

THE PUBLIC TRUSTEE OF QUEENSLAND

And

ELDER ABUSE PREVENTION UNIT

ARTICLE

“FINANCIAL ABUSE - DO I STAND A CHANCE”

Financial abuse can take a number of forms. The most common is misuse of funds (outright theft), transfer of assets (investment properties; the family home), or denial of expenditure (in order that the elder person's assets are maintained for distribution under their Will on their death). It has been said that financial elder abuse is the attempt to make an early distribution of the elder person's estate whilst they are still alive.

It is often not understood that the mere fact that an allegation of financial abuse may prove to be true does not mean that there will be an automatic recovery of the funds or assets that have been misappropriated.

An allegation, once made, and after investigation, an Application is made to the Guardianship and Administration Tribunal to remove an Attorney under an Enduring Power of Attorney and the appointment of an Administrator. Court or Tribunal proceedings may follow to recover funds or assets. Police action may also be considered. More often than not, the Public Trustee of Queensland is appointed.

It sounds simple but unfortunately it is not.

There is a perception that the very fact that the Public Trustee has been appointed will mean that there will be a recovery of funds or a retransfer of assets. In some cases this is true but in a lot of cases this perception is misplaced

There are a number of obstacles that are in the way of a successful outcome for the adult, whose assets have been misused, and other interested parties, not least family members.

There may be difficulties in obtaining evidence to prove the allegations. The adult may lack capacity to give instructions or to clarify the circumstances in which the alleged misuse took place.

The adult may have limited financial resources to fund any litigation. The adults' funds and/ or other assets may have already been used or made to disappear. Some circumstances are quite complex, especially if Company structures are involved. Ownership of assets may also be difficult to prove. Following the money trail and the unwinding of complex financial structures is not only time consuming but may require the assistance of experts such as forensic accountants.

An Administrator of the adults' financial affairs is sometime called upon to make a difficult decision. The Administrator may have to decide between the general principle to support the adults' relationships and support networks and protecting or recovering the adults' assets. This is especially so when the family dynamic is involved. The adult may have a close relationship with the family member against whom allegations have been made by other family members.

The Administrator will also have to decide the costs of litigation. The perennial adage "why throw good money after bad" sometimes applies.

To avoid disputes and to ensure an Attorney actions are transparent (especially in family situations) consideration should be given to include in the Enduring Power of Attorney document clauses as to:

Accountability: If one member of a family is an Attorney that they are required to account to other members of the family.

Consultation: That the Attorney be required to consult with other members of the family.

The other perennial adage applies "prevention is better than the cure." With good advice and recognition of the importance of completing an Enduring Power of Attorney some of the problems in obtaining a "cure" may be overcome.

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