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YOUR GUIDE TO RETIREMENT PLANNING AND LIVING

ASK THE EXPERT

Saving an inheritance

The problem: My mother's will, written 10 years ago, stated that her house would pass to me upon her death and that the remainder of her assets would go to my brother. She currently has dementia and had to sell her house and move in with my brother. He has a durable power of attorney for her and says he is using the assets from the house sale to pay for her care. When she passes, will I inherit anything?

The expert: Jennifer B. Cona, an elder law and estate planning attorney at Genser Dubow Genser & Cona LLP, with offices in Melville and Jericho.

The rules: If a will makes a bequest of a specific asset or property, but at the time of death that asset is no longer owned by the person who wrote the will, the bequest fails.

The results: According to your mother's will, you will not inherit anything. The will

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specified that you would inherit the house, but since your mother no longer owns the house, that's impossible. Your brother will still inherit your mother's other assets (such as cash, bank accounts, stocks, bonds) if any exist at the time of her death. With a diagnosis of dementia, your



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mother cannot execute a new will to ensure that you receive half of her estate.

The strategy: Assuming that there are still assets in your mother's estate, your brother (via the power of attorney) could establish and fund a living trust on her behalf. The principal and income of the trust would pay for the cost of her care, and upon her death the balance remaining could be divided equally between the two of you.

If neither you nor your brother have your mother's original will, you can petition the Surrogate's Court for an administrative proceeding (instead of probating the will) when she dies. The laws of intestacy would then govern the inheritance of your mother's assets. Such laws would provide for you and your brother to share equally in your mother's estate.

Finally, note that it is not too late to engage in Medicaid planning, which would help preserve your mother's assets and cover the cost of her care at home or in a nursing home.

— KAREN E. KLEIN