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How is Elder Financial Abuse litigated?

ORS 124.100 allows for a civil action to be brought against a person who has caused physical or financial abuse to an elderly or incapacitated person for damages including economic and non-economic losses, attorney fees, and fees for a conservator or guardian ad litem incurred in bringing the action.

Actions Against The Abuser

1. **For Physical Abuse.** An action may be brought under ORS 124.100 for physical abuse if the defendant engaged in conduct against an elderly or incapacitated person that would constitute any of the following:
 - a. **Assault**, under the provisions of ORS 163.160, 163.165, 163.175, and 163.185.
 - b. **Menacing**, under the provisions of ORS 163.190.
 - c. **Recklessly endangering another person**, under the provisions of ORS 163.195.
 - d. **Criminal mistreatment**, under the provisions of ORS 163.200 and 163.205.
 - e. **Rape**, under the provisions of ORS 163.355, 163.365, and 163.375.
 - f. **Sodomy**, under the provisions of ORS 163.385, 163.395, and 163.405.
 - g. **Unlawful sexual penetration**, under the provisions of ORS 163.408 and 163.411.
 - h. **Sexual abuse**, under the provisions of ORS 163.415, 163.425, and 163.427.

In addition, an action may be brought for physical abuse if the defendant used any unreasonable physical constraint on the plaintiff or subjected the plaintiff to prolonged or continued deprivation of food or water.

An action may also be brought for physical abuse if the defendant used a physical or chemical restraint, or psychotropic medication on the plaintiff without an order from a physician licensed in the State of Oregon.

2. **For Financial Abuse.** An action may be brought under ORS 124.100(1) for financial abuse in the following circumstances:
 - a. When a person wrongfully takes or appropriates money or property of an elderly or incapacitated person, without regard to whether the person taking or appropriating the money or property has a fiduciary relationship with the elderly or incapacitated person.



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2. **For Financial Abuse. (continued)** An action may be brought under ORS 124.100(1) for financial abuse in the following circumstances:
 - b. When an elderly or incapacitated person requests that another person transfer to the elderly or incapacitated person any money or property that the other person holds or controls and that belongs to or is held in express trust, constructive trust or resulting trust for the elderly or incapacitated person, and the other person, without good cause, either continues to hold the money or property or fails to take reasonable steps to make the money or property readily available to the elderly or incapacitated person.
 - c. When a person has at any time engaged in conduct constituting a violation of a restraining order regarding sweepstakes that was issued under ORS 124.020.

Actions Against Person 'Permitting' Abuse

1. **Person 'Permitting Abuse'.** ORS 124.100(4) states that a civil action may be brought against a person for **permitting** another person to engage in physical or financial abuse if the **person knowingly acts** or **fails to act** under circumstances in which a **reasonable person should have known of the physical or financial abuse**.

Important Note: This is a very broad section of the statute with little statutory guidelines. This author is aware of at least one title and escrow company currently being sued under this section.

2. **Exempt Persons Under the Statute.** The following persons or institutions are exempt from action under ORS 124.100(4):
 - a. A financial institution, as defined by ORS 706.008, which includes banks and trust companies.
 - b. A health care facility, as defined in ORS 442.015, which includes hospitals and long-term care facilities; however, this does not include establishments furnishing primarily residential care or treatment not meeting federal intermediate care standards - see ORS 442.015(14)(d).
 - c. Any facility licensed or registered under ORS Chapter 443, which includes home health facilities, such as residential care facilities, adult foster homes, in-home care agencies, developmental disability child foster homes, and hospice.
 - d. Broker-dealers licensed under ORS 59.005 to 59.541 referring primarily to brokers dealing in securities (stock brokers).

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