

INFOETHICS
ESSENTIALS

FOR PROFESSIONALS OF
ALL FIELDS OF PRACTICE

WHAT TO DO IF YOUR CLIENT APPEARS VULNERABLE

Incapacity + Mistreatment + and More



Chambre
de la sécurité
financière

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INTRODUCTION

Identifying unusual behaviour, incapacity and mistreatment: be a pro at protecting the vulnerable

When dealing with a client who is displaying unusual behaviour or signs of vulnerability, you must be vigilant; this may be an indication of incapacity or financial mistreatment.

Because you have developed a professional and special relationship with your client and are familiar with their personal and financial situation, you are well-positioned to spot the signs and even prevent the negative consequences inherent in these situations.

The following guide will provide you with information to help you anticipate common problematic situations and react based on best practices, compliant with your ethical and legal obligations.

Furthermore, if you work for a firm, an independent partnership or a dealer, the guidelines suggested in this document should be applied in accordance with your employer's procedure.

In any situation, always remember to document your client's file to keep track of the issues you have noted and the steps you have taken.



What is a vulnerable person?

A person whose ability to seek or obtain assistance is temporarily or permanently restricted due to, but not limited to, physical, cognitive, psychological, or other physical, mental or emotional limitations, such as duress, illness, injury or disability. An individual's vulnerability may therefore be physical, psychological or financial. Any of these factors can make them more susceptible to mistreatment.

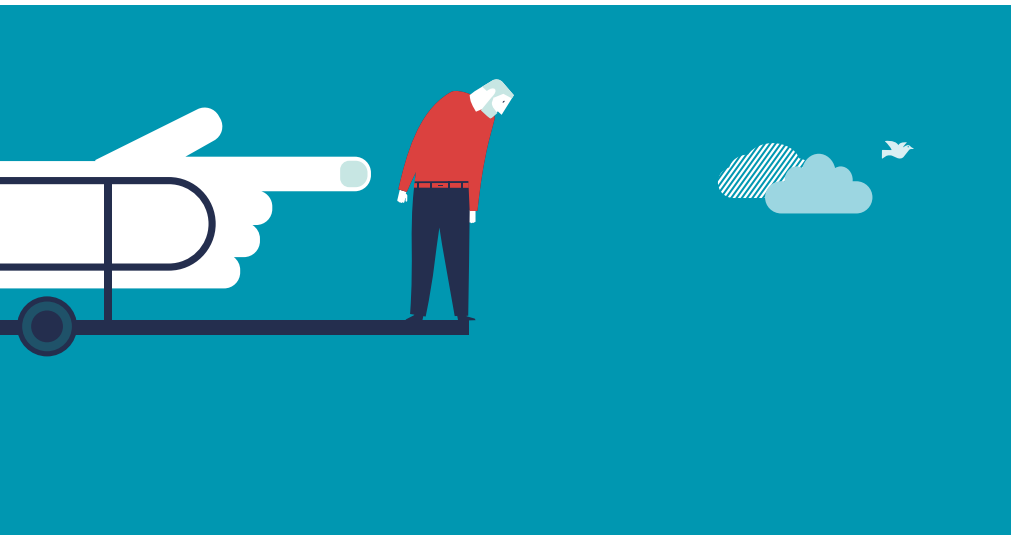
A matter of age?

Old age in itself is not a sign of vulnerability. It is however, a factor that merits careful consideration, as it can lead to more frequent changes in your client's situation, which in turn may require that you take additional steps to act in your client's best interests.

INTRODUCTION

Examples of a person's vulnerability:

- Frequently experiences significant memory loss.
- Is confused and hesitant.
- Does not understand commonly understood concepts.
- Depends on another person to care for themselves, provide for their livelihood or manage their personal affairs.
- Has a low level of financial literacy and/or a lack of awareness of their own rights.
- Suffers from financial difficulties.
- Is elderly or disabled and lives alone with little contact with family or friends.
- Provides irrational answers to your questions.



