

by Professor Michael Myers

Assume the following: You and your mother are joint owners of a tract of valuable land. Your mother is diagnosed with Alzheimer’s and is about to be transferred from a hospital to a nursing home at a cost of \$7,000 per month.

Once your mother’s available cash is exhausted, may the nursing home levy upon the entire tract of land, including your share, to satisfy costs incurred by your mother? And if so, what steps can you take to protect your interest in the land?

That is the situation faced by a 61-year-old Arizona resident who called the USD Senior Legal Helpline. The land—consisting of 25 acres—is located in California. Her mother—“brilliant but now volatile and irrational”—will not agree to a sale of the land and a division of the proceeds. “What can I do to protect my interests in the land?” the caller asked.

The land is held in joint tenancy, which means the caller and her mother each own a one-half undivided interest. That means either of them, without permission of the other, may use the land as collateral for a loan, or subject it to foreclosure by incurring indebtedness for medical or nursing home expenses. And, if her mother eventually receives Medicaid assistance, the land will be subject to the state’s Medicaid recovery program.

I advised the caller that joint interests in real property are subject to involuntary partition. I suggested she promptly retain a California attorney and initiate a partition action in the county where the land is located. Courts are authorized by state statutes to make “just and equitable” partitions between parties for the purpose of securing their respective interests.

I received a similar call from a woman who had lived with a man for 25 years in a home they owned together. They had never married. She wanted out of the relationship but did not wish to forfeit her 60 percent interest in the home. I referred her to an attorney who obtained a court order compelling the sale of the home and a division of the proceeds. She left an abusive relationship with \$65,000 in her savings account.

Retirement planning should recognize the special risks related to the joint ownership of property between the elderly and the young. Shared ownership of assets between parents and adult children generally arise out of mutual trust; but over time can produce the type of problem confronting the Arizona caller.

(Pro bono legal information, advice available to persons 55 and older through the USD Senior Legal Helpline, 1-800-747-1895; mmyers@usd.edu; Note: Opinions expressed herein are solely those of Professor Myers, not the University of South Dakota).

*The Elderlaw Forum: "Brilliant" mother, now "volatile, irrational" by Professor Michael Myers*