

# SENIORS ALERT



**SENIORS ALERT** is a commentary on topics of current interest to seniors. Professional advice should be obtained before acting on any of this information.

## Seniors, Vulnerability and Legal Consequences

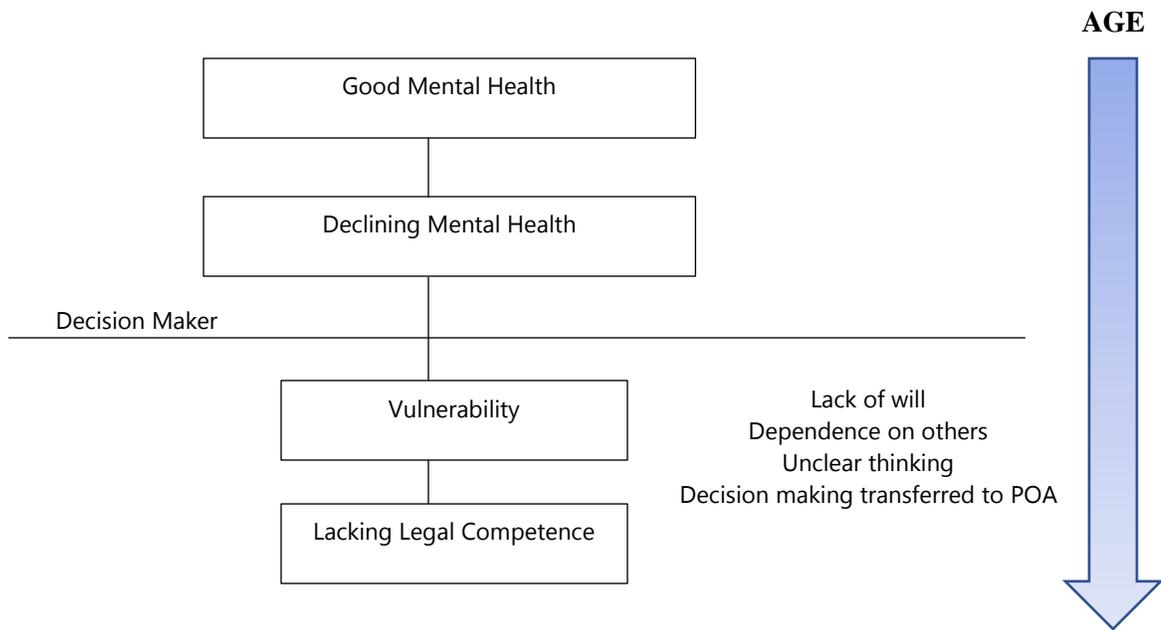
It is a certain fact that seniors will eventually suffer disability, usually chronic and often long-term. Challenging health issues for seniors will arrive at some point – sometimes slowly and sometimes quite quickly. Unfortunately, you never really know when it will happen so advanced financial planning is important.

### It's a Complicated World for Seniors

As you get older your ability to make clear decisions diminishes. Seniors should accept that fact and do everything they can, as early as possible, to build in safeguards to protect them from themselves and from others. The illustration below shows some of the threats to seniors with respect to their decision making.

- Less clear thinking
- Inability to use modern communication tools
- Increasing complexity of laws
- Increased isolation from family
- Privacy rules that inhibit communication

Today's more complex world with more complicated laws can leave seniors behind and out of touch. There may be a tendency for family to take over decision making which seniors will either resist or throw in the towel. All in all, it is a difficult world for seniors to live in. New threats now exist that were not part of the simple life of the past. Some may feel that the threats are overblown and do not apply to them - but don't be so sure – the courts say otherwise. The following illustration depicts depleting capacity over time.



Family needs to watch out for this transition and help out mom or dad as vulnerability starts to show up in subtle ways. When it becomes apparent that undue influence is arising as vulnerability is increasing, be aware of it and put your healthy attitude into the situation.

## Vulnerability

Although you may have legal capacity, we all will get more vulnerable as we age. We will be more anxious to please and want to take as much conflict as possible out of our lives. Here are some of the symptoms of vulnerability.

