

Trends In Elder Housing Risks, Advocacy, and Potential Legal Remedies

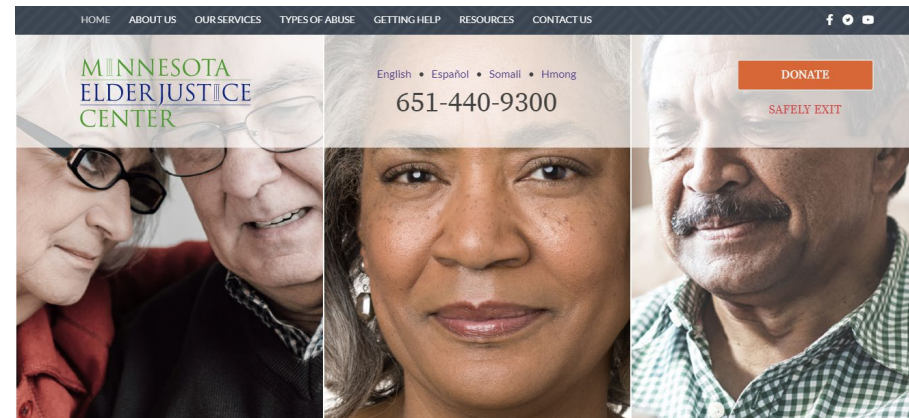
June 15, 2022

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The Minnesota Elder Justice Center

Mobilizing communities to prevent and alleviate abuse, neglect and financial exploitation of older and vulnerable adults.

- › Public Awareness
- › Professional Education
- › Public Policy
- › Direct Service



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To access a Victim Services advocate:

- Call 651-440-9312
- “Victim Services” form on website-
<https://elderjusticemn.org/our-services/victim-services/>

Free webinars

- Upcoming:
 - Typically on Thursdays at 12:00pm
- Next webinars:
 - June 23 (1pm) – Elder Justice State Legislative Policy Recap
 - June 30 (12pm) – Probate and Ownership Basics
 - <https://elderjusticemn.org/webinars/>
- Free, CEUs often offered

Today's Speakers

Victim Services Team

- Sara G., Staff Attorney
- Jenn P., Staff Attorney
- Shaina R., Advocate

Hypothetical

- Sam
 - 83 yrs old
 - Homeowner
- Tom
 - Sam's Son
 - Living with Sam
- Key Issues
 - Sam's Injury
 - Tom modifying home
 - Tom borrowing car
 - Emotional Abuse
 - Threatening Behavior
 - Tom's refusal to leave home

Overview

- First Stage – Advocacy
- Consideration of Advocacy/Legal Options
- Safety
- Representation
- Orders for Protection/Harassment Restraining Orders
- Eviction

First Stage - Advocacy

- Rapport Building
- Confidentiality
- Safety Planning
- Resources and Referrals

Let them tell their story

- Consider Opportunity vs. Burden
- Opportunity
 - Seek to validate the experience of the narrator
- Burden
 - Seek facts from supportive others
 - Limit questions to the person affected

Engage In Deep Listening

- Listening for the experiences, emotions, and preferences of the person seeking assistance.
- Provide additional information that will assist the person in making decisions about how to move forward.
- Offer multiple opportunities for the person to ask questions.

Validate and Empower

- What does this person want?
 - i.e. - receiving assistance to remove an unwanted person who is living in their home?
- Ask clarifying questions. Look for the path of least resistance. Begin to evaluate possible legal options.

Potential Legal Remedies to Removal

- Potential for Mediation
- Trespass
- Order for Protection (OFP)
- Harassment Restraining Order (HRO)
- Eviction
- Considerations: Written/oral lease for money and/or services, oral agreement, determine reason removal is needed

Safety

- Are they feeling safe in their home? Reflect on the question of safety. (Dependence, Psychological, Physical and Financial)
- Attending through validation and seek to understand why they feel unsafe.

