Elder Financial Abuse: Enduring Power of Attorney

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As discussed in our previous blog titled Capacity and Estate Planning, an enduring power of attorney document gives your Attorneys (the people you have nominated) control over your assets when you no longer have the mental capacity to make such decisions in your best interest. For example, your Attorney being able to sell property in order to secure a place in an aged care facility.

This document is useful in helping those who look after your wellbeing, by ensuring fewer complications and removing the hurdles they may face with financial institutions and health care providers.

An attorney may be allowed to give benefits to themselves to meet their reasonable living expenses and medical expenses. This is usually due to the fact that a child will look after their parents in their aging years, to the point of being unable to maintain a job themselves.

Therefore, it is often a fair compensatory method of ensuring that the elder is able to receive the support needed and the child is able to provide this help without issue. While the ability to sell your property assets is beneficially to your Attorneys, it offers the possibility of misuse of this power.

One such case is ***Wardel v Wardel (2021),*** in where a daughter, being the Attorney of her mother, sold the mother's property, the proceeds of which went solely into the purchase of a home in the daughter's name. There had been an understanding that the daughter would have helped the mother with the expenses relevant to medical expenses, but due to the sale of the mother's property and her worsening condition, there were no substantial funds left to meet the cost of such care.

Unfortunately, this was only one consequence from the Attorney's financial abuse occurring from the misuse of the Enduring Power of Attorney document. The second consequence was the estate of the mother being depleted when time came for distribution. Both of her children were to have the estate equally, as the mother's property had now been sold and the proceeds used by the daughter to purchase her own home, that asset was no longer included in the mother's estate.

Although the daughter displayed unconscionable conduct, being that her mother was at a disadvantage and she took advantage of this, it did not prevent the daughter from making a further family provision claim, in where she received more than what was provided for in her mother's will.

Our Estate Planning Lawyers are able to ensure that your Enduring Power of Attorney

documents suit your needs. Should the need arise, our Estate Planning Team are able to assist with Will Disputes that may arise from an Attorneys misuse of powers.

More Information

If you wish to obtain further information, advice or assistance in updating your Will, please contact one of our Will Lawyers in our Estate Planning team at Matthews Folbigg on **9635 7966**, email us at **estates@matthewsfolbigg.com.au** or through the website **www.matthewsfolbigg.com.au**

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