

Utah Spirit

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Consider the Appointment of a Conservator to Protect Your Assets

A senior widow contacted me about her inability to say “No” to her adult son. She was not incapacitated, and she was clearly mentally alert. She understood that something had to be done to protect her estate.

She had several children, but only one child who was unable to provide sufficiently for his own needs. That particular son had been involved with drugs for many years. He had been unable to maintain steady employment, and he always seemed to be in financial difficulty. As a result, he regularly sought help from his mother.

As a loving mother, she simply cannot say “Not” to him. She tries to help; he always promises to pay her back. But he lacks steady employment, and much of his money goes for drugs.

When she contacted me for help, she was desperate. She had no mortgage on her home and she was free from debt. Yet, she had just co-signed a loan for her son so that he could attend a trade school. She then discovered that the “loan” was actually a mortgage on her home.

She also discovered hundreds of dollars of withdrawals using her ATM Card, withdrawals she had not made. Although she finally decided something must be done, she did not know what to do. She acknowledged that she did not have the strength or ability to say “No” to her son.

We discussed two viable options. The first option was a power of attorney. She could grant to one of her more responsible adult children a power of attorney. This child could then manage her financial affairs. By doing so, her assets may be kept from the son who has been draining her estate.

The second option was a conservatorship. This is a court-appointed position to oversee her financial affairs. The Court could appoint the same adult child as in the power of attorney option. That child would then become her Conservator and would have a duty to report annually to the Court and other siblings.

A power of attorney might have been effective. But the mother could always revoke the power of attorney or could simply act independently of the power of attorney.

On the other hand, she could not merely “revoke” the conservatorship. Only the Court can dissolve or modify the conservatorship. Moreover, she would not be able to act independently of the Conservator. This approach provides greater assurance that “Mom” will not be able to succumb to her son who has taken much over the past few years.

Most often a person needing protection is also incapacitated. Because of that incapacity, the Court appoints a Conservator and also a Guardian. A Guardian is over the person; a Conservator is over the person's financial affairs.

In this case, the mother initiated the conservatorship. She recognized her need for protection. She was the petitioner, and the Court appointed a responsible son of her choosing to be her Conservator.

There are several advantages of appointing a Conservator for her. First, she no longer has to say "No" to her son. Saying "No" is now shifted to another adult child. Second, the responsible child who is serving as her Conservator has the mantle of court-appointed authority.

Third, this authority permits the Conservator to bring legal action, if necessary, to fully manage her financial affairs. That authority also allows the Conservator to more effectively deal with the errant son.

In this particular example, the dependent, drug afflicted son had moved into his mother's house. He was not paying for room or board, and his presence was causing a further strain on his mother's financial resources. He would not leave. Upon the appointment of a Conservator, he was requested by the Conservator to leave his mother's house. He promptly did so, avoiding further court action.

If you are unable to say "No" to a child, grandchild, or other relative or person, and if your estate is being depleted by the requests or demands of that person, you should consult a professional Elder Law Attorney.