

20. [REDACTED]

The Australian Law Reform Commission – National Inquiry into abuse of the elderly by family members.

My name is [REDACTED] and I am writing on behalf of my Mum, Mrs [REDACTED] formally of [REDACTED] Victoria now of [REDACTED] Victoria.

**Issue –**

- (1) The misuse a Power of Attorney by a family member, in this case my sister Ms [REDACTED]. The power authorised us jointly and each severally to act on Mums behalf. [REDACTED] misused her authority through the “severally” clause and acted alone to the exclusion of myself. There needs to be tighter controls to ensure this clause is being used appropriately;
- (2) The ease of which a Power of Attorney document can be overridden with a new one signed off a person who no longer has the mental capacity to sign such a document – a fact supported by Mum’s doctor at the time. Proof of the ability to sign seems to vary from state to state;
- (3) The ease of which a safety deposit box can be removed from a bank and the account closed using the severally part of the Power of Attorney - there are no checks undertaken by the bank to see if the other party involved in the Power of Attorney is available and agrees for this to happen;
- (4) Bank withdrawal forms were being signed by my Mum who was deemed not mentally able and [REDACTED] was using part of these funds to cover her own legal costs. [REDACTED] did not provide any accounting records until forced to by my solicitor and the records produced were far from adequate;
- (5) The removal of items from the house by [REDACTED] prior to intervention by VCAT. The State Trustee warned [REDACTED] at the time the house was being prepared for sale that any items removed from the house still remained part of the estate. However there is the issue of items removed prior to the Trustee taking over;
- (6) What recourse is there for the people disadvantaged by what has happened. Mum thought that by having a legal Power of Attorney in place her wishes would be followed. Not so. Mum feels let down by the law; and
- (7) During the time my sister had Power of Attorney, I had no feedback from the nursing home as to Mum’s state of health. Legally they said they could not divulge this information to me.

I welcome such an enquiry as this type of behaviour appears to be on the increase. I was fortunate enough to have the means to be able to take this issue to the Victorian Civil and Administrative Tribunal. Some people may not be in this position to take such action.

**Summary of events.**

In summarising the events I might add that at no stage did my sister communicate her actions to me. I found out after the event.

In 1994 following the death of our Dad, my Mum drew up a Power of Attorney with her solicitor (now at [REDACTED]) giving her two daughters, my sister [REDACTED] and myself [REDACTED] joint and

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severally Power of Attorney. Mum has always wanted equal say and equal share between the two of us.

In June 2012 Mum had a fall at home and was admitted to the [REDACTED] Hospital where she stayed a number of weeks. After that Mum was moved to [REDACTED] rehabilitation. It was during her time in [REDACTED] early August 2012 that ACAT did an assessment of Mum's mental capability and whether she could return home or not. My sister signed this ACAT assessment of behalf of Mum siting "cognitive impairment." ACAT wanted to do a second assessment but at a later date. My sister insisted that ACAT did a second assessment soon after the first which was contrary to the Doctor's advice. Again my sister signed the assessment form for the same reason as before. I was not present during either of these assessments. ACAT was advised by staff from [REDACTED] that there was a second sibling to be taken into consideration. ACAT recommended transition care to see how Mum went and to also give myself and other relations time to look at possible aged care facilities. I signed the transition form BUT also added as contacts my sister and my aunty.

Meanwhile on 31 July 2012 my sister [REDACTED] used the severally part of the Power of Attorney to remove Mums safety deposit box at the Commonwealth Bank in [REDACTED] and close the account. I was amazed this could happen. I received no advice from the bank that this was happening. Mum had set up this safety deposit box around the time the Power of Attorney was drawn up.

From the night of the fall in June 2012, my sister [REDACTED] was accessing Mum's house almost daily, removing items with absolutely no discussion with me. I might add, Mum still at this stage had not been assessed as requiring care.

In September 2012, I received a phone call from the transition care facility to say that Mum was being moved, that day, into an aged care facility my sister had selected.

The Australian Electoral Commission advised me that Mum "was removed from the electoral roll in 2012 with a doctors certificate stating she was no-longer capable of voting". One can only presume this was instigated by [REDACTED].

In early November 2012 when I was speaking to Mum by phone she said she had a visit that day from, she thought, her solicitor (from [REDACTED]) wanting to discuss financial matters. Mum was confused about what was going on.

A few days later I received a letter from Mr [REDACTED], my sister's solicitor, advising that my sister now had sole Power of Attorney – financial, medical guardianship etc. Considering Mum was in a high care dementia ward, taking dementia medication and my sister had demonstrated that she knew Mum was most likely mentally incapable of signing such forms (given what she had stated on the ACAT forms earlier) I was shocked to understand how this could have happened. How could the law let this happen – I felt let down. Mum had been let down. On what basis did Mr [REDACTED] make this judgement?

I contacted my solicitor Mr [REDACTED] ([REDACTED]) to see what could be done. Mr [REDACTED] wrote to Mr [REDACTED] asking for copies of the new Power of Attorney and the revocation of the old power. Mr [REDACTED] rang Mr [REDACTED] to discuss what had

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happened. Mr [REDACTED] made it abundantly clear that the way forward was VCAT. Mr [REDACTED] appeared to be shocked by this. Following this phone call, I later found out that my sister went to Mum's doctor to see if he would sign an affidavit verifying Mum was mentally capable at the time to sign these documents. The doctor said he needed to speak to Mum first to see what her wishes were. Mum stated she wanted both daughters to have an equal say and an equal share and she did not want this to change. Mum's doctor concluded that Mum would not understand what she was signing. He therefore would not sign an affidavit to the contrary.