Examples of signs of possible financial mistreatment:

- Requests for transactions of an unusual nature or amount that are unlikely to be justified.
- Insistence that one or more transactions be made that are not in your client's interest.
- Disbursement of a large sum of money without reasonable explanation.
- Cancellation of transactions without valid reasons.
- Request for a change in your client's investor profile from a conservative type to an aggressive type, with no change in your client's situation or objectives.
- Transfer of your client's account to another firm, independent partnership, dealer or financial institution without warning or reasonable cause.
- Suspicious signatures on important documents such as wills, protection mandates, powers of attorney, life insurance contracts.
- Request from a third party or even a trusted person for modifications to important documents belonging to your client.
- A person who takes an interest in your client's finances without a valid reason.
- Sudden reluctance to talk about financial matters.
- Nervousness and restlessness on the part of your client, when asked to justify an unusual request or the handling of their affairs by a family member.
- Addition or change of mandatory, followed by a change in your client's account activity.

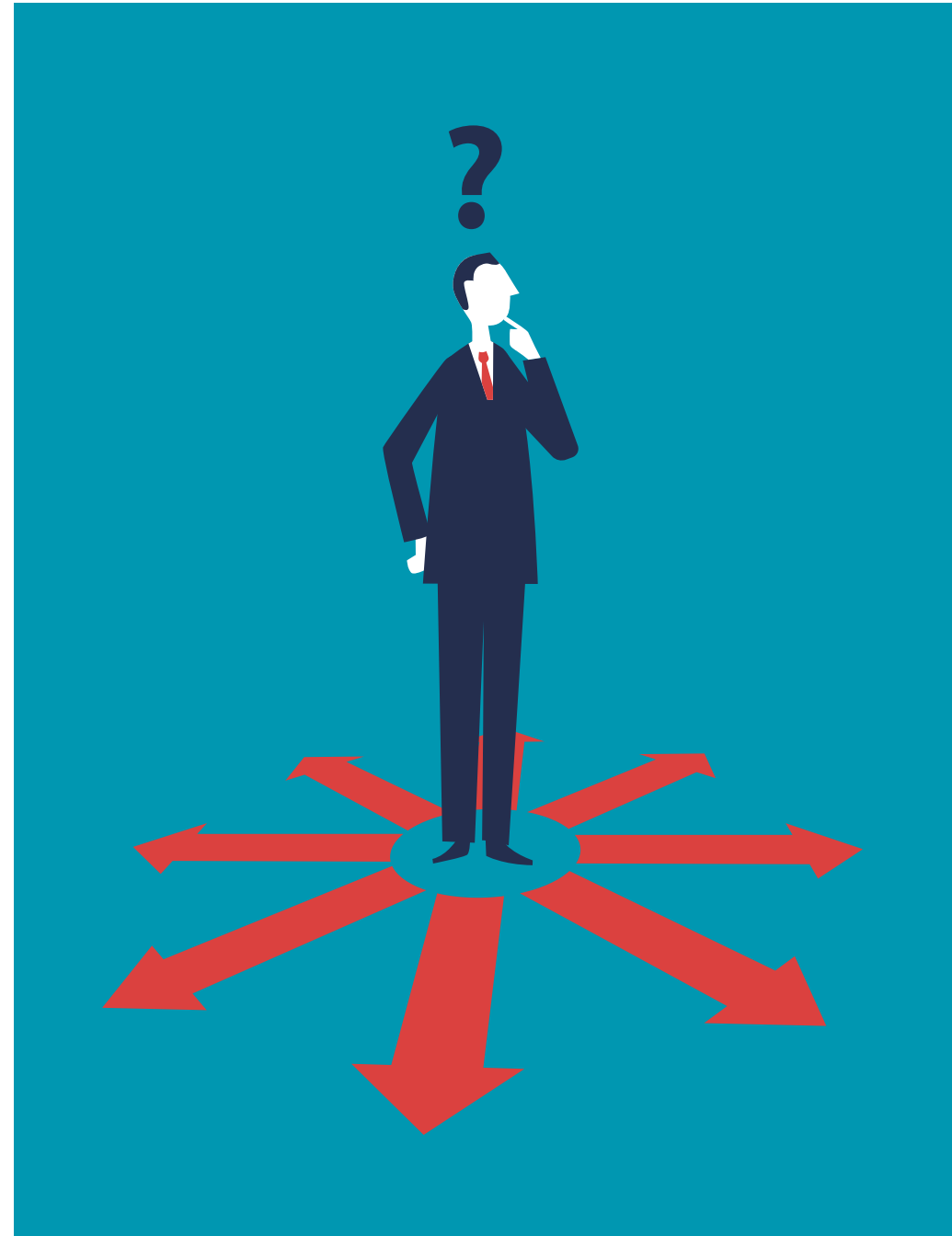
INTRODUCTION

The key element: your client's best interest

Any decision with respect to a client must be made in their best interest. The general principle to keep in mind for all your clients is to guide them by seeking to align their will and interest. This can sometimes be a significant challenge, especially with an aging clientele. Vulnerability and incapacity are risk factors that can cause a person to make decisions which is not in their best interest. A dilemma may arise when dealing with a vulnerable client, in that you will want to act ethically, by ensuring optimal service while respecting their dignity, autonomy and confidentiality, but also in their best interest; for example, by reporting a situation of mistreatment or incapacity.

Keeping in mind the respect for your client

Foster and encourage wellness by accommodating for your client's dignity, pace, willingness, autonomy and any changes in their situation. This includes balancing your client's priorities and sensitivities should they become vulnerable over time, for instance. Your client may suddenly feel the need to share more freely with loved ones, perhaps for the simple pleasure it brings to see their enjoyment! The confidentiality of your client's file must be respected as well; personal information cannot be used for purposes other than those for which it was obtained, except in certain circumstances (see page 14).



