


# Wyoming Lawyer

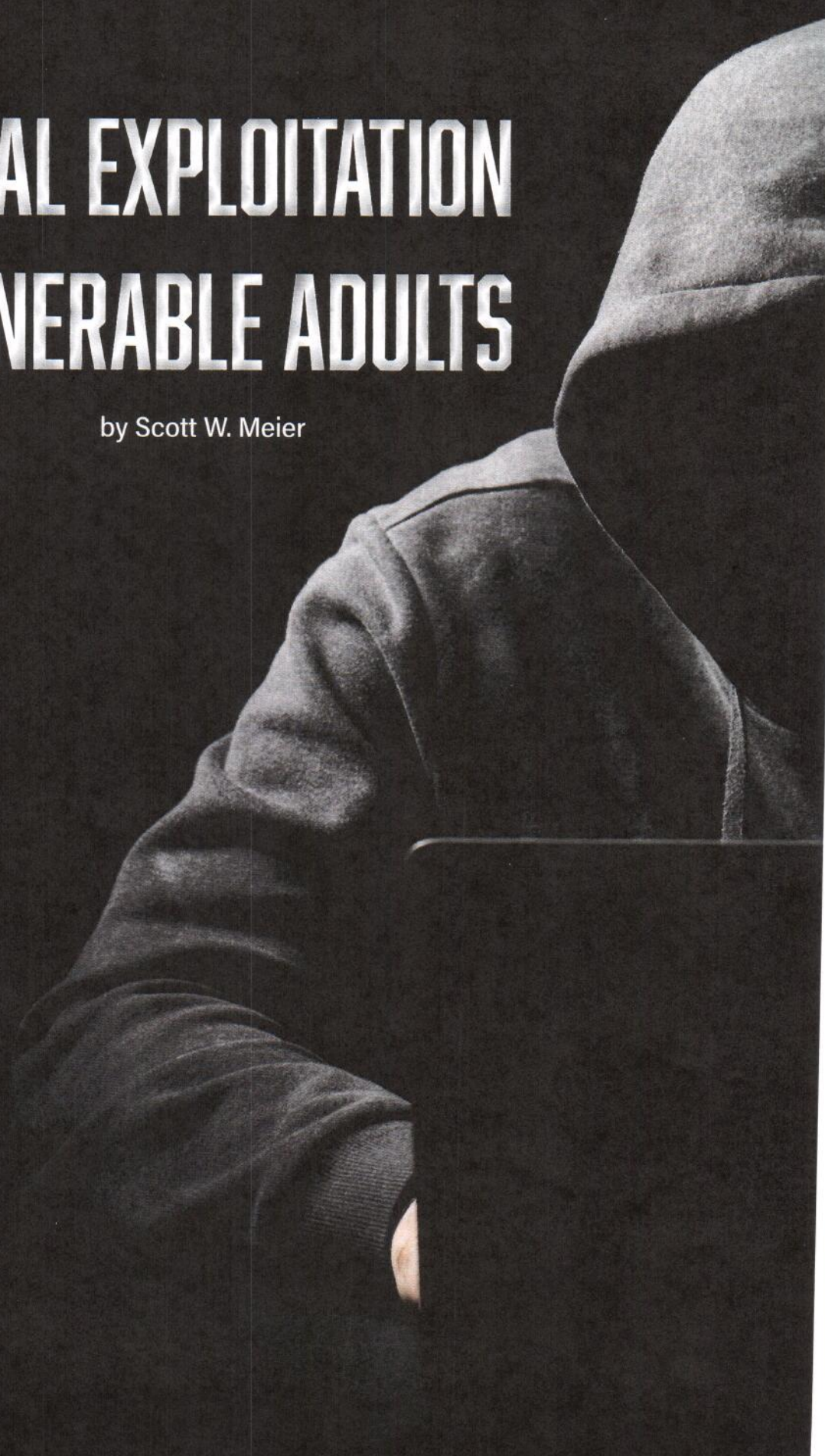


are we doing all we  
can to protect our  
vulnerable  
adults?

