NAVIGATING TRUST LITIGATION: INSIGHTS FROM THE TONY BENNETT CASE

Nearly one year after Tony Bennett's death, his children are embroiled in a trust dispute. While Tony Bennett's fame and prominence are unique, the nature of this dispute is common. In the filing, Tony Bennett's two daughters accused their brother, Danny—who served as Tony's manager and also serves as the trustee of the Family Trust—of managing their father's trust for Danny's own benefit and that of his company. The action seeks an order for a full accounting and inventory of all property and assets so that they can be distributed in accordance with the terms of the Family Trust.

While much trust litigation revolves around the terms of a trust or its amendments, there are many situations that can lead to legal proceedings even when no one disputes the trust's terms. For example, a beneficiary may question why certain assets were not included in the trust or removed from the trust before a loved one's death. In addition, a beneficiary may question the actions taken by a trustee during their loved one's life and after their death. This is particularly relevant in high-profile cases like Tony Bennett's, where the management of substantial assets and legacy can be contentious.

In general, a trustee has a legal and fiduciary duty to uphold the terms and intentions of a trust. Under Wisconsin's Trust Code, a trustee has a duty to keep "current beneficiaries and presumptive remainder beneficiaries who so request, reasonably informed about the administration of the trust." Wis. Stat. § 701.0813(1). Such information may include copies of trust documents, details about the trustee, and a list of the trust's assets, liabilities, receipts, disbursements, and the trustee's compensation. If you are a trustee seeking to uphold or administer a trust, or a beneficiary concerned about a trustee's actions, consulting with a knowledgeable attorney to evaluate your options is advisable.

Trevor C. Lippman is a shareholder at O'Neil Cannon and assists clients with all matters related to inheritance disputes, including questions about the creation and administration of trusts and wills. Lippman has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. To schedule an initial consultation with Lippman, call 414.276.5000 or email him at trevor.lippman@wilaw.com.

EX-ATTORNEY CONVICTED OF STEALING MORE

THAN $800,000 FROM ELDERLY VICTIM WITH DEMENTIA

The United States Attorney's Office from the Southern District of Ohio recently issued a press release that highlights how elderly individuals suffering from dementia may be vulnerable to financial abuse. The press release can be found here.

As the release explains, the attorney defrauded his client—an elderly woman in her 80s—over the course of seven years, between 2012 and 2019. The attorney's law license was revoked in 2015. The attorney stole the funds using a myriad of methods, including utilizing his role as the victim's power of attorney and status as a lawyer to transfer money to himself, to force the victim's signature on a revocation of a family member's separate power of attorney, and to cash out the victim's U.S. Treasury Bonds and life insurance policies. The attorney was sentenced to five years in prison and ordered to pay $882,502 in restitution.

This tragic story underscores the difficulties in flagging and investigating alleged financial abuse when the victim is not capable of protecting his or her own interests. It also rebuts the assumption that some courts and attorneys make in inheritance litigation that one only needs to look back a year or two prior to the victim's death to evaluate whether elder financial abuse of the victim may have occurred. Here, the victim suffered dementia for at least seven years.

If you or a loved one suspects that an elderly person with dementia is being taken advantage of, you should consider reporting elder abuse. There may also be options to pursue an investigation through a civil action. For example, in Wisconsin, there are routes to seek court review of an agent's conduct under a financial power of attorney.

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THE RECENT DEATH OF LISA MARIE PRESLEY

LEADS TO BREWING TRUST DISPUTE

Inheritance Disputes are Common Even Among the Wealthy

An inheritance dispute appears to be brewing following the recent death of Elvis Presley's only child, Lisa Marie. According to various news outlets, Lisa Marie appointed her mother, Priscilla Presley, and her then manager, Barry Siegel, as co-trustees of her trust in 1993. Following Lisa Marie's death on January 12, 2023, Priscilla discovered an amendment to the trust purportedly signed in 2016 that replaced both Priscilla and Barry Siegel as co-trustees.

