

Care for the Caregiver

by Jim Schuster Certified Elder Law Attorney



Caregivers are some of the most giving, caring people on earth. National statistics say that approximately 80% are women. Perhaps if somebody did a study they would find caregivers are 80% of the children taken advantage of. Too often their selfless actions for a parent are punished rather than rewarded.

One of the most common cases is of the “sandwich generation” child. She is caught on the one side taking care of her mother and on the other taking care of her children. She often has to balance the expectations of her own job, her spouse and finally herself. Often she is the only local child – her siblings are too far away to be of much assistance. Too often her own needs take a back seat to her parent’s. How can one possibly place a value on her service? Consider an extreme but true story:

Just when the family realized mom could no longer live alone Betty found herself divorced and without a job.

She was able to move in and took care of her mother for the last years of her life. She saved her mom from a nursing home. Mother “pestered” Betty about going to the lawyer to make a new Will to leave the house to Betty. She always resisted saying “Mom, I’m not doing it for your money.” Mother persisted and Betty began to realize how precarious her financial situation was. Finally she called the lawyer and made an appointment. The day came and she drove her mom there, sat through the appointment, the lawyer made a new Will leaving the house to Betty. Betty paid the bill and drove Mom home. After Mom died the other two children objected to the Will on the ground of “undue influence.” It went to court and the judge agreed. Betty had so much control over her mother’s affairs that such conduct would be presumed. Betty got nothing for her years of service.

What went wrong? For one thing, the lawyer did not

prepare the Will as needed. He should have met with Mother alone to determine that she was acting of her own free will and not under pressure from Betty. And he should have suggested other steps to take.

Why didn’t the court recognize the value of the years of service? The law presumes services rendered between parent and child are to be given freely, for love not money. The presumption can be rebutted by an agreement to the contrary. But, what if there were an agreement, would it have the same problem? Maybe.

How can these things happen? Most people don’t know how hard it is to be a caregiver. They think the caregiver has it made. I had the case of a father and two sons. The caregiver told me he wanted to have his own life, get married again, get a job, build up his retirement and have his own place. The other saw things quite differently. “What a life my

brother has. He can get up at ten and drive my dad to the doctor's. He has no rent, no taxes to pay and no boss to deal with." The brother was financially secure.

Caregiving is not only an heroic act of selflessness, it is very valuable. Home health agencies charge twenty dollars an hour for aide service. Care and supervision costs even more. 24 hour around the clock care can cost fifteen dollars an hour and that is over \$131,000 per year! No parent has that kind of money!

Parents know of the cost of help and are often thankful to the caregiver so that they don't have to pay to have strangers in their home. It is a risky situation for the caregiver. Often the parent is of failing health and is a "vulnerable adult" grateful for assistance from anyone. If she leaves a generous gift to a caregiver the siblings may question whether she was taken advantage of. Everybody has heard "horror stories" about the selfish child who gets his name on the bank accounts. After the parent dies he declares that the bank said the account is "all his." Was that the parent's intent? If there is enough money, a court battle is guaranteed.

Parents want to be fair. They want to leave gifts equally to their children. But they also

recognize the sacrifice the caregiver makes and want to compensate the caregiver. These are conflicting goals.

What steps can an elder law attorney take to prevent "elder and caregiver abuse"? First the attorney will meet with the parent, determine her present situation, her goals and will counsel her on her options. He will then will devise a plan to meet all points.

Next, the whole family should be brought into the picture to understand the plan - what is being done and why. It is true that a parent has the perfect right to do whatever she wants with her property. She need not tell or "get permission" from her children. She can keep her Will secret until she dies. If the children understand the plan then any claim of abuse can be settled before it arises.

How might the plan take care of the parent and caregiver? One way is compensation in relation to the commercial value of the service. A "care contract" states the scope of the service and the agreement to pay "market value" for it. The caregiver keeps a record of the service provided. The contributions of multiple caregivers can be recognized so that no one is unfairly treated. There need not be immediate payment. After the parent passes away the records of the caregivers can be used

to adjust the share of each child in the estate.

Where the parent lives in the child's home the contract may be similar to an "assisted living" rental agreement. The parent may make one big payment or monthly payments for room, board and care services. Often the caregiver is employed and commercial home health services are used while the child is at work. The cost of these additional services are a measure of the value of the child's contribution.

It is true that the caregivers "aren't in it for the money." So what do such contracts accomplish? They provide a fair way of measuring the value of service and to then make changes in the "estate plan" to reflect that value. The child may be paid or receive a larger inheritance.

With proper planning the parent can provide for fairness for her caregiver, her children and avoid conflicts that can split a family permanently.

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