

Challenging Capacity By Judith B. Raskin

This is a story that should give pause to anyone considering long term care and estate planning but puts it off for another day.

Mrs. A was in the beginning to middle stages of Alzheimers Disease when I first met her. She owned a \$600,000 home that she inherited when her second husband died. Mrs. A's only child had always lived with her mother, provided care and over many years had provided substantial funds to support the household.

Because Mrs. A's stepson claimed the right to one half of the house when his father died, Mrs. A executed a will leaving the house equally to her daughter and stepson. Mrs. A came to me when she realized that her estate plan would force the sale of the house because her daughter could not afford to buy out her stepson.

After discussion with Mrs. A of her options, she revoked her will, executed a deed to her daughter and reserved a life estate for herself. On Mrs. A's death the entire house passed directly to her daughter.

The stepson sued claiming Mrs. A did not have the required capacity to sign the deed or revoke her will. He said the prior will should control her estate distribution.

Even if Mrs. A's daughter succeeds in the litigation, the legal process is expensive and emotionally draining for her.

It much more difficult to challenge capacity when planning is done early.