According to Priscilla, there are various reasons the 2016 amendment may be invalid. One of these reasons is because the purported trust amendment was not delivered to Priscilla during Lisa Marie's lifetime as required under the terms of the original trust. Priscilla also raised concerns over the authenticity of the document and the signatures on the document itself.

Ultimately, a California court will be tasked with sorting through these issues that may pit a grandmother against her grandchildren.

Disputing an Amendment to a Trust in Wisconsin

The Wisconsin Trust Code recognizes the right for the settlor of a revocable trust to amend that trust. The capacity necessary to amend a trust is the same as the capacity required to make a will. The Wisconsin Trust Code holds that the terms of a trust prevail over any provision of the Wisconsin Trust Code unless certain exceptions exist.

It is not clear on the face of the Wisconsin Trust Code how a Wisconsin court would treat the specific claim Priscilla Presley appears to be making – that the amendment is not valid because it was not delivered to her as required by the terms of the trust. The Wisconsin Trust Code states that a settlor "may revoke or amend a revocable trust" by "substantial compliance with the method provided in the terms of the trust." Here, a Wisconsin court would have to review the terms of the Presley trust and determine whether the other components of the amendment without delivery to Priscilla amounted to "substantial compliance."

If a trust does not provide a method to revoke or amend a trust, Wisconsin recognizes one may be able to revoke or amend a trust by referencing the trust or the trust property as part of a will or codicil or by "[a]ny other method manifesting clear and convincing evidence of the settlor's intent."

Challenging or seeking to uphold a trust amendment can be complicated and fact intensive. These issues also oftentimes deal with dynamic family relationships. If you are a trustee and a beneficiary is seeking to challenge a trust amendment or a beneficiary who has questions

involving a trust amendment, it may be best to reach out to an attorney with experience handling matters under the Wisconsin Trust Code.

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ANNE HECHE'S WILL CONTEST: A CAUTIONARY TALE

The circumstances involving Anne Heche's estate are a stark reminder of the uncertainties that may exist following the death of a loved one and the issues that can arise even when someone *thinks* they have their estate plan in place.

Heche's (Possible) Will

When the Emmy Award-winning actress died after a fiery car crash in August 2022, she left behind two sons. After her death, her former partner, James Tupper, the father of the younger of Heche's sons, came forward with a document—reportedly an email from 2011—that he said names him as the administrator of Heche's estate.

In response, Heche's older son, Homer Laffoon, filed a petition to assume control over Heche's estate. In doing so, Laffoon also said that the 2011 document is not a valid will because it does not meet requirements under California law.

More specifically, Laffoon argued, in part, that the document does not qualify as a valid will because it does not contain Heche's signature and was not observed by two witnesses as required by California law. Because there is a question as to whether Heche had a valid will, a probate court must decide the issue before her assets can be distributed.

State law varies on the requirements of a valid will, so let's look at what is required in Wisconsin.

What is a Valid Will in Wisconsin?

First, for a valid will in Wisconsin, the testator (the person making the will) must have the capacity to create a will, which means the person must be at least 18 years old, of sound mind, and acting on their own volition.

For a will executed in Wisconsin to be valid, it must be written down and signed by the testator, or with the assistance of another person with the testator's consent and in the testator's conscious presence, and signed by two witnesses. If a witness to the will is a beneficiary of the will, his or her interests will most likely be limited to what he or she would have received had the testator died without a will, through intestacy law.

Proving a Will in Wisconsin

In Heche's situation, a judge must decide whether Tupper's proposed 2011 document is a legally valid will. Without a valid will, Heche will have died "intestate," and the probate court will distribute Heche's assets according to California law.

Similarly, when a Wisconsin resident dies, his or her estate will be distributed under Wisconsin intestacy law unless a will is admitted to probate. Depending on the circumstances, it might be appropriate to investigate the circumstances surrounding the purported execution of a will by the testator and/or the witnesses prior to waiving any rights to challenge the proposed will.

