



Photo courtesy of Gloria Duffy

## The Vulnerable Elderly

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attorney convinced our father, who suffered from severe mental illness as well as being aged, to make the attorney the executor and successor trustee for his estate, to create a new nonprofit organization, which I will call here the “Good Works Association,” of which the attorney would be chair of the board, and to make this organization the beneficiary of our father’s trust. A modest bequest to my youngest sibling, who had cared for our father in his last years, was to be provided separately.

This process was wrong from start to finish. Our father had asked in writing that my youngest sibling, a business professional, be his successor trustee, but the attorney put himself in this role instead. He apparently convinced my father that this would strengthen the defensibility of the estate plan the attorney was creating from any challenge.

This placed our father’s assets into the control of the same attorney who set up his estate plans. To prevent self-dealing, by law in California attorneys are required to have another attorney supervise when they are designated executor for an estate plan they have created. This attorney did not follow the required process. According to its intended recipients, a five-figure prior donation the attorney solicited from our father had never reached them. The attorney made alterations to our father’s estate documents after his death. And after my father’s death, the attorney would not execute the bequest to our youngest sister.

Our family took the attorney to court, and after two years of legal maneuvering and the expenditure of considerable funds, our family made a settlement in which our youngest sister’s bequest was finally paid out, and some funds from our father’s trust were provided for other family members. Through this process, the attorney paid himself and hired several of his attorney colleagues in the local region, paying them from our father’s estate, to “defend” our father’s trust. Creating all this legal activity seems to have been part of the attorney’s strategy, especially in refusing to move on our sister’s bequest, thus forcing our legal action to release it. Our lawyer jokingly called the process the “Attorneys Full Employment

Act” for the region where both our father and the attorney who made his estate plan lived.

The majority of the funds in our father’s trust supposedly went to the newly minted “Good Works Association,” but five years later we have been unable to discover any programs or beneficiaries of this charity. The attorney remains chair of its board, and from what we can tell, its sole board member. Because it is classified as a religious nonprofit, it is exempt from filing either a federal 990 form or a California 199 form, the annual returns through which non-religious nonprofits are required to provide information to the public about their operations. Given this lack of visibility into religious charities, it is impossible to know to what extent the attorney has used the estate planning process and the system of charitable organizations to guide our father’s funds to himself, either directly or through legal fees for administering this charitable organization.

The attorney conveyed a faint “I’m sorry” to our family during the settlement process, indicating that he hadn’t understood that our father was mentally ill, but it didn’t change the fact that he ended up with the majority of our father’s estate in the organization he created and heads.

Let me try to draw some conclusions from our family’s experience with financial exploitation of our parent.

First, this type of manipulation of older individuals seems to be extremely common in our society. Older people are subject to “undue influence” because in aging their brains undergo changes diminishing their capacity to understand the details of their finances and to make judgments about who is honest and who may be manipulating them. They become too trusting of those on whom they feel dependent.

Second, some elders have been somewhat impaired in addition to being elderly, and thus especially vulnerable. Our father was mentally ill. Such elderly individuals, especially when they have significant assets, may need special protection against abuse.

Third, the exemption from public scrutiny for religious nonprofits is an invitation for abuse, and needs to be changed. They should be subject to the same transparency as non-religious charities.

Finally, our society and our legal system recognize the problem of elder abuse in general, and elder financial abuse specifically. But effectively preventing it is extremely difficult. Everyone with elderly parents and friends should be extremely vigilant against this danger. Ω

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