

Sample Trust, Estate, Conservatorship, Power of Attorney,
Nursing Home and Elder Dispute Resolution Options

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Disputes involving trusts, estates, conservatorships, powers of attorney and elder issues such as daily living, financial, and care (including nursing home) assistance needs are emotional, complex, expensive and time consuming, they typically involve relationship and personality issues, they often are difficult to resolve, and they tend to develop in situations where the circumstances are fluid or developing as needs and conditions change, thus making it more difficult to craft final once-and-for-all resolution. The following list covers many, but cannot cover all of the options available for resolution. Each conflict situation tends to be different or unique at least in some respects. This paper is a work in process--I am adding to it.

Some of the below listed options that pertain to conservatorship and nursing home situations are listed in separate categories. A conservatorship of the person and/or estate is a legal proceeding that requires special considerations. Nursing homes also present special situations. Nursing homes are heavily regulated by statutes and regulations. Nursing homes may be expected to care for most or essentially all of an elder resident's daily needs 24/7, there can be communication difficulties, nursing home residents often can suffer from multiple physical and mental limitations, and nursing homes typically have high staff turnover. Many of the care and financial options that are listed above the conservatorship and nursing home discussions also may apply in conservatorship and nursing home situations.

Options for Resolution (at least some of them to consider):

Appoint a family member as the new trustee, executor, or attorney in fact.

Appoint a professional trustee, executor or attorney in fact.

Have the trustee, executor or attorney in fact produce an accounting to the beneficiaries.

Regularly or periodically have the trustee, executor or attorney in fact provide the beneficiaries with bank statements or informal account/accounting documents.

Compile a list of the assets (identify the items, values, accounts, and locations), and provide that information to all of the beneficiaries.

Hire an investment adviser.

Arrange for an opportunity for the family members or beneficiaries to view the physical assets or personal property items.

Arrange to the amount that a beneficiary or family member will have to pay for his or her personal use of a trust or estate asset.

Agree upon the fee that the trustee, executor or attorney in fact will be paid for services provided.

Reach an agreement between the beneficiaries regarding the actions that the trustee, executor or attorney in fact can take and cannot take without first obtaining the agreement of the beneficiaries, or an order of the court.

Agree to a division of the assets between beneficiaries where it is alleged that the trust or will document terms are invalid due to incapacity, undue influence, mistake, confusion, or other factors (obtain a court order if required).

If it is believed that a family member or beneficiary has wasted or improperly used or benefited from trust or estate assets, reach an agreement on the value of the waste or improper use or benefit, and agree to reduce that amount from future entitlements.

Distribute the assets and terminate the trust or estate (obtain a court order if required).

Appoint co-trustees.

Reach an agreement regarding interpretation of the trust, will or power of attorney document (obtain a court order if required).

Reach an agreement to correct an error in the trust, will or power of attorney document (obtain a court order if required).

Reach an agreement to instruct the trustee, executor, or attorney in fact how to handle a particular situation (obtain a court order if required).

Move assets outside of trust into the trust.

Obtain a power of attorney for health care decision making.

Make the trust, will or power of attorney irrevocable or not subject to amendment or termination without joint beneficiary agreement, or court order, or both.

Schedule regular caregiver and family meetings to discuss and agree upon care condition and needs, and next steps.

Obtain in independent care or daily living need assessment.

Agree on a visitation schedule with Mom/Dad.

Have visits with Mom/Dad monitored, by an independent person.

Hire a care or case manager to oversee (and report) about Mom or Dad's daily living and care needed.

Hire live-in caregivers.

Hire caregiver assistance on a part-time basis.

Arrange for family members to provide daily living assistance.

Arrange for family members to provide live-in care.

Agree on a payment for family members who provide extra care or assistance that is beyond the level that would already be expected.

Allow for Mom or Dad to have access to an appropriately small bank account to help maintain independence and dignity.

Provide regular financial reports or documents to family members.

Provide regular care and living condition reports to family members.

Additional options? There are many, depending on the facts and circumstances of the specific situation.

Conservatorship of the Person and/or Estate:

Consider whether a conservatorship of the person is needed. Arrange for an assessment.

Consider whether a conservatorship of the estate is needed.

Consider options to conservatorship:

Trusts.

Power of attorney for financial matters.

Power of attorney for health decisions.

Regular exchange of financial, or care and medical information.

Appoint a family member as the conservator.

Appoint co-conservators.

Appoint an independent professional conservator.

Obtain court authority to make medical decisions.

Obtain court authority for dementia medications.

Consider whether there is a need for living location placement authority from the court.

Consider whether there is a need for secured placement authority from the court.

Allow for the conservatee to have access to a relatively small bank account to help maintain independence and dignity.

Agree to regular sharing of information.

Nursing Homes (I am working on this section):

Evaluate the elder's needs by in-house evaluation, with the involvement of the elder's family/representative, the nursing home director of nursing, and others as necessary. Needs may at least include:

Medical;

Dental;

Dietary;

Hygiene;

Social and socialization;

Physical;

Mental;

Rehabilitation and physical exercise;

Medication;

Hearing;

Sight/eyesight;

Assistance with daily activities; and

Other.

Evaluate the elder's needs by outside case/care manager, with the involvement of the elder's family/representative, the nursing home director of nursing, and others as necessary.

Develop a written care plan that addresses the elders needs and action steps to be taken.

Monitor and evaluate in writing the care plan implementation, progress, lack of progress, and other changes, at agreed-upon intervals or earlier as needed.

Retain an outside case/care manager.

Make use of an outside independent mediator/facilitator to improve the communications between the nursing home and the family/representative.

In the circumstance of litigation, typically a monetary payment by the nursing home's carrier and possibly the nursing home, on agreed upon terms, and/or possibly an apology, an injunction, nursing home staff training, or a change in future nursing home procedures.

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