Our inheritance litigation team has a wide array of experience in handling will disputes—whether investigating the authenticity of the document itself, analyzing the legal sufficiency of a proposed will, or investigating concerns over lack of legal capacity and undue influence. If a court finds that a document does not meet the legal requirements of a valid will, the decedent's estate may be distributed under a testator's previous estate plan or under Wisconsin intestacy law.

Anne Heche's situation is another reminder of the unfortunate complications and issues that may arise following the death of a loved one.

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THE GREAT WEALTH TRANSFER AND ITS IMPLICATIONS ON ESTATE, TRUST, AND PROBATE LITIGATION

On August 14, 1945, Life magazine photojournalist, Alfred Eisenstaedt, captured the spirit of the nation in his photo of a sailor embracing a nurse in New York's Times Square. It was the end of World War II, and America was at the top of its game. Although the US had been late to enter the war, after the attack on Pearl Harbor on December 7, 1941, it was all-hands-on-deck. In his best-selling book, Tom Brokaw described the veterans and their peers as "the greatest generation."

When the war ended, families reunited. Sweethearts got married and spent lots of quality time together. The birth rate—dubbed "the baby boom" —became exceedingly high. The children born in the years following World War II grew up in a period of economic prosperity. Many of the children of "the greatest generation" grew rich, far beyond their parents' dreams. Decades later, Baby Boomers' wealth is now shifting to younger generations in what has been referred to as The Great Wealth Transfer.

Generation Defined

"Generation" is one of those ineffective words. It may refer to a group of people of similar age with a common philosophy or lifestyle, such as the "Hippie generation" and the "Me-generation." It may also refer to people born within the same time period of roughly 15 to 20 years—a useful basis for economic analysis. The following are popular generational terms for people living in the US today, grouped by ages from youngest to oldest:

- Generation Z (Gen Z, 10–25, born between 1997–2012)
- Millennials (26–41, born between 1981–1996)
- Generation X (Gen X, 42–57, born between 1965–1980)
- Baby Boomers (58–76, born between 1946–1964)
- Greatest Generation (77–100+, born between 1922–1945)

How Much Wealth Do the Boomers Hold?

Anyone born between the years 1946 and 1964 qualifies as a "Boomer." In 2022, the oldest Boomers will be 76 years old, and the youngest, 58. Boomers, like any other age group, consist of a diverse array of people. However, as Boomers spread their wings in the 1960s, '70s, and '80s, they developed common characteristics. During those times, adult Boomers had lofty expectations and sought financial stability and success far beyond the lifestyles

many of them had been raised in.

Not all Boomers are wealthy, but some Boomers are extraordinarily wealthy. This wealth accumulated through a combination of personal drive and favorable circumstances, including:

- educational opportunities;
- shoulder-to-the-wheel mentalities;
- entrepreneurship and access to capital;
- ingenuity in business and technology;
- real estate appreciation;
- investment in the rising stock market (e.g., bull market of 1980's);
- compound interest (return on savings); and
- tax advantages.

Boomers make up about 20% of the US population. The Boomer generation's accumulated wealth adds up to roughly $35 trillion, more than a quarter of all US wealth. The Boomers own the lion's share in various asset categories, including the following:

- real estate, 43%;
- corporate equities (including mutual funds), 55%;
- pension entitlements, 50%; and
- private business ownership, 46%.

Father Time is undefeated. As Boomers start to move into their long-awaited retirement and twilight years, Boomers are re-evaluating priorities and thinking about the legacies they wish to leave behind. Analysts estimate that between 2018 and 2042, 40 million households will transfer close to an astonishing $70 trillion dollars to younger generations. Likely beneficiaries will include children, grandchildren, and great grandchildren. Other potential beneficiaries will include surviving spouses, partners, friends, and donations. Many Boomers also wish to consider providing for loved ones or charities during their lifetimes.

