



“What Can We Do?”

In each issue of Family Care, we ask Public Trust to answer your questions about legal and planning issues. Anita Mexted, who has answered your questions since 2007, recently left Public Trust. From this issue we welcome Janet Strong, a Specialist Advisor from Public Trust's Auckland Central Customer Centre. We would like to thank Anita for all her hard work and wish her the best for the future!

Dear Janet,

I need some advice. My father is in his late 80s and has had a couple of mini strokes. My older brother and I have been caring for him for the past five years, since our mother passed away.

My brother is not well at present, and I have no choice but to move to another country because of my husband's work transfer. My younger and older sisters have done nothing to help with our father's care until now, but are interested of late.

My older sister has a large section on her property. She is keen to sell Dad's house and use the money to place a unit for him on her land. My Dad is willing to sign anything, as he does not wish to live in a rest home.

Is there anything my brother and I can do to stop our oldest sister from selling Dad's house? According to Dad's current Will, the proceeds from selling the house will be divided between we five siblings when he dies.

My sister is only interested when money is involved. What steps can we take to stop this from happening?

Concerned, Waipu

Dear Concerned,

I'm sorry to hear about your situation, which unfortunately is becoming more common. When an elderly parent has developed health needs and isn't managing as well as they used to, it can cause tension among their adult children about what steps to take next.

The tough decision of whether to sell a parent's house and what is done with the proceeds can cause real divisions within families. While some of the children may be concerned with the welfare of their parent, others may be looking to benefit financially from the situation.

Before you move to another country, I think it's a good idea to get your Dad and the family together to talk about your concerns and let them know how you feel. It's important you all work together and put your Dad's needs first.

But when it comes to formally helping to take care of your Dad's best interests, what options do you have? This really depends on two things: firstly, whether your Dad can still make decisions for himself and, secondly, whether he has set up enduring powers of attorney.

Where your Dad's mental capacity is NOT impaired

If your Dad has not lost his mental capacity (he is still of sound mind) he is entitled to make his own decisions. This includes whether he sells his house, how his money is managed, and where he decides to live. Your Dad has the final call on what he does. If he chooses to put some money into a unit on your sister's property then your Dad

Alzheimers New Zealand

www.alzheimers.org.nz
0800 004 001



Making life better for all people affected by dementia

nationaloffice@alzheimers.org.nz

P O Box 3643, Wellington
 Ph: 04 381 2362
 Fax: 04 381 2365

would be wise to get some independent professional advice to ensure that his position is protected. There are various ways this might be done. If your Dad currently doesn't have enduring powers of attorney, he should consider putting them in place now. This will help ensure his property matters, together with his personal care and welfare, are taken care of in a way he would want if the time comes when he can't manage. In your family situation, where there is potential conflict, it may be worth your Dad considering an independent property attorney to look after what happens to his house. If you are unsure about your Dad's mental capacity, only a health practitioner whose practice includes assessment of mental capacity can carry out a formal assessment. Most often this is a person's regular GP.

Where your Dad has LOST his mental capacity and DOES have enduring powers of attorney

If your Dad has lost his mental capacity, and he has enduring powers of attorney in place for both personal care and welfare and property, whoever your Dad has appointed to act on his behalf will determine what happens next. This could include how your Dad is cared for, where he lives, whether his house is sold, and what is done with the proceeds. If a family member disagrees with what the appointed attorney plans to do, they can seek a review of any important decision by the Family Court. You can learn more about this process from any Family Court, or online at www.justice.govt.nz. Ultimately what it all comes down to is that your Dad's best interests are taken care of for the future.

Where your Dad has LOST his mental capacity and DOESN'T have enduring powers of attorney

If your Dad has lost the mental capacity to manage his affairs, and he doesn't have enduring powers of attorney in place, you or other members of your family can't simply take over on his behalf. An application will need to be made to the Family Court to allow decisions to be made about your Dad's property and his personal care and welfare. The Family Court will appoint a property manager and a welfare guardian for your Dad. An independent property manager such as Public Trust may be appropriate when the family is not united, as in your current situation. But an organisation cannot be a welfare guardian, so a family member, friend, or other party will have to fill that role. To learn more about how welfare guardianship works in New Zealand, request a free copy of the Summer 09 issue of *Family Care*. Email sara@carers.net.nz or phone Far North (09) 406 0412.

Whether or not your Dad has mental capacity or enduring powers of attorney in place, I strongly recommend that you seek professional advice from someone you can trust, such as your family lawyer, or an advisor at Public Trust. They will explain your options and help you set things up so there can be no disputes. If you'd like to learn more about how Public Trust may be able to help you, please call toll free on (0800) 371 471, or visit www.publictrust.co.nz

Janet

This column is not a substitute for professional advice in any particular circumstance. No liability will be accepted by Public Trust for any loss arising from any person relying on the information contained in this column. You can email questions for Janet to info@carers.net.nz, or post them to PO Box 133, Mangonui, Far North 0442.



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0800 725 463

www.adhb.govt.nz/rcline