

“Never Thought It Would Happen to Us”™

by Professor Michael Myers

The Elderlaw Forum: Money is needed to keep a family intact. But, often, a lot of money tears a family apart; particularly when those with the money approach the end of their lives.

“I never thought it would happen to us,” said the USD Senior Legal Helpline caller, a 73-year-old woman whose husband died two years ago. “We used to be a loving family. Now my daughters won’t talk to me. And, they are attacking each other.”

“I have a lot of land and other assets,” she said. “And, I believe that’s the problem.”

She called to ask how she could revoke a power of attorney designating one of her daughters as agent. And, once revoked, she asked whether I thought she really needed a power of attorney. And, if the answer is yes, could two of her children serve as co-agents?

The caller is in good health, active in civic affairs, and self-sufficient. She has a financial advisor. She has several close friends. She expects her seventies to be busy and rewarding. But the unexpected enmity within her family is a source of unhappiness.

I advised her to consult with the attorney who drafted her power of attorney, execute a revocation, and distribute it to all interested parties, most importantly, members of her family and relevant financial institutions. Secondly, she should execute a conditional or “springing” power of attorney, one that would become effective only upon her becoming verifiably incapacitated.

Thirdly, “yes, she can designate two of her children as co-agents. Also she can use the document to designate a person to be her guardian, in the event she becomes permanently incapacitated. And there, too, she could designate co-guardians.

The designation of co-agents or co-guardians is generally discouraged, particularly when intra-family animosity is present. “Among your children, which is the most trustworthy and responsible?” I asked. She said she really did not know.

“It is at a point where no one trusts anyone.”

I recommended she engage a neutral attorney or family counselor to explore the potential for mediating the real or perceived conflicts within this once-happy family. Money can deliver happiness. Also it can take it away.

(Pro bono legal information, advice and assistance is available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895).

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