

# Senior\$afe

PREVENTING FINANCIAL  
EXPLOITATION OF THE ELDERLY:

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*The Role Of Broker-Dealers and Investment Advisers*



UTAH DEPARTMENT  
OF COMMERCE  
Division of Securities



MAINE COUNCIL FOR  
ELDER ABUSE  
PREVENTION

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# Goal of This Training

To prevent financial exploitation of the senior population before assets/funds are depleted.

## **Part 1: WHY Report**

Educating about financial exploitation in an effort to prevent future abuse.

Explaining the benefits of reporting, why the issue is important, common red flags, how to make a difference, and case studies.

## **Part 2: HOW to Report**

Developing a proper internal protocol and action steps for reporting.



# PART 1: WHY REPORT

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# What Is Financial Exploitation?

Senior financial exploitation and fraud is the illegal or improper use of a senior's resources for another's profit or advantage.

**Exploitation** usually (not always) involves someone the senior knows, such as a family member or caregiver.

**Fraud** is usually (not always) perpetrated by a stranger, such as a telemarketer or investment promoter.

**NOTE:** Bad financial decisions may not be considered exploitation.

# You Can Play a Key Role in Stopping Financial Exploitation

Regular contact puts you in a unique position to detect behavior changes and to assist in protecting clients before assets have been disbursed.

Proactive measures help to promote goodwill within the communities where you have footprints.

Reporting is consistent with your role in protecting your client's assets and safeguarding their information.

# Benefits of Reporting and Referring

## **Community Benefits**

It is in the public interest, that is the purpose of laws being passed to address the problem.

Provides more effective cooperation between you, APS agencies local law enforcement, and financial industry regulators.

Improved safety in your community for seniors and other clients.

Protecting the finances of your clients helps to preserve their financial independence.

# Benefits of Reporting and Referring

## **Business Benefits**

Demonstration of concern for your clients' well being and financial independence is GOOD customer service!

An ounce of prevention....Investment account losses which could have been prevented is a missed opportunity to reduce the damage of exploitation and fraud.

A pound of cure...Trying to recover monies after exploitation and fraud in ultimately more work, less satisfying service, and produces less successful outcomes.

It is in the clients interest, the financial services industry interest and the public interest...your interest!



# Why Addressing This Issue Is Important

Older persons are targets for these types of crimes.

Twenty percent of persons over the age of 65 already have been victimized by a financial fraud,<sup>1</sup>

37% of seniors report that they are currently being pitched by people calling or mailing them asking for money.<sup>1</sup>

Older adults are often:

more trusting,

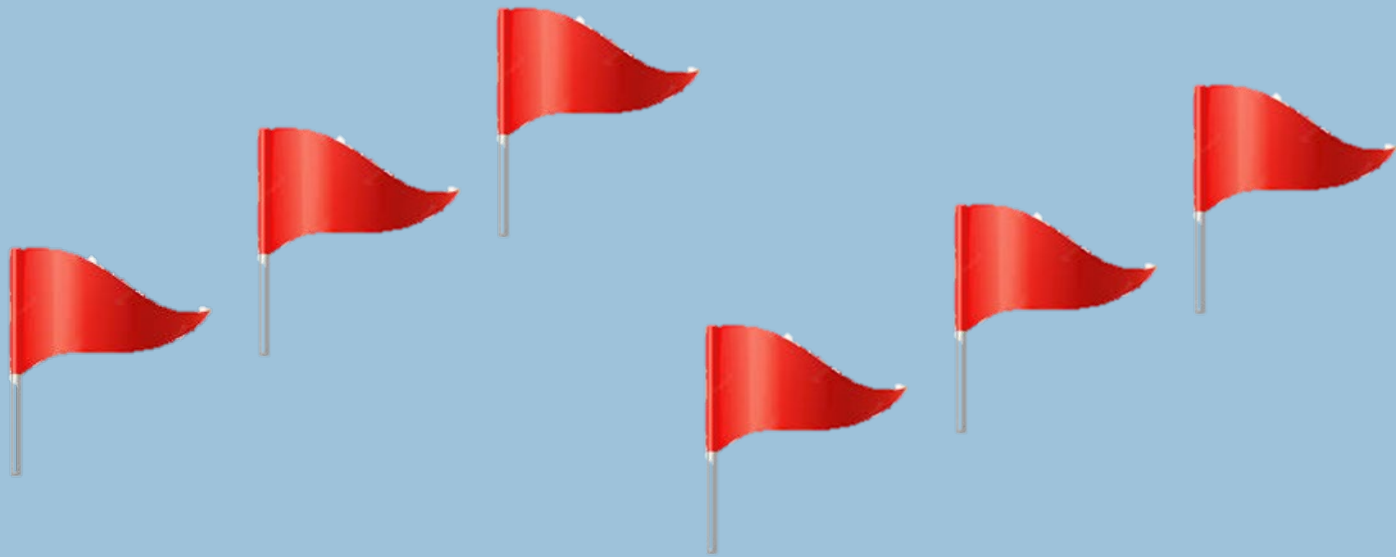
may feel it is impolite to not listen to a sales pitch,