POSSIBLE SITUATIONS

UNUSUAL REQUEST

1 From any client

How do you handle an unusual request from your client that does not appear to be in their best interest or does not meet their objectives?

- Be vigilant.
- Don't rush a transaction.
- Don't make decisions for your client.
- Engage in dialogue to encourage your client to express their motivations.
- Record these motivations on file.
- Explain the effects of the request on their financial security and objectives, including tax implications.
- Try to direct your client towards a product or strategy that fits both their situation and profile.
- Suggest a reasonable amount of time for reflection.
- If your client insists,
 - Verify if measures are in place at your firm, independent partnership or dealer to appropriately react to the situation.
 - You may refuse to answer the request.
 - If you agree to the request, give your warning, have it signed by the client and put it on file.
 - Review the profile if your client's situation warrants it and rebalance the portfolio if necessary.

UNUSUAL REQUEST

2 From a client who appears vulnerable

What should you do when a client whose vulnerability you suspect makes an unusual request that does not appear to be in their best interest or does not meet their objectives?

- Follow the procedure for any client, as outlined in point 1 and apply the following good practices:
 - Invite your client to attend the next meeting with an impartial and trustworthy person.
 - Inform them that the Curateur public offers an assistance measure. This lets them receive help from an officially appointed assistant to help them make decisions and manage their property without relinquishing any of their rights.
 - Ask your client if he would be willing to have a colleague, such as a manager or compliance officer, in attendance at the next meeting as well.
 - If your client persists with the request, report the situation to your compliance department and follow the procedure established for such cases.
 - If you have an authorization from your client, communicate with their trusted contact person to discuss the situation, within the terms of the authorization (see page 12).
 - Document your client's file.

POSSIBLE SITUATIONS

UNUSUAL REQUEST

3 From a client whom you suspect is being financially mistreated

What should you do if you suspect your client is being financially mistreated when making a request that is not in their best interests, but they do not want to report the person responsible for the mistreatment?