Millennials Will Inherit Boomers' Wealth

In the next 20 years—thanks to the Great Wealth Transfer—Millennials will become the wealthiest generation in US history. Millennials grew up with daycare centers and the internet. Many have divorced parents, blended families, and two-income families are the norm. Many Millennials are still paying off student loans. They are getting married later in life and having fewer kids. They are racially and ethnically diverse.

Although Millennials make up about one-fifth of the population, they control a little less than 5% of the wealth. Unlike the Boomers, Millennials got off to a slow start financially, starting their careers during a period of economic recession. In recent years, they have gained momentum, thanks to low interest rates, entrepreneurship, and homeownership. In fact,

Millennials hold the greatest portion of their wealth in real estate.

Wealth Transferred, Wealth Lost

History tells us that self-made millionaires and billionaires are more likely to preserve and increase their wealth than people who inherit large sums of money. Of the wealthiest people in the world, almost 70 percent are self-made. Each successive generation of beneficiaries is more likely than the previous one to lose a substantial portion of inherited wealth.

But history is not destiny. There are several resources for managing wealth and new investment options. Millennials could be the first generation to increase inherited wealth.

Family Fights

When this amount of wealth is changing hands, family and other emotionally charged disputes are inevitable. This is particularly so as Boomers reach their 80s and 90s, many of whom, statistically, will suffer from some form of dementia or other cognitive decline. Families all have their own histories and are made up of unique relationships that are oftentimes decades in the making. Siblings and children may squabble. Step-parents and step-children do not always get along. Friends and neighbors might get their hands caught in the proverbial cookie jar. As a result, loved ones may challenge gifts, deeds, trusts, wills, and the designation of various accounts, among various other kinds of transfers. A person is allowed to do with his or her property what he or she wants. However, if that person lacks the legal capacity or was unduly influenced by a loved one or acquaintance, serious questions may arise as to the authenticity of certain transactions or estate plans.

Consult a Professional

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EVEN THE BRIGHTEST MINDS CAN SUFFER

FROM DEMENTIA

Recently, Justice Sandra Day O'Connor, the first woman appointed to the United States Supreme Court, wrote a letter addressed to "Friends and fellow Americans" discussing her diagnosis with the beginning stages of dementia. In her letter, Justice O'Connor explained that her condition is "probably Alzheimer's disease."

Justice O'Connor, age 88, was appointed to the Supreme Court by President Ronald Reagan in 1981. Since retiring from the Supreme Court in 2006, Justice O'Conner has continued to demonstrate her commitment to public service. In 2010, Justice O'Conner began the iCivics program, which she describes as an educational program designed "to teach the core principles of civics to middle and high school students with free online interactive games and curriculum that make learning relevant and remarkably effective." As explained in her recent letter, Justice O'Connor believes her diagnosis means she can no longer help to lead this cause, but she believes the program will continue to flourish under new leadership. More information on the iCivics program can be found at www.icivics.org.

The sad news regarding Justice O'Connor's diagnosis reminds us that even the brightest minds are not immune to the devastating impacts of Alzheimer's disease and other forms of dementia. Justice O'Connor's letter might also serve as inspiration for those who suffer from dementia or who have family members or other loved ones who suffer from such conditions. You can find the full letter here.

It is important to acknowledge the significant impacts that this tragic disease can have on families and on our society as a whole. As our nation's baby boomers continue to age, the number of people impacted by dementia will likely increase significantly. According to the Alzheimer's Association, there are currently about 5.7 million people suffering from Alzheimer's disease in the United States, and that number is expected to double by 2050.

We would do well to heed one of the statements that Justice O'Connor made in her letter: "It's not enough to understand [the effects of dementia], you've got to do something." At O'Neil Cannon, we remain committed to helping to protect the legacies of those who suffer from this disease. Unfortunately, there are times when a family member or other acquaintance might attempt to take advantage of a person suffering from dementia by exerting undue influence to gain a financial benefit. These attempts to take advantage might involve unauthorized transfers or withdrawals of money from an elderly person's accounts, or improperly seeking to elicit changes to a will, trust, or other legal document. While many people diagnosed with dementia remain capable of changing their estate plans for some period of time after they are diagnosed, if such changes are the result of undue influence, then those who are impacted may have the right to pursue relief in court.