more willing to capitulate to high pressure sales techniques,

less likely investigate or discern an opportunity to good to be true.

No all seniors have experience managing finances. Often one spouse handles the finances, potentially leaving a surviving spouse more vulnerable to exploitation.

<sup>1</sup> Investor Protection Trust Elder Fraud Survey, 2010



# RED FLAGS?

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You are in a unique position to have early – and often the only – knowledge of financial exploitation.

# What Can You Do?

LEARN TO IDENTIFY COMMON RED FLAGS THAT COULD INDICATE FRAUD, EXPLOITATION, OR ABUSE

This section will describe common RED FLAGS.

This list will include the activity that can trigger a Suspicious Activity Report (SARs)\*, as well as other common RED FLAGS that have been identified by Adult Protective Services (APS), and the Financial Services Roundtable (BITS).

\* **Important Note:** Federal- and state-registered investment advisers are not currently subject to SARs filing requirements. Information regarding SARs red flags and filing requirements is provided on an informational basis to investment advisers to learn of red flags used by the Broker-Dealer and other financial institutions to identify elder fraud, exploitation, or abuse.

# RED FLAGS

Suspicious  
**BEHAVIOR**  
That Could  
Indicate Fraud,  
Exploitation, or  
Abuse

- Person accompanying elder shows excessive interest in elder's finances or accounts, does not allow elder to speak, or is reluctant to leave the elder's side during conversations *(SARs Red Flag)*
- Elder shows an unusual degree of fear, anxiety, submissiveness, or deference towards person accompanying him or her *(SARs Red Flag)*
- Elder lacks knowledge about his or her financial status or shows a reluctance to discuss financial matters *(SARs Red Flag)*
- Elder moves away from existing relationships and toward new associations with other "friends" or strangers *(SARs Red Flag)*

# RED FLAGS

Suspicious  
**BEHAVIOR**  
That Could  
Indicate Fraud,  
Exploitation, or  
Abuse

- You are unable to speak directly with the elder despite repeated attempts to contact him or her *(SARs Red Flag)*
- Elder displays unexplained or unusual excitement over a financial windfall or prize check; may be reluctant to discuss details *(BITS)*
- Noticeable neglect or decline in appearance, grooming, or hygiene *(APS)*
- Sudden appearance of previously uninvolved relatives claiming their rights to the elder's affairs and possessions *(BITS)*

# RED FLAGS

## Suspicious ACCOUNT ACTIVITY

That Could  
Indicate Fraud,  
Exploitation, or  
Abuse

- A new caretaker, relative, or friend suddenly begins conducting financial transactions on behalf of an elder without proper documentation *(SARs Red Flag)*
- Abrupt changes to financial documents, such as power of attorney, account beneficiaries, wills and trusts, property title, and deeds *(SARs Red Flag)*
- Uncharacteristic nonpayment for services, which may indicate a loss of funds or access to funds *(SARs Red Flag)*
- Closing of accounts without regard to penalties *(SARs Red Flag)*

# RED FLAGS

Suspicious  
**ACCOUNT**  
**ACTIVITY**  
That Could  
Indicate Fraud,  
Exploitation, or  
Abuse