- Follow the procedure for a client who appears vulnerable, as outlined in point 2, and apply the following good practices:
 - Plan the meeting in an environment where your client feels comfortable.
 - Be patient, respect your client's pace by allowing more time for meetings and increasing their frequency.
 - Respect your client's decision not to talk about a potential mistreatment situation, remain available to maintain the bond of trust.
 - Voice your concerns about the situation, raise awareness to the risks of mistreatment, and listen to your client.
 - Explain to your client that reporting the mistreatment and receiving help may get the abuser to change their behavior.
 - Mention to your client that they can talk to someone they trust.
 - Educate your client about resources that can help in the event of mistreatment.
 - Protect your client's assets.
 - Locate changes made to your client's account.
 - Find out if a mandatary or tutor can act on behalf of the client by contacting the Curateur public.
 - Re-address the topic if the situation is not resolved.
 - Assess the possibility of reporting the situation (see Reporting mistreatment on page 8).
 - Document your client's file.



If you suspect that the person accompanying your client is trying to intimidate or influence them and the request does not appear to be in your client's best interests, you may want to arrange a one-on-one meeting with your client to see if the request represents their wishes.



REPORTING MISTREATMENT

Proceed with caution: your client has the right to be protected from mistreatment, but also the right to choose whether or not to report it. The act of reporting a case of mistreatment involves the disclosure of your client's confidential information, which you have a duty to protect. An emergency situation or a threat to a person's health or safety, however, would allow a report to be made without your client's authorization (see page 14).

Take the time to assess the situation before making an unauthorized report, as you may be in violation of your code of ethics, the rules of your firm, independent partnership or dealer, and applicable privacy laws.

If you are planning to report a situation without your client's consent, consult with a compliance officer, contact person or legal counsel and document the rationale for your decision.

You can file a complaint with the *Commission des droits de la personne et des droits de la jeunesse* (human rights commission). The Commission, along with organizations such as the Elder Mistreatment Helpline (LAAA), the Curateur public and Info-Social 811, can offer assistance in this process.

POSSIBLE SITUATIONS

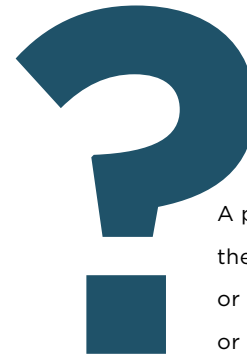
UNUSUAL REQUEST

4 From a client whose incapacity you suspect

What should you do when you suspect your client might be incapacitated?

A vulnerable person is not necessarily incapacitated. The relationship you have developed with your client allows you to determine whether their reactions are usual or not. You don't have to assess your client's health, but you can identify signs that suggest they may be incapacitated. Your client's consent is always required when you make a transaction or respond to a request, unless your client's incapacity has been declared by a court and the request comes from the legal representative by virtue of the powers conferred by a protection mandate, protective supervision measure (tutorship) or temporary representative appointed by the client and according to the conditions set by the court.

- Suggest a reasonable amount of time for your client to reflect.
- Ask for time, for example, to calculate the fee for this application or to consider the tax consequences. This will save you time to exercise due diligence and establish your strategy.
- Consult with the Curateur public if your client has been placed under tutorship, has been declared incapacitated and if they've appointed a temporary representative for this request. If the client has been declared incapacitated, you cannot respond to their request and should instead contact their legal representative.



What is an incapacitated person?

A person who is unable to care for themselves or to administer their property because of illness, accident, intellectual disability or impairment due to age, which affects their mental faculties or the physical ability to express their will.

- Contact the compliance department of your firm, independent partnership or dealer to find out if there is a procedure in place to deal with such a situation.
- Have a lawyer or compliance officer accompany you in your efforts.
- Ask your client for permission to have a colleague, such as a manager or compliance officer, present at the meeting. The presence of your colleague may help you confirm or refute your suspicion.
- Contact organizations that can help your client or answer your questions (see page 14).
- If this situation is provided for in the authorization given by your client, communicate with the trusted contact person to find out whether your client has been declared incapacitated or advise them of your observations.
- Document your client's file.



