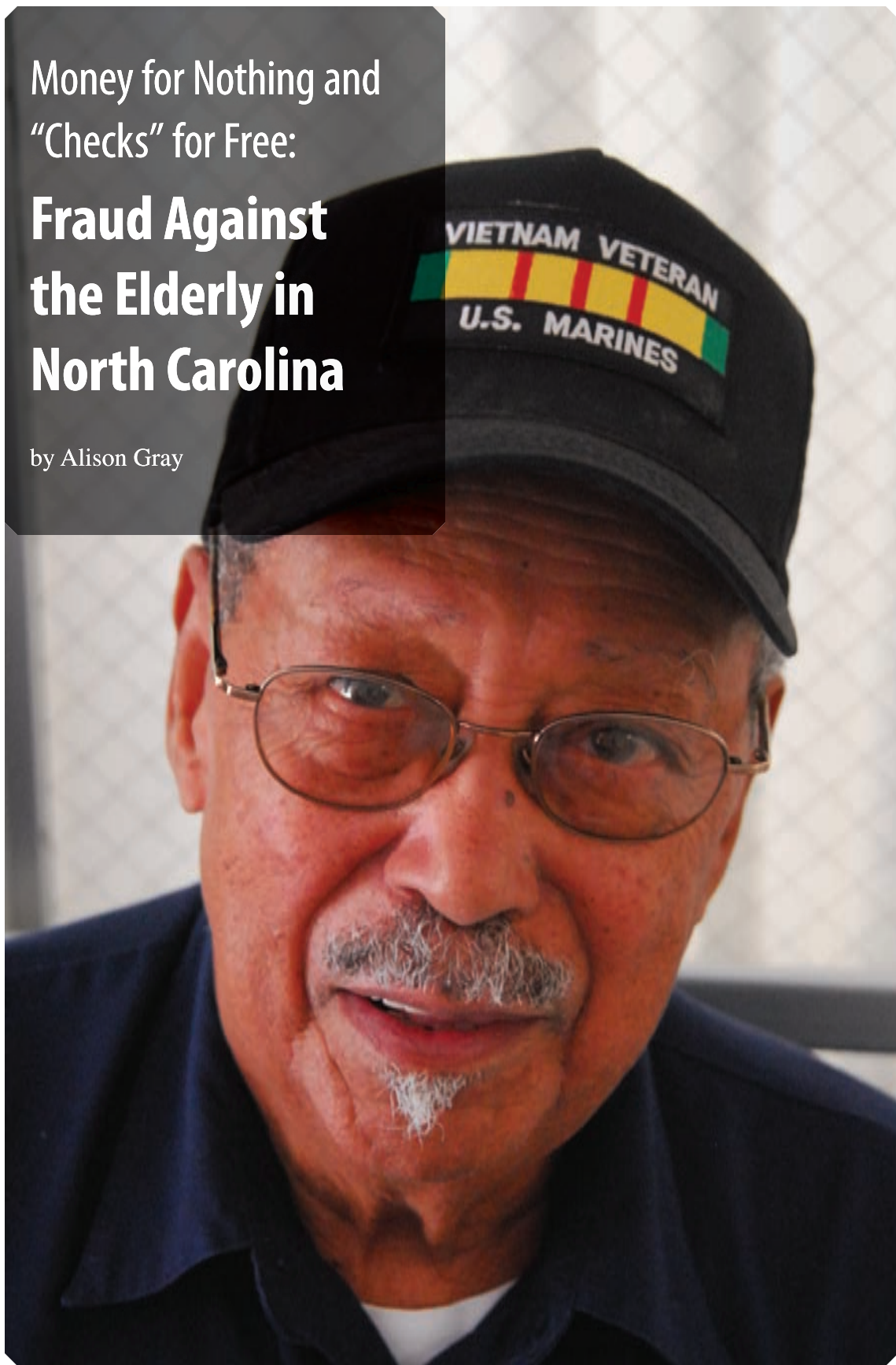


Money for Nothing and
“Checks” for Free:

Fraud Against the Elderly in North Carolina

by Alison Gray



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As they age, North Carolina's Baby Boom generation may find new meaning in the lyrics of the Dire Straits' song, "Money for Nothing," if they come up against the ever-evolving scam artists whose enticing lures of free money and even false love rob them of their life savings. "Elder fraud," or the financial exploitation of older adults, is not a new phenomenon. What is new, however, is the increasing sophistication and international scope of the fraudulent operations, a continually growing population of older and wealthier citizens, and the widening role of the Internet and other forms of advanced technology as a means of perpetrating new, and often hard to detect, schemes. These factors add additional layers of complexity to an already complex problem where the schemes are as varied as the minds of those who devise them, few generalizations can be made about the victims, and the perpetrators range from complete strangers to trusted family members, caregivers, and advisors.

How Big Is the Problem?

Although the actual extent of fraud against the elderly is not clear because it is an under-reported crime, the impact is substantial and far-reaching. On a national scale, consumers lose in excess of \$40 billion a year to telemarketing fraud, only one type of the many fraudulent schemes. On an individual scale, persons can lose anywhere from a few dollars to their life savings and homes. Such losses can be especially devastating to senior citizens who have limited opportunities—because

of their age and in some cases accompanying health problems—to recover such losses.

