Q: My 81-year-old mother, Grace, is becoming increasingly confused. My sister, Tammy, recently moved in with Grace and took on the role of caregiver. Tammy has asked whether she should be given a power of attorney over Grace's assets. I'm a little concerned. What issues should I be thinking about before agreeing?

A: You are right to be concerned, there are many issues to consider. A power of attorney is a written authorization that allows one person to represent another as their agent, stepping into their shoes for legal and financial purposes. There may be better alternatives for Grace than a power of attorney. Grace needs to have legal capacity to sign a power of attorney. Only a lawyer is skilled to evaluate legal capacity, which would protect both Grace and Tammy.

Even if Grace has legal capacity, the power of attorney may not be adequate to meet all her needs. Not all banks, title companies and brokers will take direction from Tammy even if Grace executes a power of attorney. Also, with nothing more than a power of attorney, there is no plan in place that holds the person who is appointed accountable for their actions. If Tammy makes an honest mistake, or acts dishonestly, you may be too late to correct the error because you won't learn about it until after it occurs. We would not recommend that Grace sign a power of attorney without the advice and counsel of a lawyer who has specific experience in elder financial abuse and disability planning.

Q: Grace does not have legal capacity to appoint an agent under a power of attorney. What else can I do?

A: If Grace cannot manage her legal and financial affairs, any interested person may apply to the court to be appointed Grace's conservator. Similarly, if Grace can no longer care for her physical and medical affairs without assistance, any interested person may apply to the court to be appointed as Grace's guardian. One person (or professional service provider) can serve in both roles, or the roles can be split so that one person acts as guardian, another as conservator. Any person observing Grace (or Grace and Tammy) can make a report to Oregon's Adult and Family Services. Sometimes such a report results in a professional being appointed instead of a family member or friend. Concerned family and friends are advised not to wait if they have concerns, but to confer with an attorney early on to determine the best course of action.

Q: I am concerned that Tammy is taking financial advantage of Grace, what can I do?

A: You can apply to the court for appointment as Grace's conservator. Once you are appointed as Grace's conservator, you can protect all of Grace's financial accounts immediately. You can review Grace's financial affairs to determine if Tammy has taken any funds from Grace or otherwise interfered with her financial well being. If you discover that Tammy has taken money out of Grace's financial assets, you may want to file a lawsuit against Tammy to recover what she has taken. If you have evidence that Tammy has taken funds or financial assets from Grace, or has tried to do so, then you can ask the court to expedite the appointment.

(Continued on reverse.)

Q: Will an Oregon court appoint a conservator to protect Grace?

A: A conservator manages a person's financial and legal affairs. You must prove that Grace is "financially incapable" to establish a conservatorship. A person is financially incapable if they are unable to: manage their finances and assets effectively; obtain, administer and dispose of their property; manage their income and benefits; or pay their bills.

Q: Last week Grace died before my petition for appointment as guardian and conservator was granted by the court. My brother and I have discovered that a few months ago, Tammy took Grace to a lawyer and he prepared a will for Grace to execute. In the will, Tammy gets a greater share of Grace's estate than we, her sister and brother, receive. What can we do?

A: You have a potential " will contest." If a will was executed due to someone's undue influence or when a person executing the will lacked testamentary capacity to execute a will, then the will can be set aside by a court. This is a complex process, but there are strict timelines that govern your right to contest a will. You must confer with a lawyer who has experience with trusts and estate contests immediately. Under almost all circumstances, a will contest must be filed within four months of probate initiation.

Q: How would we prove undue influence?

A: The lawyer will want to know whether Grace was susceptible to influence. The court looks at such factors as whether Tammy had dominance over Grace, whether she isolated Grace or whether Grace exclusively relied on Tammy for her daily needs. Also, some circumstances are especially suspicious, such as whether Tammy participated in having Grace execute a will or whether Grace had independent advice. The lawyer will ask such questions as: "Did Tammy select the attorney?" or "Did she meet together with Grace and the attorney?" Other factors that are considered are whether the will was done in secrecy and haste.

Q: How would we prove lack of testamentary capacity to make a will?

A: To have capacity to make a will requires that Grace: understand that the will is intended to dispose of her property after her death; has a general understanding of her assets, financial and otherwise; is able to identify the persons who would be the natural beneficiaries of her will; and has an ability to express her intended scheme of disposition of her wealth.