If the request is consistent with your client's habits and profile, you must process it unless otherwise specified by your firm, independent partnership or dealer, and document the file, stating the facts of which you are aware that could indicate incapacity.

POSSIBLE SITUATIONS



UNUSUAL REQUEST

5 From a client who is manifestly incapable of managing their own affairs

You cannot respond to client requests if your client is manifestly incapable of managing their business. This also relates to your obligation to ensure that you obtain your client's free and informed consent before acting on their behalf. By definition, a manifest trait describes what is naturally evident; authentic and distinctly perceived in reality. Hence, a client's manifest incapacity to manage their own affairs will be apparent to the advisor who knows their client well. For instance, when your client's protection mandate is homologated, or a protective supervision request is opened in their name, your client's incapacity to manage their affairs is manifest since they are legally unable to provide valid or informed consent.

If a client who is manifestly incapable of managing their affairs insists on a transaction,



- Refuse to respond to their request and explain your professional obligations to them.
- Notify the compliance department of your firm, independent partnership or dealer, if applicable, to find out whether internal policies are in place to deal with this situation.
- Communicate with the trusted contact person identified by your client in their file, your client's mandatory or tutor, if applicable.
- Document your client's file.

If you are unsure of your client's incapacity, follow the steps outlined in point **4**.

PREVENTIVE MEASURES

1 For any client

- Address the subject of cognitive decline with your client. Find out if they have a protection mandate, a power of attorney and a will. If not, encourage the client to obtain them with the help of the Chambre des notaires or the Curateur public. Review the relevant documents, if applicable.
- At the first meeting, have them sign an authorization to communicate with the designated trusted contact person(s) for questions concerning their personal or financial affairs.
- Inform them that the Curateur public offers an assistance measure. This lets them receive help from an officially appointed assistant to help them make decisions and manage their property without relinquishing any of their rights.
- Refuse to serve as a mandatary in case of incapacity, be appointed as liquidator of the estate or assistant according to the rules of the Curateur public, if you intend to remain your client's advisor, since you risk placing yourself in a conflict of interest situation.
- Regularly check the information contained in the protection mandate, the power of attorney, the Curateur public registry (for the assistant or the temporary representative) and the authorization to communicate with the trusted contact person to ensure that they are up to date.
- Ask your client to meet with the family and friends they have identified as being potentially responsible for managing their finances in the event of incapacity.
- Also record any other relevant information, such as your observations about the possibility of a conflict of interest between a mandatary and your client in relation to your client's investments or whether the mandatary is also the beneficiary of your client's life insurance policy.
- Remind your client that their information is confidential and that you cannot contact a relative without their explicit authorization.
- Suggest to your client to provide your contact information to their relatives, who will then be able to contact you if necessary.
- Improve your client's financial literacy. Information should be adapted to your client's level of financial knowledge and literacy. A well-informed person is better able to make an informed judgment about a potentially abnormal situation.
- Suggest to your client that a family member, an assistant according to the rules of the Curateur public or trusted contact person attend the meeting if it would help them better understand certain financial concepts.
- Make sure your client understands the information they have received.



PREVENTIVE MEASURES

Authorization to communicate with a trusted contact person

Invite your client to be vigilant when designating the person(s) they trust, knowing that elder mistreatment is often perpetrated by members of their own family (spouse, children and other family members).

The authorization should include:

- The contact details of the trusted person(s).
- The nature of the information that may be communicated.
- Situations where it is permitted to communicate with them.

Cases that could be provided for in the authorization:

- Your client can no longer be reached at the contact information on file.
- Your client's ability to make financial decisions that are in their best interest or to understand the scope of their decisions seems to be compromised.
- Your client has obvious cognitive difficulties.
- Your client appears to be a victim of financial mistreatment.