- Noticeable change in elder's established banking or financial management habits or patterns, including:
  - Frequent large withdrawals (*SARs Red Flag*)
  - Sudden NSF activity (*SARs Red Flag*)
  - Inconsistent transactions or uncharacteristic attempts to wire large sums of money (*SARs Red Flag*)

# RED FLAGS

Suspicious  
**ACCOUNT  
ACTIVITY**  
That Could  
Indicate Fraud,  
Exploitation, or  
Abuse

- Change of address on accounts to new recipient's address, especially when distant from elder's home (*BITS*)
- Large withdrawals from a previously inactive account or a new joint account or sudden appearance of credit card balances (*BITS*)
- Suspicious signatures (*APS*)
- Unexplained disappearance of funds or valuable possessions, such as safety deposit box items reported missing by elder (*BITS*)



# What Can You Do?

## OFFER ACCOUNT SAFEGUARDS AND SAFE MONEY MOVEMENT ALTERNATIVES

*For example:*

Suggest alternatives to large cash withdrawals and discourage wire transfers.

Make clients aware of ways to limit the risk of joint accounts.

Make client aware of the advantage of naming a “trusted person” added to a account.

# What Can You Do?

INCORPORATE INTO YOUR FIRM'S PROTOCOLS LAWS AND RULES RELATING TO REPORTING ABUSE, NEGLIGENCE AND EXPLOITATION AND/OR TEMPORARILY DELAYING SUSPICIOUS TRANSACTIONS

New laws and regulations have been created to help safeguard elderly clients and their financial accounts. Your firm should have written supervisory procedures\*, which should include reporting requirements and procedures to report a delay processing transactions.

A clear internal protocol ensures timely, efficient, and effective management of reports of suspicious behaviors.

## REMEMBER:

A reasonable belief of elder financial exploitation is adequate for reporting; proof is not required. No dollar amount is too small to report.



# PART 2: HOW TO REPORT

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Developing a proper internal protocol and action steps for reporting



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Call 911 if you believe that anyone  
is in **immediate danger!**



# Reporting Elder Abuse and Financial Exploitation

There are rules and laws governing disclosure of financial information.

Knowledge of these laws fosters confident and consistent reporting of elder financial abuse by financial professionals.

*DISCLAIMER: The following slides provide an overview of confidentiality laws and their exceptions. The materials do not provide, and should not be considered, legal advice.*

# Federal Confidentiality Law

Financial institutions may not disclose non-public personal information to non-affiliated third parties without providing notice to the customer of how information will be shared and an opportunity to opt-out. See Gramm Leach Bliley Act (GLBA), 15 U.S.C. § 6802.

Non-public personal information is personally identifiable financial information.

SEC Regulation S-P establishes requirements for collecting and processing customer non-public personal information.

# Exceptions to Federal Confidentiality Laws

The interagency guidance indicates that the GLBA permits disclosure of nonpublic personal information to local, state, and federal agencies for the purpose of reporting suspected financial abuse of older adults without the consumer's authorization.

Disclosure is always permissible with the consumer's consent.

# Exceptions to Federal Confidentiality Laws

GLBA permits disclosure to local, state, and federal agencies without consumer authorization:

1. To comply with federal, state, or local laws, rules, and other applicable legal requirements, such as laws that require reporting of suspected abuse.
2. To respond to a properly authorized civil, criminal, or regulatory investigation, subpoena, or summons.



# Exceptions to Federal Confidentiality Laws

3. To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability. This exception generally allows a financial institution to disclose non-public personal information in order to:
  - Report incidents that result in taking an older adult's funds without actual consent, or
  - Report incidents of obtaining an older adult's consent to sign over assets through misrepresentation of the intent of the transaction.
4. To the extent specifically permitted or required under other provisions of law...to law enforcement agencies...or for an investigation on a matter related to public safety.

# Federal Reporting: Suspicious Activity Reports (SARs)

A SAR is required where the financial institution\*:

Knows, suspects, or has reasons to suspect that a transaction has no business or apparent lawful purpose, or

Is not the sort in which the particular customer would normally be expected to engage, and

The financial institution knows of no reasonable explanation for the transaction after examining the available facts.