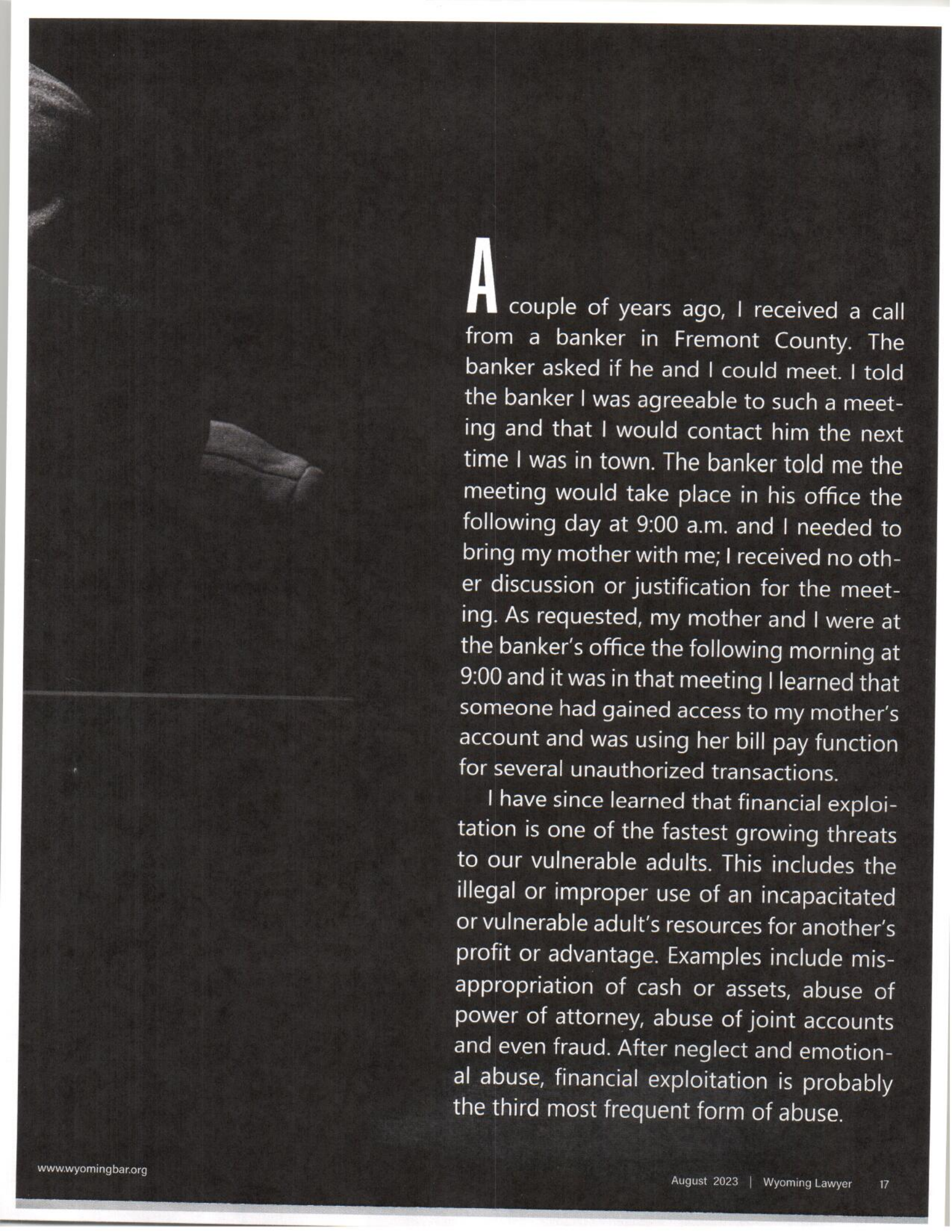


# FINANCIAL EXPLOITATION OF VULNERABLE ADULTS

by Scott W. Meier







**A** couple of years ago, I received a call from a banker in Fremont County. The banker asked if he and I could meet. I told the banker I was agreeable to such a meeting and that I would contact him the next time I was in town. The banker told me the meeting would take place in his office the following day at 9:00 a.m. and I needed to bring my mother with me; I received no other discussion or justification for the meeting. As requested, my mother and I were at the banker's office the following morning at 9:00 and it was in that meeting I learned that someone had gained access to my mother's account and was using her bill pay function for several unauthorized transactions.

I have since learned that financial exploitation is one of the fastest growing threats to our vulnerable adults. This includes the illegal or improper use of an incapacitated or vulnerable adult's resources for another's profit or advantage. Examples include misappropriation of cash or assets, abuse of power of attorney, abuse of joint accounts and even fraud. After neglect and emotional abuse, financial exploitation is probably the third most frequent form of abuse.



To be clear, Wyoming has had for a number of years statutes that criminalize the exploitation of vulnerable adults. Over the past two years, however, the Wyoming Bankers Association, along with Director Korin Schmidt of the Wyoming Department of Family Services, Bobbie Frank and Shane Schultz of the GoWest Credit Union Association, Tom Lacock of AARP Wyoming and Senator Cale Case – SD25, began working on a bill to help deal with the identification of those situations where someone is or has been exploiting vulnerable adults. As of July 1, 2023, Wyoming has new statutes aimed at protecting these vulnerable adults; Title 13, Chapter 1, Article 7, Protection of Vulnerable Adults.

