



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

Planning for the Protection of the Elderly or Disabled

By Diane Weinberg

A few months ago, I received a telephone call from an obviously distressed gentleman, who I will call Sam.* Sam's elderly father, Frank, was in the final stages of an illness and has problems with confusion. Through a friend, Frank learned about a woman, Cruella, who might be willing to care for him as a live-in caretaker. Frank called Cruella on the telephone and hired her, sight unseen.

Sam called me in a panic. No one in the family had met Cruella. A brief Internet search revealed that she had been married three times. In each case, she married a gentleman much older than herself and became a wealthy widow within a few years of marriage. How could they stop this woman from entering their father's house?

Sam's family faced a challenge. Despite his memory problems, Frank was legally competent to make decisions affecting his own life. He had the legal right to invite guests into his home and to hire people to work for him. He had the legal right to date and marry whomever he desired. Yet, from a practical standpoint, Frank was helpless. He needed someone to assist him with many aspects of his daily care, and he was completely dependent on others for transportation. A stranger who entered his house could easily gain the ability to run Frank's life to the detriment of both Frank and his family.

Preparing for Disability: Advance Directives and Powers of Attorney. Generally, when someone comes to an elder law attorney asking to help plan for disability, the attorney will advise the client to sign two powers of attorney – [a financial power of attorney](#), which allows a designated person (known as an agent) to handle his financial issues, and an [advance directive for healthcare](#), which allows a designated person to make medical decisions on his behalf. In both cases, the assumption is that the agent will act only when the principal (here, the client) is incapacitated or otherwise unable to communicate those decisions.

Despite the best planning measures, sometimes a power of attorney is simply does not provide enough protection. A financial power of attorney does not stop the principal from giving money to whomever he wants, and it is revocable as long as the client is competent. A health care power of attorney does not give the agent the right to determine who the principal can befriend or who he can marry.

Restraining Orders. Another option the family might explore is obtaining a restraining order under the [Family Violence Act](#). Under this act, a restraining order can be obtained against an individual who commits a felony in the home or who commits an act of violence against an individual in the home.

Unfortunately, the family here had two problems. First, under Georgia law, the family had no standing to file the restraining order on Frank's behalf. In other states, like Illinois, someone can file a restraining order on behalf of an individual if the person feels that the elderly individual is being abused. Georgia has no such provision. As long as Frank is legally competent to make his own decisions, Sam has no ability to file a petition seeking a restraining order against Cruella.



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

The second problem is that Cruella had done nothing except accept the position Frank offered her. She had not physically abused him or stolen his money. There are no grounds for a restraining order against someone who had not committed a crime. Again, even if she had made such a threat, only Frank had the legal right to obtain a restraining order.

The Options of Last Resort: [Guardianship and Conservatorship](#). When a power of attorney is not enough, a family may want to consider obtaining a guardianship or conservatorship over the person. Both are considered drastic measures because they legally reduce the client to the status of a minor.

In a Guardianship, the guardian acts as the parent for the elderly individual, known as the “ward.” He must provide for the ward’s support, care, education, health and welfare. Like a parent, the guardian must decide where the ward will live, the type of medical care that the ward receives, and with whom the ward may associate.

While a guardianship gives the guardian power of the ward’s personal life, a conservatorship gives the conservator power over the ward’s financial decisions. Thus, the client no longer has the ability to write a check or sign a legally binding contract.

In this case, Sam may have had grounds for obtaining a conservatorship over his father’s finances. Because of his confusion, Frank had already lost his ability to manage his finances. He had occasionally written checks to people he didn’t know for amounts that he could not remember. A conservatorship could protect Frank’s assets by removing Frank’s ability to give Cruella any gifts or agreeing to an expensive personal service contract.

Obtaining a guardianship may have been more problematic because Frank had not taken any actions to show that he could not care for himself. He made competent medical decisions. He also recognized his physical limitations and welcomed help. For Sam to obtain a guardianship, Sam needed Frank to put himself in harms’ way. Frank would need to allow Cruella into his house.

Solving the problem with “self-help.” Fortunately, Sam’s situation has a happy ending. The family realized that Frank really didn’t want to hire a stranger. His health was deteriorating, and he was living alone. He was scared and lonely and wanted companionship.

Recognizing Frank’s motivation in hiring Cruella, the family enacted a two-part plan. First, relatives took turns staying with Frank for extended periods. While they stayed in his house, they introduced him to caregivers who would continue to assist Frank on a 24/7 basis once the relatives went home.

Second, instead of fighting Frank’s wishes to hire Cruella, they simply asked Frank whether they could interview her and conduct a background check, as would happen in any caregiving situation. Cruella did not



MORGAN AND DiSALVO, P.C.
attorneys at law

RICHARD M. MORGAN, Esq.
rmm@morgandisalvo.com

LORAIN M. DiSALVO, Esq.
ldisalvo@morgandisalvo.com

OF COUNSEL
DIANE B. WEINBERG, Esq.
dweinberg@morgandisalvo.com

like being interviewed and became quite belligerent. She became an aggravation to Frank, especially when compared to the helpful caregivers already in his house.

Ultimately, Frank told Cruella that he did not need her services. Cruella called Frank for several weeks trying to convince him to hire her. Had Cruella been successful, the family would have opted for a guardianship and conservatorship. Because Frank continued to rebuff Cruella, the family simply blocked her phone number, and the problem resolved. Due to his caring and quick-thinking family, Frank spent the remainder of his life surrounded by his family and friends.

**All names were changed to protect the innocent and not-so-innocent.*

*** Thank you to Sam for giving me permission to retell his story.*