

“VALIDATING A DEFECTIVE ESTATE PLAN DOCUMENT”

By Mitchell A. Karasov, Esq.

Question: After losing my job two years ago, my mom asked my husband and I to move in with her to help her out. We did, and I took over as her main caregiver hiring another caregiver to fill in here and there. I’m really thankful that I have been able to be there for my mom and she has been very appreciative. Everything was going really well until my mom’s Parkinson’s started getting worse and the stairs in her home became a major obstacle. I really want to keep her home as long as possible, however, due to her declining health, my husband and I decided to sell the home and rent or buy a single level place. Our dilemma is that our friend, who works for an escrow company, said my mom’s power of attorney is defective and she’s too confused to sign a new one or any of the realtor’s documents to sell the house. He said our only option is to rent out the house and sell it when my mom passes. I really want to sell it now. Is there anything we can do?



Answer: One good thing that has come out of this bad economy is more families like yours are coming together to help each other. Although, your friend could be correct that the Power of Attorney is defective, renting out the house is not your only option.

Do not assume the document is or isn't defective. I've had people show me valid power of attorney documents that were rejected by financial institutions. Because there has been a great deal of financial abuse using power of attorney documents, many institutions have become wary of honoring them. You should first have the document reviewed by an attorney to determine its validity. If there is some problem with the document, it still doesn't mean the document is fatally defective. The attorney can determine the best approach to resolve any questions regarding the validity of the power of attorney with the real estate broker, escrow, and/or the title company.

One obstacle that does present a major challenge is if the power of attorney isn't notarized. This type of defect presents a major problem with title companies. In those circumstances, your attorney would need to file for a Conservatorship with the Court, and name you as your mom's Conservator over her finances. Once you are appointed, you will need to convince the Court that it's medically necessary and appropriate to move your mom out of her current living arrangement and sell their primary residence. In your particular situation, where the two-story house has become a problem, your attorney would have a good chance at getting the request to sell the residence approved.

If your mom's power of attorney is valid, it is always a good idea to have an attorney counsel you about your responsibilities and liabilities when acting under such a document. I have seen many cases where people got themselves into hot water acting as the power of attorney just because they didn't fully understand their legal role. Best of luck to you and your family. ☐