Contacting the trusted contact person

If you need to communicate with a trusted contact person designated by your client, you should only provide them with the information required and authorized to assist your client, for example:

- Your concerns about your client's ability to manage their finances on their own.
- Facts suggesting that your client could take actions that might jeopardize their assets.
- Concerns about certain decisions from your client who is planning to invest in an apparently suspicious or fraudulent scheme.
- Identified signs of mistreatment.

You may wish to use the model authorization to contact a trusted person, on page 22 of the guide entitled [Protecting Vulnerable Clients](#), published by the Autorité des marchés financiers.

POWER OF ATTORNEY

A power of attorney does not take away the rights of your client, and it only applies to their property. It authorizes a third party to act on your client's behalf if they have not been declared incapacitated, whereas a protection mandate can also apply to the protection of a person and is only used in the event of incapacity. The power of attorney specifies the responsibility entrusted to the mandatary and its period of validity. In case of doubt about your client's intentions, confirm them with your client. Furthermore, the power of attorney and the protection mandate may be revoked at any time before incapacity is declared.

2 For elderly, vulnerable or new to finance clients

- Take special care in the way you convey information to a new, elderly or vulnerable client. Information should be clear, concise, well-structured and punctuated with concrete examples. Your client may prefer to receive documentation in paper format.
- Make sure your client understands the concepts discussed. If there is any doubt as to their understanding, repeat your explanations in another way. The less comfortable a client is with financial concepts, the more important it is that the information conveyed is clear and understood by that client.
- Inform them about the assistance measure provided by the Curateur public.
- Update their profile more often. It can change quickly (investment horizon, risk tolerance, capital protection, access to funds, etc.).
- Send a report to your client, by mail or e-mail, outlining what was discussed at the meeting.
- Do not hesitate to inform your client of the different types of fraud they could be a victim of.

PREVENTIVE MEASURES

3 For clients declared incapacitated

Represented by a third party (tutor, mandatary or temporary representative)

- Two conditions must be met in order for the protection mandate or the opening of protective supervision to be legally binding :
 - Your client's incapacity must have been declared following a medical and psychosocial assessment.
 - The court must have confirmed your client's incapacity to protect their person and property.
- Obtain a copy of the court judgment and the protection mandate or protective supervision from the person who will exercise the incapacitated client's rights to find out the extent of their powers.
- Please be vigilant, keeping in mind that third-party transaction requests may result in the exploitation of your client. For example:
 - Theft, fraud, embezzlement, counterfeiting, illegitimate cashing of cheques, unauthorized bank withdrawals.
 - Negligence and/or abuse of power by the legal representative.
 - Threatening to transfer your client's account to another financial institution or firm, or dealer.
 - Requesting an unusual withdrawal from your client's account on the pretext of acting in their interest.
- Ask questions to the third-party and make appropriate inquiries by reviewing the terms of the protection mandate and checking the registers of protective supervision maintained by the Curateur public if you are unsure. Ask yourself whether the third-party's request is truly in your client's best interest and whether your client will still be able to support themselves if you grant that request.

- Do not hesitate to contact the Curateur public, your compliance department or legal counsel if you are unsure what action to take. Above all, take notes!
- When a situation of mistreatment is unambiguous, act quickly by notifying the compliance department of your firm, independent partnership or dealer, if applicable. It would be advisable to report any potential mistreatment to the *Commission des droits de la personne et des droits de la jeunesse* and the Curateur public.

TEMPORARY REPRESENTATION

The temporary representation helps the incapacitated person remain independent and allows a close friend or relative to carry out a specific action on their behalf, for a pre-determined period of time, without having to apply for guardianship. The court will appoint a temporary representative to meet a punctual need. Their name is then entered into a register of the Curateur public. This temporary representative must act in the best interest of the incapacitated person, respect their rights, safeguard their autonomy, and take into account their wishes and preferences. Their mandate ends when the action has been taken.

PROTECTION MANDATE OR PROTECTIVE SUPERVISION

A protection mandate is a document in which a person appoints one or more mandataries to look after their person and administer their property in the event of temporary or permanent incapacity. In this document, the person defines, as principal, the extent of their mandataries' powers and obligations.