When Mr [REDACTED] was asked how he had assessed Mum's mental capability, he said that he had asked her a number of questions about what she was signing and she appeared to understand what was being said. Surely by law he should have had to err on the side of caution. For example, obtain proof from a qualified geriatrician that Mum was mentally capable to sign these documents. He said that he was acting on instructions from his client [REDACTED]. He also stated that he was acting for both Mum and [REDACTED] – surely a conflict of interest.

In February 2013 [REDACTED] changed the locks on Mum's house (something arranged by my sister and Mr [REDACTED]) and not something Mum wanted. Mum had always stated that I was welcome to stay in the house when I came to Geelong. Like my sister's legal costs, the cost of changing the locks was also charged to Mum's account.

In March 2013 I had Mum assessed by a qualified geriatrician, Dr [REDACTED], who concluded that Mum was not mentally capable of signing legal documents based on his assessment at the time. Dr [REDACTED] also reviewed Mum's medical records including those from another geriatrician while Mum was in rehabilitation.

Following Mum's trip to the geriatrician I took Mum out to the Botanical Gardens in Geelong for lunch which she enjoyed. Mum had donated some cactus and so she could see how they were progressing. Soon after this outing [REDACTED] placed a ban on all relatives, including myself, from taking Mum out of the nursing home on trips. This upset us all, Mum included. Some relatives had travelled from Adelaide to visit Mum and take her out.

Meanwhile my solicitor [REDACTED] was gathering evidence to support our VCAT case. We had, amongst other things, asked for sign copies of the Power of Attorney which my sister refused to hand over to her solicitor. We asked that my sister give an undertaking that she would not remove the safety deposit box from the Commonwealth Bank (although we knew full well, and had the evidence, that she had already removed it). [REDACTED] ignored this request. We asked that [REDACTED] give an undertaking not to remove the title deeds, last will and testament etc from Mum's solicitor [REDACTED]. My sister gave this undertaking BUT only a month or so later she removed all of those papers and closed the account at Mum's solicitor. We also asked for a statement of outgoing – what was supplied was inadequate much of it disclosed a basic lack of knowledge of the information that should have been provided. My sister again charged the \$5,000 costs from Mr [REDACTED] to Mum's account.

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In fact my sister and her solicitor had dug themselves into such a deep hole of lies and deceit that all correspondence from Mr [REDACTED] to us ceased from April 2013 onwards.

At the VCAT hearing (December 2013 presided by Deputy President Coghlin) [REDACTED] and Mr [REDACTED] bought along a barrister Mr [REDACTED] to try and get them out of the mess they had created and save face. This failed and the new Power of Attorney was overturned and Mum's financial matters were put into the hands of the State Trustee.

In her affidavit to VCAT, my sister stated that the Director of Nursing, [REDACTED] from the aged care facility had said to make herself (ie my sister) Power of Attorney. My sister claimed that I was interfering in her decisions. In order to get to the truth of the matter, I ended up writing to the Australian Health Practitioner Regulation Agency to understand what role [REDACTED] had played in changing the Power of Attorney. The advice received was that [REDACTED] "did make enquiries to ensure that the enduring power of attorney for Mrs [REDACTED] was valid. Mrs [REDACTED] advised that she did not tell or ask Mrs [REDACTED] to make arrangements to be appointed the sole power of attorney for Mrs [REDACTED]."

In order to understand how Mr [REDACTED] could legally have someone sign a new Power of Attorney when clearly there was adequate evidence around to show that this person was not mentally capable to sign legal documents I wrote to the Victorian Legal Services Board and Commissioner. Kevin Power from the Victorian Legal Services Board and Commissioner advised that Mr [REDACTED] did not have to prove that Mum was mentally capable. He could make a judgement. Given that Mr [REDACTED] is not a geriatrician, Mum was on dementia tablets in a high care dementia ward it is difficult to see how he came to the conclusion he did – ie Mum was mentally capable. There are holes and gaps everywhere with the law. I would have thought, as a minimum, it would be mandatory for a solicitor to seek professional advice from a reputable qualified geriatrician first. Not so. It also appears that different states and territories have different laws around what is adequate evidence.

Mr [REDACTED] in his written response to the Legal Services Board and Commissioner advised that he made his judgement of Mum's mental capability just by talking to her. He also advised that he had acted on instructions from [REDACTED]. He also stated that as his instructions came from [REDACTED] his fees should not have been paid from Mum's funds. He also went on to say that he did not know that his client was removing items from Mum's house.

### **Conclusion**

Everyone says be prepared and have a legal Power of Attorney in place. However even having one in place was not enough to protect Mum's wishes against a perpetrating sibling. The law is simply inadequate. What is even more frightening is that perpetration by family members appears to be on the increase. Family members appear unwilling to wait for their inheritance.

Fortunately I had the funds to take action against my sister and her solicitor. Many others would not be in this position. My sister has always wanted to be in charge of all situations and she did not like the fact that Mum had wanted both siblings to be involved. [REDACTED] used her influence and contacts as a former theatre sister at the

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[REDACTED] Hospital to not only manipulate people, including her solicitor, but she also used her nursing friend as a witness to the new Power of Attorney.

Given what has happened there are a number of other loose ends that remain unresolved. I am not sure how these can be resolved. I am more than happy to supply names and addresses of the people involved should they want to respond to any further follow up you may want to take – just let me know. I am also happy to supply any letters, documentation etc if required.

Can I say please strengthen the laws so that this type of behaviour does not continue.

Yours Sincerely

[REDACTED]

6 August 2016