Safety - Continued

- Options/Considerations:
 - Counseling support
 - Leaving the home temporarily
 - Protection of personal property
 - Reliance on the unwanted resident for personal care
 - Unrelated considerations: such as unmet medical needs or assistance with tasks of daily living
 - Supportive Others

Representation

- We discuss the potential legal remedies and what the pathway to the remedy is likely to look like, including unknowns.
- Is the person competent to secure representation and understand the legal proceeding.
 - Presence of a Guardian, Conservator, or Attorney-in-Fact (POA)

Orders for Protection(OFP)/ Harassment Restraining Order (HRO)

- Can be used independently or in conjunction with Eviction
- OFP vs. HRO – Different standards/elements
 - Statutes
 - Different remedies
- Specific safety issues

OFP v. HRO - Relationship

OFP – MN Stat 518B.01

- Blood relative
- Live together now or have lived together in the past
- Have a child together or are pregnant with their child
- Are or were involved in a romantic or sexual relationship

HRO – MN Stat 609.748

- No relationship requirements

OFP v. HRO - Requirements

OFP

- actual physical harm, or
- imminent threat of physical harm or fear, or
- interference w/ 911 call, or
- forced sexual contact, or
- any sexual contact if the person needing protection is a minor

HRO

- physical assault, or
- sexual assault, or
- more than 1 incident (pattern) of intrusive or unwanted acts, words, or gestures that have a substantial adverse effect or are intended to have a substantial adverse effect on the safety, security, or privacy of another

OFP v. HRO - Relief

OFP

- R may be excluded from home & sheriff will remove R from home
- P may ask for guns to be removed from home
- Temporary custody / parenting time may be granted
- Typically a 2 year limit

HRO

- Sheriff will likely not remove R, but may restrict R from returning to home
- No provisions for removal of guns
- No provisions for any family law matters
- Typically a 2 year limit

P: Plaintiff (files)

R: Respondent (responds)

OFP v. HRO - Hearings

OFP

- May be granted without a hearing
- P or R may request a hearing
- Timing considerations

HRO

- May be granted without a hearing
- P or R may request a hearing
- Timing considerations

OFP v. HRO - Fees

OFP

- P: None
- R: None

HRO

- P: none if the alleged actions would constitute criminal harassment or if person is indigent (IFP), otherwise around \$300
- R: Around \$300

Safety considerations for OFP/HRO

- Service of the summons while Respondent remains in the property
- Evaluating threat of escalation

The Law of Eviction

- Potential trespass – early situation, no consent
- Typical Eviction – non-payment, lease violation, substantial violation
- Tenancy at Will
- Pandemic Phase-out - Complete

Tenancy

- Residential tenant
 - person who is occupying a dwelling in a residential building
 - under a lease or contract, whether oral or written,
 - requires the payment of money or exchange of services,
 - all other regular occupants of that dwelling unit,
 - or a resident of a manufactured home park.

- MN Stat. 504B.001 Subd. 12

Tenancy at Will

- A tenancy in which the tenant holds possession by permission of the landlord but without a fixed ending date. (Ex. Month-to-Month, Family situation)
 - MN Stat. 504B.001 Subd. 13
- Terminating a tenancy at will is initiated by notice.
 - MN Stat. 504B.135

In Summary...

- Reflections regarding the case scenario?
- Parting thoughts to share?

Additional Resources

- [NCEA](#) – National Center on Elder Abuse
- [DOJ EJI](#) – Department of Justice - Elder Justice Initiative
- [NCALL](#) – National Clearinghouse on Abuse in Later Life
- [CFPB](#) – Consumer Finance Protection Bureau
- [Ombudsman](#) for Long Term Care – Advocate for residents
- [MAARC](#) – Minnesota Adult Abuse Reporting Center
- [Senior LinkAge](#) – Many resources for seniors
- [CESDM](#) – Center for Excellence in Supported Decision Making
- [Day one hotline](#) – OFP/HRO Resource
- [MN Department of Commerce Safe Seniors](#) – Financial Exploitation/Fraud Resource

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Thank You! Questions?

Advocacy Line
651-440-9312

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