If you would like to further discuss this article, please feel free to contact Attorney Trevor Lippman at 414-276-5000 or Trevor.Lippman@wilaw.com.

FAMILY SECURES LARGE SETTLEMENT IN CONTENTIOUS INHERITANCE DISPUTE

The extended family of a reclusive millionaire secured a large settlement on the eve of trial. As reported by the Milwaukee Journal Sentinel, when LeRoy Ern died at the age of 92, he purportedly left his entire $1.6 million estate to his financial advisor. At the time of the changes, Mr. Ern suffered from dementia and lived the life of a hermit. According to the allegations, soon after meeting the financial advisor, Mr. Ern nominated the financial advisor as his financial and health care power of attorney. Eventually, the financial advisor obtained an interest in 100 percent of Mr. Ern's estate upon Mr. Ern's death.

As is often the case in disputes such as this, the purported transfers to the financial advisor to take place upon Mr. Ern's death occurred through a series of different mechanisms. Here, it involved a revised will identifying the financial advisor as the personal representative and sole beneficiary as well as changes to the beneficiary designation on multiple annuity policies. Other common mechanisms may include the retitling of accounts from the name of the decedent or his or her trust into a joint account, payable-on-death account, or transfer-on-death account to the alleged wrongdoer or a change in beneficiary designation on a life insurance policy.

After Mr. Ern died, the financial advisor filed the will and sought to serve as the estate's special administrator. Mr. Ern's family members objected to the will on the basis the financial advisor obtained a 100 percent interest in the estate in bad faith. As the newspaper points out, the family and the financial advisor settled on the eve of the scheduled trial that was set to begin this week. As part of the settlement, the family will receive the bulk of Mr. Ern's estate. It is evident that had Mr. Ern's family not taken court action to assert their rights, they would have received nothing. Instead, they secured a settlement worth almost $1.5 million.

If you would like more information on this topic, you are welcome to call Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com.

PROTECTING THE ELDERLY FROM FRAUD BY CAREGIVERS

In what has become an all-too-common story, it was recently reported that a 92 year-old Wisconsin woman suffering from dementia was defrauded by her caregiver. The caregiver, who allegedly stole $25,000, recently pled guilty to fraud and identity theft. More details on the story, which was reported by Milwaukee WISN 12, can be found here.

Like many who suffer from dementia, the victim of this crime was living in her home, with the assistance of caregivers. While most caregivers are certainly professional and trustworthy, in this case, the caregiver—Andrea Gooseberry who worked for Home Care Assistance—allegedly was not.

The criminal complaint alleges that the caregiver used Marilyn's debit card and identity to steal approximately $25,000 through 47 separate ATM transactions, all of which occurred over the course of one month. According to victim's son, Marilyn was no longer capable of using an ATM card on her own.

The sad news does not end there, unfortunately. The police are also investigating whether four family friends stole another $20,000 from Marilyn.

There are steps that can be taken to reduce the risk that a loved one will be defrauded. For one thing, it is important that steps be taken to monitor a loved one's bank account to identify suspicious transactions. In addition, arrangements can be made to have a financial power of attorney put in place. If necessary, court proceedings can also be filed to seek the court appointment of a representative to take charge of the finances of one who is no longer able to handle his or her finances alone.

Whenever fraudulent activity of the sort described above is discovered, it is important to contact the local authorities. In addition, depending on the circumstances, the filing of a lawsuit may be the best option to put yourself in a position to investigate suspected fraud, particularly if that fraud is not discovered until after your loved one has passed.

