

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.