If the court issues a judgment declaring incapacity, the mandatary or mandataries must protect and represent the person and carry out the wishes expressed in the mandate. The protected person continues to exercise their rights, within the limits imposed by the mandate.

On the other hand, when protective supervision is opened in a person's name, they become limited in their freedoms and in the exercise of their civil rights according to the degree of their incapacity. The incapacitated person's rights are henceforth exercised by a tutor.

URGENT SITUATION

If the situation is urgent and could put the life, health or safety of your client or a third party at risk, this is an exception allowing you to disclose confidential information about your client for the purpose of their assistance. If you are unable to act or communicate with a relative, contact one of the many organizations dedicated to the well-being of seniors or invite your client to do so.

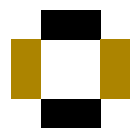
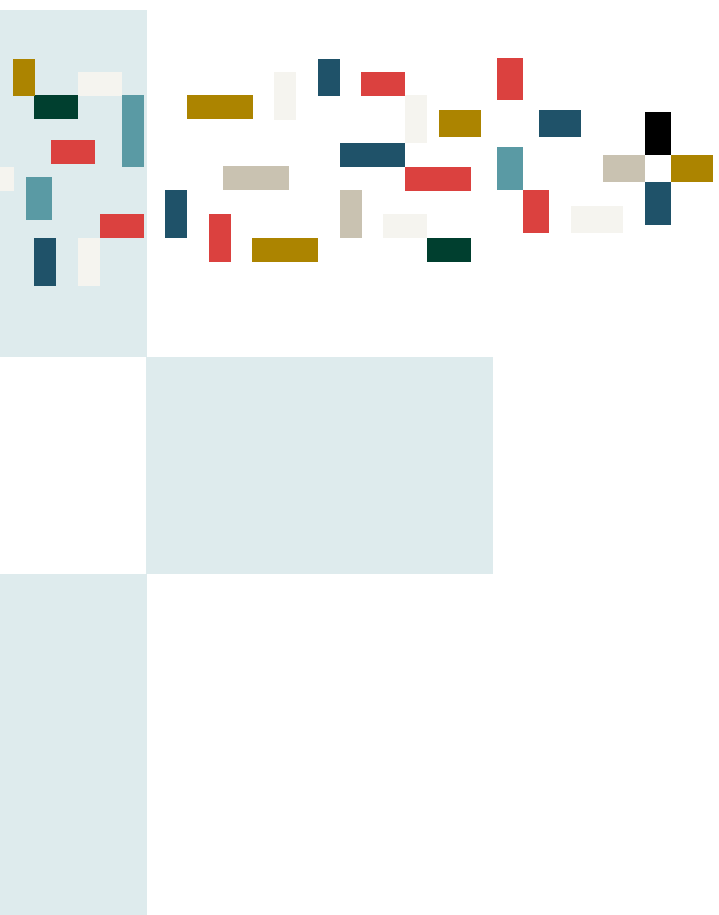
Examples of exceptional situations in which confidential information may be disclosed:

- A loss of assets that would deprive your client of the essential resources to meet their needs.
- A physical or psychological injury that would significantly impair a person's physical integrity, health or well-being.
- The will to end one's life.
- A situation of abuse by a tutor or mandatary.

Contacts

- **Chambre de la sécurité financière**
514-380-3011 or 1-888-380-3011
info@chambresf.com
- **Autorité des marchés financiers**
514-395-0337 or 1-877-525-0337
- **Commission des droits de la personne et des droits de la jeunesse**
1-800-361-6477
- **Curateur public**
514-873-4074 or 1-844-LECURATEUR (532-8728)
- **Info-Social** 811, option 2
- **Elder Mistreatment Helpline** (LAAA)
8:00 a.m. to 8:00 p.m., 7 days a week
514-489-2287 or 1-888-489-2287
- **Option consommateurs**
514-598-7288 or 1-888-412-1313





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