

PLANNING AGAINST ELDER VULNERABILITY

Elder abuse can take many ugly forms, but few consider the financial havoc that can be wreaked on an otherwise well thought-out estate plan by the actions of an interloper. Consider the following situation as one example.

Ten years ago, Mr. Smith, an elderly gentleman, lost his wife. As part of the grieving process, Mr. Smith wanted to ensure that his three children and eight grandchildren would be taken care of after his death. To honour the significant contributions his wife had made to the community during her life, Mr. Smith also provided bequests to various charities in her name. Mr. Smith had a well-drafted Will that divided his estate between his adult children, his grandchildren, and the various charities. Straightforward trusts were created for the grandchildren to ensure their shares would fund educational goals and other aspirations.

Over time, Mr. Smith's mental health began to deteriorate. Loath to see their father institutionalized, the children took over his financial affairs and arranged for 24-hour personal supervision at his residence. Although costly, this seemed the best solution in view of the fact that each child lived a considerable distance from their father and none of them could attend to his needs personally.

When Mr. Smith died, you can well imagine the shock and anger of his relatives when one of the caregivers (30 years younger than Mr. Smith) announced that she and the deceased had been secretly married three months prior to his death at a civil ceremony in front of a Justice of the Peace. Immediately after the purported marriage, the new "Mrs. Smith" arranged to have herself named as the beneficiary on all Mr. Smith's life insurance policies. Because of the nature of Mr. Smith's mental deterioration, he would probably have said "I do" or "yes" to any questions asked of him. Similarly, he would have signed without question any document put before him.

Mr. Smith's estate planning objectives crumbled completely. In most jurisdictions, marriage revokes a Will. As a result, he was said to have died "intestate" (without a Will), and his estate was divided in accordance with the legislation dealing with intestate succession. Not only were his children and grandchildren deprived of assets he intended for them, as his surviving spouse, the new Mrs. Smith also was entitled to collect a survivors benefit from the Canada Pension Plan. Having the marriage nullified proved too costly for the heirs of Mr. Smith's modest estate.

Remarriage of elderly persons is not always an abuse of trust nor do caretakers routinely take advantage of those they care for. Anyone considering an estate plan, however, may want to take precautions against such vulnerability. Legally speaking, irrevocable family trusts are an excellent solution. Likewise, trusts can be an excellent way to provide for charities while still retaining lifetime income from one's assets.

From a purely practical point of view, family members should not lose touch with those who mean the most to them. The best defence against abuse of a vulnerable elderly person, however, is to ensure that proper powers of attorney are in place before a person becomes incapable of drafting them.

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