

ANOTHER TOOL TO PROTECT VULNERABLE ADULTS

It might be too late to assist the family of Ernie Banks, whose will was changed in 2014 to the benefit of his caregiver, but this statutory tool will protect others from being victimized by non-family caregivers of persons requiring care. Attorney Janna Dutton, an active advocate for vulnerable adults for over 30 years, as a member of the Illinois National Academy of Elder Law Attorneys wrote a new section of the Probate Act, "Presumptively Void Transfers" Public Act 098-1093.

Signed by the Governor in August, 2014 and effective January 1, 2015, the purpose of the Presumptively Void Transfers act is to prevent non-family caregivers from taking advantage of the persons they are caring for by influencing them to make a will or sign other legal instruments which transfer property to the caregiver at the person's death. Basically, the statute provides that, if a "transfer instrument" is challenged by another person (likely a family member of the deceased person) in a court proceeding, there is a presumption that the instrument is void if the beneficiary is a "caregiver" and the transfer exceeds \$20,000.00.

Under the statute, a person is considered a caregiver if they are providing assistance with activities of daily living to another person, whether paid or unpaid. Close family members are not considered to be caregivers even if they are providing care.

Under the Presumptively Void Transfers statute, once the presumption is in place, the transfer instrument remains effective only if the caregiver-beneficiary can prove one of the following:

- (1) The caregiver-beneficiary proves by clear and convincing evidence that the transfer was not the product of fraud, duress or undue influence; or
- (2) By showing that the beneficiary's share under the transfer instrument is not greater than the beneficiary's share already in effect prior to becoming a caregiver.

If the presumption is present and the caregiver was not previously in the deceased person's estate plan, the transfer instrument is void and ineffective if the caregiver is unable to prove the will or other instrument was written (or changed) entirely independently of the caregiver's assistance or influence.

If the Presumptively Void Transfer Statute was applicable to Ernie Banks' Will signed in 2014 shortly before his death, his family would have a much easier time undoing the Will. To preserve the new Will, the caregiver would be required to prove Ernie Banks changed his Will entirely independently of her. Given the facts reported in the press, that Mr. Banks had dementia and used the services of a new attorney instead of his long time estate planning attorney, it appears that would be unlikely.

To Read the Act; please go to: <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1093>

When you have questions related to elder law, estate planning, special needs and long-term care planning, probate, and guardianship, think of the attorneys at Dutton Casey & Mesoloras. With over 165 years of combined legal experience, you can depend on our team for the knowledge, advice, and support you deserve to resolve your legal needs.

Resources:

National Elder Law Foundation – www.nelf.org

National Academy of Elder Law Attorneys – www.naela.org

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Naperville, and Skokie, Illinois or via video conferencing
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