



STUART + CARLYON

Financial advisers for your lifetime goals

New law helps prevent misuse of powers

One of New York's leading philanthropists was social queen Brooke Astor who died in 2007 aged a remarkable 105. Her story was told in a recent edition of *Vanity Fair*.

It was Brooke's longevity that sparked a recent and notably egregious case of financial abuse, in this case at the hands of her son Tony and his new wife Charlene who married in 1992 when mum was 90. Here's the rub. If Tony (aged 70 and with a heart condition of his own) were to predecease his mother, then Charlene would not get a red cent of the inheritance which would all go to charities instead. Readers will plainly see where this is going.

A few years later with the gradual onset of mum's Alzheimer's, Tony and Charlene made their move. Tony had power of attorney, so he began documenting his mother's condition in order to smooth the transfer of power to his control. Meanwhile he began persuading his mother to sell off various paintings - one was worth \$US 13 million - for which he would keep millions in commission.

“The Protection of Personal and Property Rights Amendment Act 2007 brought changes to Enduring Powers of Attorney”

The greedy couple quietly transferred ownership of the Astor summer home into Charlene's name and conducted other deals, getting Brooke to sign over funds during lucid moments, and ultimately ousting all the charities from the will – allegedly with fake signatures. Tony and Charlene then confined Brooke, distressed, in her Manhattan apartment with inadequate care and unable to reach her own lawyers. It appeared that greed had won the day.

Elder abuse isn't confined to the super-wealthy. It is not uncommon for New Zealand families to be riven by greed or by an inflamed sense of entitlement whereby children put a lot of pressure on the parents if not to hurry up and die, then to at least hurry up and sign-over the estate. If a parent is in any way incapacitated – for example with dementia – then how much protection is there for this parent?

In late September 2008, the Protection of Personal and Property Rights Amendment Act 2007 brought changes to Enduring Powers of Attorney.

Here are a few facts about EPAs:

- Enduring Power of Attorney is the legal document that enables you to appoint someone to act on your behalf should you become mentally incapacitated in the future.
- There are two types of Enduring Power of Attorney. One relates to property (including financial matters) and the other in relation to personal care and welfare. You can appoint a different person to each of these roles, and someone financially savvy is important for the property part.
- An Enduring Power of Attorney in relation to personal care and welfare allows someone to make decisions about your personal well-being for example to consult with medical practitioners about treatment.
- If you don't have EPAs and you become mentally incapacitated, the Family Court steps in and appoints someone. This may not be the person you want.

The recent changes ensure a better level of protection. When people appoint attorneys they will be better informed, and individuals granted the power of attorney will in-turn be made more accountable.

Do think about that if somebody asks you to fulfil this role or if you are choosing someone. Attorneys will need to keep clear financial records and always act in the person's best interest. Individuals now have to sign in front of a lawyer who has to certify that the appointor is capable and that all parties understand what is involved. The lawyer has to be independent of the person being appointed as an attorney and different lawyers must witness the signatures of the appointor and the attorney.

“The recent tweaks to the Act were brought in to stop people being coerced into signing and to stop neglect or abuse happening”

There is also a new definition of mental capacity. A prescribed form must be used when health practitioners certify as to incapacity. And there is now a broader range of people who can apply to the Court to review the attorney's actions. The ultimate result is greater transparency and communication which places more burden on attorneys but will protect the vulnerable.



The recent tweaks to the Act were brought in to stop people being coerced into signing and to stop neglect or abuse happening, for example children skimping on care for Mum in order to boost their inheritance.

Our advice:

- If you already have EPAs they will remain valid but review your attorneys and make sure you are still happy with them.
- If you don't have EPAs get them in place. If you don't have anyone you trust, you can appoint a trustee company like Public Trust.
- If your kids ask you for money, make a loan and record this. It is only fair to your other children so that the borrower has a reduced share of the inheritance.
- Don't give financial guarantees to anyone including family without thinking things through very carefully. This is potentially ruinous, so seek independent advice.
- Don't let kids under financial stress of their own put you under unnecessary stress – it's your money and if you don't have any to spare, say so.

Back to Manhattan and the Brooke Astor saga. In 2006 two of Brooke's friends Annette de la Renta and David Rockefeller, as well as grandson Philip became aware of the financial abuse and stepped in. A judge – having summed up what he saw was going on – usurped Tony and appointed Annette as Guardian of Brooke Astor who then received proper care until she died in 2007. Later, charges were laid against son Tony, and when the story hit the press the New York Post came up with this page one headline: BAD HEIR DAY. He still awaits trial.

The Markets – not as gloomy as talkback radio

Negativity, who needs it? The question for investors in these gloomy times is not so much about the economic outlook per se - we all know it's dire, thanks - but whether share prices have now fallen to a level that reflects the environment we face. In other words do we stay in cash investments or can we now start buying realistically priced shares, or are there more falls to come?

In this respect the tide has turned for investment markets:

- Cash investments are becoming less attractive with historically low interest rates of 3% to 5%
- By comparison NZ shares and listed property are currently yielding 9-14%
- Australian shares are yielding 6%
- Overseas shares are yielding 4%
- Bear in mind the NZ dollar is weakening so an investment today in overseas shares is likely to benefit from the shifting exchange rate.

Since returns from cash may not reward investors we need to evaluate the alternatives. Our asset allocation specialist *farrelly's* has a central forecast and a pessimistic forecast based on their usual thorough methodology.

Companies will downgrade profits this year so *farrelly's* has slashed current forecasted dividends by a further 20%. With earnings growth of 4% pa over the next decade and minimal investor confidence driving prices for NZ shares, the projected return is 12.8% pa pre-tax for the next ten years. Their projected returns for Australian and world markets are even higher. Sounds good; and a reminder that when shares are low enough they become worthwhile to buy.

How about their pessimistic forecast? This assumes the NZ and Australian share markets finish the next decade at exactly where they are now. In this case, we still end up with total returns of 6% pa for both markets – driven largely by the dividend yields. This is better than current cash rates and if the economy does turn out that gloomy for the next ten years, then interest rates could be cut more to between 1% and 3%.

As fund manager Platinum says in its December 2008 Quarterly Report, they don't expect share prices to provide great returns in the near term, but "the Fund's holdings are providing good dividend yields so at least one is being paid to wait."

Our prognosis: turn off the talkback radio, put your under-the-mattress strategy on hold, and start looking for the investment opportunities.

Summer's here

The balloon is up. Each year on Refresher Day when lifeguards get ready for the summer season Surf Life Saving release hundreds



Surf Life Saving New Zealand release 1,430 balloons: one for each person rescued in the previous season. (Photo courtesy of Surf Life Saving NZ)

of balloons: one for each person rescued in the previous season nationally. Last year some 1,430 red and yellow balloons were released – a celebration of a job well done. Susanna serves as a Director on the Board of Surf Life Saving Northern Region.