**While our financial institutions may be a great front line of defense against these crimes, accountants and attorneys who represent vulnerable adults should also be mindful of sudden changes described above, especially in sudden changes to estate plans or transfers of property.**

Often our financial institutions are the first to notice such abuse. This may come in the form of unusual transactions such as expensive purchases or suspicious transfers of funds (romance swindles or reports that a grandchild is stuck in a foreign prison). Such abuse may also manifest itself in sudden switches to cash transactions, a customer's recent anxiety about personal finances, and unexplained or sudden financial problems (e.g., inability to pay recurring bills such as utilities). It may also show up in changes to account beneficiaries, sudden applications for credit or signatures that appear forged or suspicious.

So why the new law? We already have the Federal Senior Safe Act where a financial institution can file a Suspicious Activity Report. Wyoming's new law, however, is different in that unlike the Federal Senior Safe Act, the Wyoming law covers more of the real-world vulnerable adult abuse situations, including (i) reaching out to a family member or other person (Wyo. Stat. §13-1-703) and (ii) pausing or temporarily halting a suspicious transaction (Wyo. Stat. §13-1-704). It also provides Wyoming's financial institutions with some civil immunity for making efforts to pause suspected transactions. Wyo. Stat. §131705. The federal law does not have these provisions. Furthermore, the Federal Senior Safe Act deals solely with the elderly while Wyoming's new law applies to *all* adults eighteen years of age or older who are unable to manage and take

care of themselves or their money, assets or property without assistance as a result of advanced age or physical or mental disability. Wyo. Stat. §35-20-102(xviii). The key is vulnerability, not age. Furthermore, being competent does not eliminate vulnerability.

Under the new law, if a "qualified person" has cause to believe that financial exploitation of a vulnerable adult has occurred, is occurring or has been attempted, the qualified person shall notify the financial institution of the suspected financial exploitation. Wyo. Stat. §13-1-702. Who is a "qualified person?" A "qualified person" means any agent, investment adviser representative or person who serves in a supervisory,

compliance or legal capacity for a financial institution. Wyo. Stat. §13-1-701(a)(vi). That probably excludes new tellers who may or may not know the customer.

If a financial institution is notified of suspected financial exploitation or otherwise has cause to believe that financial exploitation of a vulnerable adult has occurred, is occurring or has been attempted, the financial institution shall assess the suspected financial exploitation and, if warranted, submit a report to the Department of Family Services. This report must be submitted by

the financial institution within five (5) days of receipt.

Once a financial institution has submitted the report, the financial institution may place a hold on a suspected transaction not to exceed five (5) business days. Wyo. Stat. §13-1-704. A financial institution may extend such a hold for a period not exceeding thirty (30) days if a state or federal agency or law enforcement agency investigating the suspected financial exploitation makes such a request. *Id.*

A financial institution may also notify a third party (if appropriate) of the suspected financial exploitation. Wyo. Stat. §13-1-703. This would require a customer to name someone as the contact person at the time they opened an account. This ability, however, should be used with caution. If the named third party is the one with whom the financial institution suspects of financially exploiting a customer, then the financial institution should probably not make such notification. Furthermore, the financial institution should make sure they are not hampering the efforts of law enforcement by notifying someone who law enforcement is investigating.

A qualified person who provides notification under Wyo. Stat. §131702(a), a financial institution that submits a report under Wyo. Stat. §131702(b) or provides notification to a third party under Wyo. Stat. §131703 and a qualified person or financial institution that testifies or otherwise participates in a judicial proceeding arising from a notification or report



under this article is immune from any civil liability arising from the notification, report, testimony or participation in the judicial proceeding, unless the qualified person or financial institution acted in bad faith or with a malicious purpose. Wyo. Stat. §131705(a). Furthermore, a financial institution that, in good faith and with the exercise of reasonable care, places or does not place a hold on a suspected transaction, is also immune from civil liability or disciplinary action resulting from that action or failure to act. Wyo. Stat. §131705(b).

Victims of vulnerable adult financial exploitation often underreport, perhaps because of shame or a desire not to cause problems. According to one study, elder females over the age of 70 and who reside alone (like my mother) are likely victims. *MetLife Study of Elder Financial Abuse* (June 2011). While our financial institutions may be a great front line of defense against these crimes, accountants and attorneys who represent vulnerable adults should also be mindful of sudden changes described above, especially in sudden changes to estate plans or transfers of property. These changes or transfers may be exactly what your client wants, but it may be worthwhile to do some investigating if such changes seem unjustified or unexplained. ♦



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