If you would like more information on this topic, you are welcome to call Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com

WOMAN WITH DEMENTIA LOSES HOME AFTER ALLEGEDLY UNKNOWINGLY SIGNING OVER DEED: RESOURCES TO PROTECT YOUR LOVED ONES FROM ELDER FINANCIAL ABUSE

In March 2017, Milwaukee WISN 12 reported a heart-wrenching story about a criminal investigation alleging two neighbors defrauded a 92-year-old woman suffering from dementia.

According to the allegations, they acquired her home as a gift through a deed and gained control of her nearly $2 million in assets through the execution of a durable power of attorney document. The neighbors then boxed the woman's belongings up, moved her out of the home she grew up in, and used her funds to remodel the house. You can read the full story here.

Unfortunately, this is an all-too-common story in the world of inheritance litigation. I regularly receive calls from previously unsuspecting individuals who have just realized that a loved one was financially abused during the victim's most helpless moments. Sometimes we are fortunate enough to suspect this while the victim is still alive so we can try to do something about it. More often than not, nobody recognizes this until after the victim has died. The shock usually comes when this person receives the victim's purported estate planning documents—whether a will or a trust, or their amendments—that dramatically change the expected inheritance of some or all of the victim's family members.

This type of situation happens more than many expect. As we become more aware of this problem through stories such as this and learn more about the effects of dementia and other diseases, it is important that we as a society are mindful of this issue. Of course every person, including our oldest population, has the right to do with their property as they wish. It needs to be as a result of his or her free will, however, and not at the hands of an individual with ulterior motives.

In the right circumstances, civil litigation may be the best way to position yourself to thoroughly investigate these matters. This is particularly so if you did not have reason to suspect the abuse until after the victim has died. Unlike the example above, criminal prosecutors are often limited in their ability to conduct a thorough investigation into matters involving a person's rightful estate. The obligation is often on the aggrieved person to protect his or her own rights.

I encourage you to look at the various resources referenced in the article and in your community if you fear a loved one or you are potential victims of financial abuse.

If you would like more information on this topic you can contact Trevor Lippman at 414-276-5000 or trevor.lippman@wilaw.com

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A FAMILY MATTER: PROTECTING AN ELDERLY PARENT WITH DEMENTIA FROM FINANCIAL ABUSE

As Baby Boomers continue to age, an increasing number of elderly Americans and their families are forced to deal with the devastating effects of dementia. According to the National Center on Elder Abuse, approximately 5.1 million Americans over the age of 65 suffer from some form of dementia. In addition, nearly half of all individuals over the age of 85, the fastest growing segment of our population, currently suffer from Alzheimer's disease or some other type of dementia. Many of these individuals do not have a will or a trust, nor have they executed power of attorney documentation. Conversely, many others have planned ahead, going to great lengths to ensure that "everything is taken care of" in advance for their families.

Today, advance planning commonly includes nominating an individual to be a Durable Power of Attorney. This approach allows one (assuming mental competency is intact) to choose the person who will manage his or her affairs and assets if that person is unable to do so adequately in the future. Appointing a Durable Power of Attorney in advance alleviates the need for the initiation of public proceedings to address the elder individual's mental capacity.

In many cases, it is common for one or more of an elderly parent's adult children to step in and help manage the parent's affairs, particularly when the elderly parent's spouse has passed. Oftentimes, due to the proximity of one child to the parent's residence, a strong relationship with the parent, or for a multitude of other possible reasons, one child ends up visiting with and assisting an elderly parent more than other children. That child might even live with the parent. In those cases, the elderly parent will frequently name this child as his or her Durable Power of Attorney.

Unfortunately, with vulnerability comes opportunity. Provided with suddenly unfettered access to significant funds from numerous accounts and sometimes very little oversight, there can be disputes between adult children about how an elderly parent's assets and financial affairs are being handled.

It goes without saying that every family with multiple siblings has unique dynamics that may

change over time. It is not uncommon for siblings to grow apart over the years due to differences in lifestyles, ideologies, or personalities. On the other hand, sometimes, siblings become each other's best friends, talking to each other nearly every day. These unique family dynamics can sometimes play a role in disputes over estate planning matters, especially after one parent has passed and the other parent is suffering from some infirmity associated with an advanced age.