North Carolina is no stranger to this crime. According to the Federal Trade Commission, consumers in the Tar Heel state lodged 14,846 fraud complaints in 2007 and 23,128 in 2008. In 2008, 85 percent of these complaints reported an actual total loss of \$25,473,738. In addition, North Carolina consumers lodged 6,069 identity theft complaints in 2007 and 7,609 in 2008. Overall, in 2008, North Carolina ranked 24th among the 50 states in the number of fraud complaints, and 21st in the number of identity theft victims. Nationwide, in 2008, 30 percent of all consumer fraud complaints and 26 percent of identity theft complaints were lodged by individuals aged 50 and over.

The Scammers and Their Schemes

In general, the financial exploitation of the elderly is carried out by two broad categories of perpetrators: (1) strangers; and (2) relatives, family friends, and caregivers. **Strangers** run the gamut from (a) sophisticated, international telemarketing check and sweepstake schemes; to (b) local home repair fraud rings that persuade elderly homeowners to undertake needless repairs based on false reports of crumbling chimneys, rotting roofs, and frozen pipes; to (c) Internet-based identify theft through phishing (an electronic attempt to illegally acquire information such as usernames, passwords, and credit card details by pretending to represent a trustworthy organization) and spam e-mails; to (d) the insidious "sweetheart scam" where an opportunistic

con artist befriends an elderly widow or widower and over time feigns false love which they use to gain control of the senior citizen's estate and finances.

Unlike strangers, **family members, friends, and caregivers** have a legal, fiduciary, or moral responsibility to take care of, not abuse, the older adults within their care and start out from a position of trust. The methods used by these individuals include, among others: (a) intentional theft of money, property, or valuables from the senior citizen's home; (b) "borrowing" money without any real intent to repay it; (c) withholding services or medical care to conserve the elder person's financial estate; (d) selling or disposing of the elderly person's personal property without permission; (e) misappropriating funds received by the elderly in the form of pension or retirement checks; (f) misusing ATM and credit cards; and (g) forcing the senior citizen to part with resources or sign over property.

Who Are the Victims?

It is human nature to want something for nothing or feel like one is getting a bargain. Whether older adults are necessarily more vulnerable overall to such impulses than other age groups, however, is unclear. Various studies show that different frauds attract different audiences. Although age alone is not necessarily a good predictor of likely victimization, it is clear that many scam artists specifically target the elderly due to the following risk or lifestyle factors. First, the elderly are the most financially well-off population group, and their assets tend to be easy to convert to cash. Second,

as retirees, older individuals are more likely to be at home to respond to telephone calls or door-to-door scams. Third, according to the American Prosecutors Research Institute, "most older Americans are just too polite to hang up."

Efforts by North Carolina To Combat Elder Fraud: Prevention and Enforcement

Those with front-line state responsibility for addressing elder fraud—the Attorney General's Office, the Division of Aging and Adult Services, and the Secretary of State, as well as the nonprofit AARP-NC (formerly the American Association of Retired Persons-North Carolina)—view this issue as a high priority for the state. Their combined work mirrors what is widely viewed as a necessary two-pronged approach to combating fraud against the elderly: prevention and enforcement.

Among North Carolina's earlier efforts in **prevention** was the 1995 creation of the Partnership for Consumer Education, a nonprofit organization with authority to secure financial and other support for the statewide education of consumers in identifying and avoiding fraud. In 1998, the North Carolina Senior Consumer Fraud Task Force was formed to bring together federal, state, and local law enforcement, consumer networks, crime prevention agencies, and North Carolina's aging network in an alliance to address the financial exploitation of the elderly in North Carolina. Then in 1999, the N.C. Attorney General's Office was selected to participate in a pilot project funded by U.S. Department of Justice to fight telemarketing fraud. Other

successful prevention efforts include SCAM Jams—half-day or full-day events where the elderly and other consumers are invited to listen to presentations and discuss consumer-related topics such as identity theft, telemarketing fraud, and investment fraud—and the accompanying “Shred-a-Thons”—where a truck which contains a huge cross-cutter shredder comes to the SCAM Jam or other public venue so that people can safely shred outdated financial documents.

North Carolina is embracing the role of volunteers in two elder fraud initiatives. First, the Victims Assistance Program uses trained volunteers who are assigned to individuals who are especially vulnerable individuals and/or those already victimized. Second, in 2007, the Fraud Fighters Program began training a number of speakers to go into community groups, civic groups, clubs, and churches and present a 30-minute presentation on elder financial exploitation.

Although preventive efforts are often geared at educating the public, equally important is educating and enlisting the support of local and national businesses, especially financial institutions which are in a front-line position to assist in detecting and halting fraudulent transactions. One success story in this area is a 2005 agreement with Western Union that was negotiated by N.C. Attorney General Roy Cooper and nine other attorneys general on behalf of 48 states to protect consumers from telemarketing scams. Under the agreement, Western Union has agreed to institute better warnings on their materials

and in their offices, train their clerks to recognize the telltale signs that a transaction is fraudulent, and provide \$8.1 million in funding for consumer counseling. A similar agreement with MoneyGram was reached in summer 2008.

