

## **Handling the Sensitive Issues Surrounding an Incompetent Parent**

Robert, 84, is a retired executive whose wife died only six weeks ago. His daughter Robyn has noticed his memory slipping. Sometimes he's not sure what month it is or in which direction to walk to the neighborhood convenience store. And now, to the family's surprise, Robert has announced he plans to marry a younger woman he recently met. In addition, Robyn learns that her father is cutting his children out of his newly revised living trust and leaving his entire estate to his future wife. After the shock wears off, Robyn feels that her father was mentally impaired and under duress from his future wife when he changed his estate plan.

This scenario is more common than you might think. Many elderly people lose their ability to effectively manage their financial affairs. They may become vulnerable to fraud, and, if they live alone or are emotionally isolated, unethical parties -- such as daily caretakers -- can unduly influence them. If you have a parent who is incapacitated, now is the time to step in and protect his or her financial interests. Let's review your options to protect an elderly parent's financial affairs if he or she becomes incompetent.

### **Review Your Options**

If your parent makes a hasty life choice that is not in his or her best interest, first discuss the matter with any siblings you may have. Resolve any disagreements among yourselves before trying to reason with your parent or consulting an attorney. Then consider these four options:

1. Persuade your parent to change his or her mind. You may be able to persuade your parent to write you and your siblings back into the will or trust and perhaps allow you -- or at least a third-party administrator -- to take control of his or her estate. If your parent has a living trust, he or she has already named a successor trustee. You may be able to persuade your parent to let the successor trustee take control of his or her financial affairs.
2. Seek doctors' declarations. If your parent has a living trust, it may allow for the successor trustee to take over provided that one or two doctors declare in writing that your parent is no longer capable of handling his or her own financial affairs. Even if your parent doesn't have a trust or the trust doesn't allow for this, the doctors' letters can be valuable if your next option is to have a court declare your parent incompetent.
3. Petition a court to declare your parent incompetent. If you are successful, the court will appoint a legal guardian to prevent your parent from acting against his or her best interests. Having the court declare your parent incompetent also establishes a strong basis for contesting the will or trust after the parent dies. But an incompetency proceeding is the least appealing legal option because it requires a guardianship (or conservatorship) proceeding before a judge that can be difficult, costly and embarrassing for both sides. Without overwhelming proof -- such as medical records, doctors' testimony and witnesses -- getting a judge to declare your parent incompetent may be difficult. Many judges will bend over backward to preserve an elderly person's independence as long as possible. The worst possible scenario is that the judge rules against you, the opposing lawyer portrays you as a greedy, self-serving child and your parent stops speaking

to you. If this is the outcome, contesting the will or trust if your parent dies soon thereafter will be much more difficult.

4. Wait until your parent dies and then contest the will or trust. If the court didn't declare your parent incompetent while he or she was alive, contesting a will or trust after death -- on the ground that your parent did not have the legal capacity to sign it -- requires much of the same evidence as in a guardianship proceeding. Because the judge will not face the prospect of robbing an elderly person of his or her independence, you will have more leeway to work out a compromise.

### **Quick and Thoughtful Intervention**

Managing your parent's financial affairs can be gratifying if he or she is cooperative and appreciative. But if your parent resists your involvement and refuses to give up control, the situation can become complicated and stressful, and legal action may be necessary.

Nobody can stop an adult from making rash and harmful decisions. And even the ravages of old age can test the most well-planned estates and harmonious of families. Of course you can standby and let your parent do as he or she pleases. But quick and thoughtful intervention with the help of competent legal and financial advisors may help minimize the damage.