Include the term “elder financial exploitation” when filing a SAR in instances of financial exploitation of the elderly.  
(FIN-2011-A003)

\* Only Broker-Dealer firms are subject to SARs reporting requirements. Federal- and state-registered investment advisers are not currently subject to SARs filing requirements. Information regarding SARs red flags and filing requirements is provided on an informational basis to investment advisers. Investment advisers should keep themselves informed regarding whether SARs obligations may extend to them in the future.

# Understanding Your Reporting Obligations and Referral Options

Utah securities laws and financial exploitation reporting requirements are outlined in this presentation.

**Note:** Clients with residency in states other than Utah may have different reporting requirements.

**Note:** SARs filings by broker-dealer firms are not a substitute for Utah APS and Utah Securities Division reporting on elder financial exploitation.

\* Federal- and state-registered investment advisers are not currently subject to SARs filing requirements. Information regarding SARs red flags and filing requirements is provided on an informational basis to investment advisers. Investment advisers should keep themselves informed regarding whether SARs obligations may extend to them in the future.

# Utah Laws and Reporting Requirements

In May 2018 a new Utah law went into effect titled **“Protection of Vulnerable Adults from Financial Exploitation”**.

The language of the laws can be found in the Utah Uniform Securities Act (“UUSA”) Sections 61-1-201 through 206.

Your responsibilities are to know these laws, use the laws to write written supervisory procedures documenting how your firm and agents will act to comply with the law.

We will next address each UUSA Section next.

# UUSA § 61-1-202: Definitions

**“Eligible adult”**- (a) an individual who is 65 years of age or older; or (b) a **“Vulnerable adult”** as defined in Section 62A-3-301 which states: an elder adult, or a dependent adult who has a mental or physical impairment which substantially affects that person's ability to: (a) provide personal protection;... (e) manage the adult's own financial resources; or (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

**Qualified individual”** means: (a) an agent; (b) an investment adviser representative; or (c) an individual who serves in a supervisory, compliance, or legal capacity for a broker-dealer or an investment adviser.

**Financial exploitation”** : (a) the wrongful or unauthorized taking... use of money...of an eligible adult; or (b) an act or omission, including through a power of attorney, ...of an eligible adult, to: (i) obtain control, through deception, intimidation, ... over an eligible adult’s money, ... or, (ii) convert an eligible adult's money, ... to deprive the eligible adult of the ownership, use, benefit

## UUSA § 61-1-202: Disclosures

(1) If a broker-dealer, an investment adviser, or a qualified individual **reasonably believes** that a person has **engaged in or attempted to engage** in the financial exploitation of an eligible adult, the broker-dealer, investment adviser, or qualified individual: (a) **shall promptly notify the** [Utah Securities] division **and** Adult Protective Services; and (b) subject to Subsection (2), **may notify** a person previously designated by the eligible adult, **a person allowed to receive notification under applicable law or any customer agreement**, or an individual reasonably associated with the eligible adult.

(2) A broker-dealer, an investment adviser, or a qualified individual **may not notify a third party** under Subsection (1)(b) **if the third party is suspected of engaging in the financial exploitation** of the eligible adult or other abuse of the eligible adult.

## UUSA § 61-1-203: Notification Immunity

A broker-dealer, an investment adviser, or a qualified individual who, **in good faith and exercising reasonable care, notifies the [Utah Division] division, Adult Protective Services, or a third party**, in accordance with Section 61-1-202, is **immune from administrative or civil liability** that might otherwise arise from the notification.

## UUSA § 61-1-204: Delaying Transactions (part 1)

(1) A **broker-dealer or an investment adviser may delay a disbursement or transaction from an eligible adult's account...**, if the broker-dealer or investment adviser: (a) **suspects that the disbursement or transaction may result in the financial exploitation...**; (b) **initiates an internal review of the disbursement or transaction and the suspected financial exploitation of an eligible adult**; (c) **after initiating the internal review, reasonably believes that the disbursement or transaction may result in the financial exploitation of an eligible adult**; (d) **within two business days after the day on which the disbursement or transaction is delayed, [the firm] provides written notification of the delay and the reason for the delay to: (i) each party authorized to transact business on the account, unless the party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult; (ii) the [Utah Securities] division; and (iii) Adult Protective Services**;