- Poor decision making ✓
- Financially irresponsible ✓
- Don't want to face the issues ✓
- Easily influenced ✓
- Unstructured financial planning ✓
- Communicate poorly ✓
- Fight back or refuse to act ✓
- Decisions are inconsistent with past decisions ✓

Vulnerability is an area fraught with problems giving rise to family dispute and even litigation. Make as many decisions as you can early in life and document them before vulnerability becomes an issue giving rise to later disputes about the real intentions of your actions.

## Undue Influence

More and more court cases involve allegations of undue influence. Generally, undue influence is defined as dominating the will of someone through manipulation, coercion or the subtle use of power. A list of possible signs of undue influence has developed through the courts. Here are some of the main ones to watch for:

- Increasing isolation
- Substantial gifts and property transfers to family
- Inability to provide an explanation for large transfers
- Turn-over in advisors
- Material change in terms of a will or power of attorney
- Family wants to attend advisor meetings
- New relationships or material changes in previous relationships

Some of these signs may seem to be obvious. Unfortunately, in some cases family members may need to watch what others are up to including influential friends. As we age, it gets more difficult to keep things in order. Even when we are younger this can be a problem in this increasingly complex world. In organizing your personal finances, documentation proving lack of undue influence becomes paramount and the sooner you get it done the better. Remember that your documentation can be challenged by anyone with an interest in your estate including government, family and others with whom you do business, so make sure it is clear and is done when your mind is sound.

## Advisors Need To Keep Watch For Undue Influence

Legal professionals are aware that it is part of their duty to watch out for undue influence. Other professionals may not be as aware of this with regard to their elderly clients. Signs that undue influence in meeting with advisors is appearing are as follows:

- Family directs the conversation
- Plans are already decided before the meeting
- Client easily agrees with recommendations without putting forth their own thoughts
- Client has dismissed long term advisors

It's a tricky area for professionals. They may have to excuse family members from meetings or refuse to complete ill advised transactions when decisions are obviously not the right ones for elderly clients. Professionals need to be mindful of situations that take their clients to places they should not be going.

## Did you Mean to Transfer Property Ownership

There may be significant pressure by friends and relatives and even advisors for seniors to put their assets in joint ownership. It is not always a good idea. The main reason for doing this seems to be to save on probate fees. In the big picture, probate fees are relatively small so the decision is seldom well founded. Don't be easily influenced to do this without giving it some thought.

There are four adverse considerations in moving ownership of half of your property from sole to joint ownership:

- You may have given up ownership of half of your property depending on who is the new co-owner.
- When you transfer ownership of property to someone other than your spouse, for tax purposes you have a deemed sale at fair market value. That means that you must report any gain as income but losses aren't usually deductible.
- The new co-owner of the property may squander the asset, use it as security for a debt or in some other way diminish its value.
- The new co-owner could expose the property to claim by spouse in the event of marital breakdown.

In your mind, you may think that the transaction is only on paper without legal implications. To the contrary, the new joint owner will have legal title to fifty percent of the property and this may prevent you from doing what you want with it after the change. If you really did mean to transfer property ownership make sure you document that in your valuable papers.

Finally, on death, your interest in the jointly held property passes to the survivor. This means that any provisions in your will with respect to the property is difficult to enforce if a financial institution has already transferred ownership to the survivor. Don't let your frailty allow you to make bad decisions with respect to your ownership of property including bank accounts, investments and real estate.

## Summing Up

The vulnerability of seniors is becoming a bigger issue given the large amounts of estates of individuals with fairly modest means. The recent growth in real estate values has been amazing and has contributed to this and has its own unique set of problems for the elderly. Take note seniors and go to work on this. Get your wills, powers of attorney and other documents in order while you can and while you can show that your decisions were your own - independent of influence.

*J. E. Arbuckle Financial Services Inc.  
30 Dupont St. E., Suite 205, Waterloo, Ontario N2J 2G9  
Phone: 519-884-7087 Fax: 519-884-7087  
Email: [jea@personalwealthstrategies.net](mailto:jea@personalwealthstrategies.net)  
[www.personalwealthstrategies.net](http://www.personalwealthstrategies.net)*