

# Points of Law

Number 2002-2

May 15, 2002

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## THANKS TO READERS

Thank you to the readers of the last edition of my newsletter. Your kind comments have inspired me to issue another one. This issue discusses Death Angels. Please feel free to call me to discuss subjects related to my newsletters. I accept referrals.

## DEATH ANGELS

In the planned estate, I believe that the most frequent reason for failure of the plan is the influence of a person who has gotten close to the decedent in the last years before the decedent's death. In the unplanned estate, there is no framework for protection from those persons who would take advantage. In private I refer to such individuals as **Death Angels**. Death Angels are those who hover about a person and for purposes not related to the wishes of that person undertake to persuade the person to make dispositions of property and money, generally to the benefit of the angel.

The tools of the trade often include false friendship, loans, religious donations, joint or TOD accounts, document fraud, will or trust amendments, deposit theft, and survivorship deeds. In the 28 years of my practice I have seen dozens of Death Angels at work. The penalty for getting caught is generally none and even if caught the matter is nearly always settled with some profit to the angel. The following cases may encourage professionals to be alert and to help protect our clients from having their estate plans frustrated by self serving people.

### CASES

**The Joint Deed:** Dad yielded to mother's wish to create a survivorship deed to their motel naming themselves and their daughter as grantees. Son-in-law prepared the deed and included his name with the daughter's. Dad died, mother wanted to sell the motel and retire. Son-in-law pointed out that sale would be nice as he and daughter could use their share of the money.

**The Bank Account:** Neighbor began depositing checks to Decedent's account after Decedent lost his driver's license. Decedent signed forms creating a joint account. Before death, \$250,000 + of T-Bills and Municipal Bonds paid out to Decedent. Neighbor deposited the checks signed for deposit by Decedent. No instructions were given with the account. The Court held that the account belonged to the neighbor on Decedent's death.

**The Change:** This case may or may not be abuse. Mother and eight children survived husband. Mother had a 1984 will. In 1986 she was placed under conservatorship for mental deficiencies, including senile dementia. She signed a new will in 1988. The child who was the conservator arranged for mother to meet with a lawyer to make the new will which was greatly to the disadvantage of one son as compared to the old will. After Mother's death, on appeal, the new will was affirmed because it was found that Mother made the new will in a lucid interval. Lucero v. Lucero, 118 N.M. 636 (1994).

## PREVENTION

Professionals, family members and friends can help avoid abuses by being alert and speaking up when their suspicions are aroused. Several factors seem to be common where estate plans are changed or evaded. Some of those factors are:

- S Mental weakening
- S Isolation/loneliness of the victim
- S Changing of banking arrangements
- S Excessive dependence on one person
- S Sudden religious fervor
- S Excessive fondness for a new acquaintance
- S New professional advisors
- S Bitter remarks about a close person

The most effective prevention is to visit frequently with and listen to what the person is saying. It is also good to compare notes with family members and to discuss estate matters openly with the family. Having an estate check up by a lawyer can be helpful as that may bring unusual transactions to light and may encourage

persons to make appropriate adjustments to their plans. The more people who know the plan, the less likely that one person will be able to wrongfully influence or steal from the victim.