## UUSA § 61-1-204: Delaying Transactions (part 2)

(e) **...the broker-dealer's or investment adviser's [continues] internal review** of the suspected or attempted financial exploitation..., as necessary; and (f) **upon request, [firm] provides** a timely report on the **status and results of the internal review to the [Utah Securities] division or Adult Protective Services.**

(2) Except as provided in Subsection (3), **a delay of a disbursement or transaction** under Subsection (1) **expires the earlier of:** (a) **the day on which the broker-dealer or investment adviser determines that the disbursement or transaction will not result in the financial exploitation** of an eligible adult; or (b) **15 business days** after the day on which the **broker-dealer or investment adviser initially delayed the disbursement or transaction.**

## UUSA § 61-1-204: Delaying Transactions (part 3)

**(3) If an internal review** described in Subsection (1) **supports a reasonable belief** that a person has **engaged in or attempted to engage in the financial exploitation** of an eligible adult, the [Utah Securities] division or Adult Protective Services **may extend the delay of the disbursement or transaction** under Subsection (1) as reasonably necessary.

**(4) A court** of competent jurisdiction **may enter an order terminating or extending a [transaction] delay** under this section or granting other protective relief.

# UUSA § 61-1-205: Transaction Delay Immunity

**A broker-dealer or investment adviser who, in good faith and exercising reasonable care, delays a disbursement or transaction in accordance with Section 61-1-204 is immune from administrative or civil liability that might otherwise arise from the delay.**

# UUSA § 61-1-205: Transaction Delay Immunity

**A broker-dealer or investment adviser who, in good faith and exercising reasonable care, delays a disbursement or transaction in accordance with Section 61-1-204 is immune from administrative or civil liability that might otherwise arise from the delay.**

## UUSA § 61-1-206: Records

(1) Upon request, a broker-dealer or investment adviser shall provide access to or a copy of any record, including a historical record, that is relevant to the suspected or attempted financial exploitation of an eligible adult to Adult Protective Services or a law enforcement agency.

(2) For purposes of Title 63G, Chapter 2, Government Records Access and Management Act, a record made available to Adult Protective Services or a law enforcement agency under this section is a protected record as defined in Section 63G-2-103.

(3) Nothing in this section affects the authority of the [Utah Securities] division to access or examine the books or records of a broker-dealer or investment adviser as otherwise provided by law.



ADULT PROTECTIVE SERVICES

# UTAH ADULT PROTECTIVE SERVICES

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# Reporting to Adult Protective Services

If you have reason to believe that there has been, or is about to be, abuse, neglect, or exploitation (including financial exploitation) of a vulnerable adult or senior, **it should always be reported to Utah Adult Protective Services (APS):**



By Telephone  
Monday - Friday  
8:00 am - 5:00 pm  
1-800-371-7897



Report Online 24/7

It's fast and easy.

Click this link to use the online abuse reporting form.

<https://utahaps.com/Intake/NewPublicIntakeReport.aspx>

# Reporting to Adult Protective Services

A reasonable belief is enough to report financial exploitation.

**If you are in doubt, call APS!** APS will determine whether the senior needs assistance, and if not, APS may refer the senior to the appropriate local resources.



# Reporting to Adult Protective Services

## The APS Process and Timetables

A concerned citizen contacts his/her local APS office to report concerns about the welfare of a senior or adult with disabilities.

The details provided in the report will be screened by a trained professional to evaluate if it meets the statutory requirements for APS services in the state and/or municipality receiving the report.

If the situation meets criteria for abuse, neglect or exploitation, an APS worker will initiate face-to-face contact with the adult needing assistance.

# Reporting to Adult Protective Services

## The APS Process and Timetables

The APS worker will assess the adult's safety, need for assistance, and determine what services, if any, would be beneficial to maintain his/her well-being and independence.

While APS workers help thousands of vulnerable adults every day, individuals always have the right to decline services.

# Repeat Reporting

Even if the suspicious behavior is reported, victimization can continue. Why?

Complex underlying relationships.

Seniors may refuse to admit that they are being abused.

Agencies cannot take action due to lack of evidence.

Repeat victimization.

Report *every time* there is suspected exploitation or abuse, regardless of whether the customer has refused help in the past.



# LAW ENFORCEMENT

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Local police, sheriff, or other law enforcement



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# Reporting to Local Law Enforcement

Some instances of potential abuse/exploitation should be reported to law enforcement as well.