There is no question that fraud against the elderly is a multi-jurisdictional problem that presents a role for local, state, federal, and international law **enforcement**. Ensuring that all the various law enforcement parts are working in conjunction with each other, however, can be a very difficult process. In North Carolina, the Attorney General’s Office does not have original criminal jurisdiction; thus, criminal prosecutions either have to be referred to federal authorities who prosecute telemarketing cases under, for example, wire or mail fraud statutes, or to local district attorneys who prosecute under state laws against obtaining property by false pretenses. Both of these options, however, can be problematic because many times the amount of the loss fails to satisfy federal guidelines, and local district attorneys may be ill-equipped financially and time-wise to handle cases that can be complex and resource-draining in light of the multi-jurisdictional issues. Despite the limitation on its powers, the AG’s Office has been very active in prosecuting civil claims under the North Carolina Unfair and Deceptive Trade Practices Act.

Future Elder Fraud Trends

The expectation is that fraudulent telemarketers will increasingly use computer technology, including spam e-mails, to

contact potential victims because the aging population of Baby Boomers tends to rely on computers twice as much as the current generation of older Americans. The implications of this in terms of fraud against the elderly could be significant. The combination of decreasing costs through technology and the increasing number of seniors, especially seniors with wealth, is a worrisome combination. One foreseeable implication is that law enforcement and prosecutors will have to become fully knowledgeable about how to investigate and prosecute telemarketing fraud and identity theft conducted through the Internet. Such training also will have to include educating prosecutors and investigators on how to obtain and present electronic evidence to juries.

According to the American Prosecutors Research Institute, another troublesome trend is the scam artists' increased use of "disposable technology such as calling cards, cellular phones, and laptop computers, to avoid identification. [Such] tactics pose immense barriers to successful investigation and prosecution." Finally, consumer advocates in North Carolina are becoming concerned about the increased targeting of elderly people in the early stages of dementia or Alzheimer's disease. Those individuals who are most likely to become repeat or "super-victims" are those with mild dementia because "the community around them has not yet appreciated that they're having memory disorders." The targeting of this subset of elderly creates significant enforcement problems because these victims are unlikely to make good witnesses

due to their impaired memory function.

North Carolina's public and private consumer advocates have made great strides in implementing programs and creating ongoing partnerships that address the financial exploitation of older adults. However, from defining mistreatment of the elderly to gathering data on the extent of the problem to finding solutions, all agree more needs to be done.

The Center's Recommendations on the Mistreatment of Elders

Fraud against the elderly, or the financial exploitation of older adults, is just a part of the problem. No one knows how many older adults in America suffer from elder fraud, abuse, and mistreatment. According to the National Center on Elder Abuse, a program of the U.S. Administration on Aging, "while evidence accumulated to date suggests that many thousands have been harmed, there are no official national statistics." Even the definitions vary, and in the absence of a uniform reporting system for states or a nationwide tracking system, information on the prevalence of this problem is hard to come by.

The wolves are often those we least expect: a minister, a daughter, a next-door neighbor, a trusted caregiver. To prepare for its aging population, North Carolina needs to update its laws to protect vulnerable adults age 60 and over. The Baby Boomers are a wealthy generation, and the more money Gramps and Grandma have and the longer they live, the more conniving the wolves will be.

Recommendations

The Definition:

The N.C. Center for Public Policy recommends that the N.C. General Assembly clarify and strengthen N.C. General Statute Chapter 108A, the Protection of the Abused, Neglected, or Exploited Disabled Adult Act. The statute has not been amended since 1981, and it needs to support a broader system of protection for older adults. The definition of abuse should include physical abuse, emotional abuse, sexual abuse, financial exploitation, neglect, and abandonment. The act should cover vulnerable adults instead of limiting it to disabled adults. In defining vulnerable, the functional limitations of an individual should be considered in addition to any diagnosis, and the act should also cover vulnerable adults who are at substantial risk of being abused. For those elders that have the capacity to consent to services, the statute should cover voluntary interventions as well as involuntary interventions. And, in keeping with the definition in the federal Older Americans Act, older adults should be defined as those 60 and over.

The Numbers:

The Center recommends that the N.C. General Assembly require reporting on the statewide incidence and prevalence of mistreatment of the elderly, expanding North Carolina's current data collection system.

The Role of the Banks:

The Center recommends that the N.C. General Assembly establish a study commission to examine how the N.C. Commissioner of Banks, the financial management industry, and law enforcement agencies can partner to prevent fraud against the elderly. The study commission should assess whether training for bank employees can help them recognize, report, and reduce the incidence of fraud against the elderly.

The Role of the Attorney General:

The Center recommends that the N.C. General Assembly consider giving the N.C. Attorney General authority to initiate prosecutions for fraud against the elderly. Only five states do not give their Attorney General any authority to initiate local prosecutions—North Carolina, Arkansas, Connecticut, Texas, and West Virginia.