These family dynamics sometimes manifest themselves into unfortunate scenarios. At its extreme, the most troubling situation is when there are allegations that one child is stealing from an elderly parent. This may lead to a problem that inheritance trial attorneys are all too familiar with — most or all of an elderly parent's assets slowly dissipate, not necessarily on expenses associated with caring for the parent.

Imagine, for instance, that a doctor just recently diagnosed an elderly mother with Alzheimer's disease. The husband, and father, passed away years earlier. The mother has $500,000 in assets at the time of her diagnosis. She has four children and drafted a will after her husband passed away indicating that it is her wish to leave one-fourth her estate to each of her children. At the same time, the mother has named one child (Child A) as her Durable Power of Attorney. After the Alzheimer's diagnosis, two doctors sign a Statement of Incapacity, which results in Child A taking over all of the mother's financial affairs. The mother passes away one year later, and in the estate proceedings, Children B, C, and D learn that each of them will receive $25,000 — far less than they had expected. Children B, C, and D concede that Child A legitimately spent $100,000 on their mother's medical care and other living expenses. But where did the other $300,000 go? Some family members do not want to broach the subject because they find it to be an uncomfortable discussion. Nobody wants to wrongly accuse a family member of such an egregious act. Moreover, family members may feel they are being "greedy" if they initiate a legal proceeding involving property that, to that point, had never belonged to them.

There is more to consider, however. Parents often spend a lifetime working, saving, and investing in hopes of being able to provide loved ones with financial support after they pass. Is it fair to a parent's legacy to walk away to avoid the confrontation? Ultimately, this is the very personal and difficult decision many adult children have to make.

There are several things one can do to try to protect against such situations:

- **Ask Questions**
  If you get the sense that somebody is taking advantage of an ailing parent, ask that person questions. Stay involved to the extent you can. If you believe there are unusual or suspicious circumstances surrounding an elderly parent, take note of them. One who might otherwise take advantage of an elderly parent might not do so if he or she knows that others are regularly checking on the status of the parent's care and financial matters.

- **Talk to Your Parent**
  The effects of dementia are unquestionably devastating, but, to a point, an ailing parent may still have the capacity to sense when something is wrong. On occasion, talk with your elderly parent outside the presence of the caretaker or power of attorney. If your parent never answers the phone or somebody refuses to let you inside your parent's home, continue your efforts to initiate contact.

- **Look for the Signs of Improper Purchases**
  Not every purchase that a caretaker makes should cause immediate suspicion. But, if one who is appointed Durable Power of Attorney suddenly buys a new luxury car, takes an expensive vacation, or engages in other activity that is clearly out of the ordinary, you should inquire. Try to engage in honest and open conversations with all of your family members about these matters. If concerns remain, it may be time to consider other arrangements.

- **Inquire as to Whether the Durable Power of Attorney Documentation Includes Gifting Powers**
  If your parent signed a Durable Power of Attorney document, ask whether the document specifically grants the person appointed the Durable Power of Attorney the power to make gifts on their behalf. While a Durable Power of Attorney document can provide an individual with expansive power over the finances of the elderly parent, the more general language typically seen in these documents often will not provide the Durable Power of Attorney with the authority to make gifts to himself, herself, or to others. If an elderly parent wants to give the Durable Power of Attorney the authority to give gifts, this must be stated explicitly in the Power of Attorney document. Any person who is considering granting such expansive powers to a loved one needs to give such matters very careful consideration.

Unfortunately, elder financial abuse is all too real. This abuse can have devastating consequences both on the ailing parent and on their families. Be mindful of the potential problem. Naivety is not a sufficient excuse when it comes to caring for those who need our help the most. There are legal avenues you can take to try to protect the rights of your parents and your parents' beneficiaries.

If you have any questions, please contact Attorney Trevor Lippman at O'Neil Cannon at 414-276-5000.