These are some examples of when you might make a non-emergency report:

- Identity theft

- Grandparent scam

- Sweetheart scam

- Lottery/sweepstakes scam

# Reporting to Local Law Enforcement

Non-emergency reports should be limited to very basic information:

Name, age (estimate), address, and telephone number of the victim.

Full description of the suspect (if known).

Description of the incident.

Location of the incident.

Description of suspect's car and license plate number (if known).

Remember, if you believe that the customer  
is in **immediate danger**, always call 911.



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# SECURITIES REGULATOR

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Utah Division of Securities

# Reporting to Your State Securities Regulator

## Utah Securities Division

Assists with the investigation or referral of cases involving elder **financial exploitation** as it relates to **violations of the Utah Uniform Securities Act.**

Educates seniors on how to identify red flags for financial fraud and exploitation and how to protect themselves.

Phone: 801-530-6600 or Toll Free 800-721-7233

Email: [securities@utah.gov](mailto:securities@utah.gov)

Website: <https://securities.utah.gov/contact.html>



# Information For Utah Securities Division Report

## **Reporting of financial exploitation:**

Confirmation Utah APS report was filed,  
Firm Name, Agent Contact Name, File No, etc.,  
Client Name and complete contact information,  
Brief description of firm's suspicion of financial exploitation prompting the report.

## **Reporting on delaying a transaction:**

All information required for reporting financial exploitation, plus the following:  
Confirmation of notification to non-suspected account owners/authorized persons,  
Brief description of the delayed transaction including the date of the transaction request.

# What Happens Next?

Utah Securities Division may:

- Evaluate the situation
- Speak with the senior to gather information

it **doesn't** involve a security:

- Confirm that the firm/agent has made a reported Utah APS

If it **does** involve a security:

- Conduct an investigation on securities violations only.
- Pursue securities administrative, civil, or criminal action related to securities violations.
- Possibly refer to additional support or resources

# Utah Requirement Reporting Matrix

UTAH LAWS AND REGULATIONS REPORTING ON ADULT ELDER ABUSE, NEGLECT, OR EXPLOITATION			
What	Who	When	How
Notification of possible elder abuse, neglect, or exploitation; <b>not involving</b> financial exploitation in a securities account	Utah Adult Protective Services ("APS") (Required) and/or Local Law Enforcement	Emergency: Dial 911  Non-Emergency: As soon as reasonable belief is discovered	Utah APS 1-800-371-7897 Utah APS On-line Form: <a href="https://utahaps.com/Intake/NewPublicIntakeReport.aspx">https://utahaps.com/Intake/NewPublicIntakeReport.aspx</a>
Notification of possible elder abuse, neglect, or exploitation; <b>involving</b> financial exploitation in a securities account	Utah APS (Required) and/or Local Law Enforcement  Utah Securities Division (Required)	Emergency: Dial 911  Non-Emergency: As soon as reasonable belief is discovered	Utah APS 1-800-371-7897 <a href="https://utahaps.com/Intake/NewPublicIntakeReport.aspx">https://utahaps.com/Intake/NewPublicIntakeReport.aspx</a>  Utah Securities Division 1-801-530-6600 or <a href="mailto:securities@utah.gov">securities@utah.gov</a>
Notification of delaying a transaction due to suspicion of financial exploitation or reasonable belief of financial exploitation in a securities account	Adult Protective Services (Required)  Utah Securities Division (Required)  Any <b>non-suspected</b> party with authority to act on the account in question (Required)	Within two (2) business days after the requested transaction notify APS and Utah Securities Division  Within fifteen (15) business days after the requested transaction the processed transaction or communicate continued concerns to APS and Utah Securities Division	Utah APS 1-800-371-7897 <a href="https://utahaps.com/Intake/NewPublicIntakeReport.aspx">https://utahaps.com/Intake/NewPublicIntakeReport.aspx</a>  Utah Securities Division 1-801-530-6600 or <a href="mailto:securities@utah.gov">securities@utah.gov</a>

# Resources

## ServeOurSeniors.org

### Where to Turn for Help

Click on your state, province or territory to find contact information for helpful resources.

