

Managing Other People's Money

I'm Legally Responsible: Now What!

- AGENT -

OSHER Life Long Learning Institute | Connie Bourne, Esq.
January 22, 2012

Seminar Goals

This information is for educational purposes only and does not constitute legal or other professional advice. It is recommended that you seek advice and services from legal, financial, tax and other estate planning professionals regarding your personal estate and long-term care planning needs.

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Fiduciary

- An individual who holds a legal, ethical, and moral relationship of trust between him or herself and another person or persons
- Involves the prudent care of assets, especially money for another person
- Includes duty of care and duty of loyalty

Agent - General Durable Power of Attorney

- A Power of Attorney is a grant of authority.
- An Agent may have a moral or other obligation to take on the responsibilities of agent, especially if the Principal was relying on him or her to do so. Once an Agent begins to act, he or she has a duty to act prudently.
- The fact that the Principal has named you as her agent does not mean that the Principal cannot act for herself. So long as the Principal is competent, he or she can do anything, including undoing something you may have done as Agent.
- A Power of Attorney can be revoked at any time by written notice to you.

Agent Specific Duties Under Power of Attorney

- Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest; act in good faith; and act only within the scope of authority granted in the power of attorney.
- Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:
 - Act loyally for the principal's benefit;
 - Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
 - Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
 - Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
 - Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's wishes

Agent - Advanced Medical Directive

- Written statement of the type of medical treatment a person would want when faced with certain specific medical condition or illness.**
- Individual cannot speak for themselves. Applies only to terminal illness or persistent vegetative state.**
- Appoint someone to make any or all health care decisions. Individual does not give up control.**
- Make sure family and doctor understand and will respect your wishes.**

Agent Specific Duties Under AMD

- Promote the patient's wishes and welfare
 - Welfare is defined as choices about relief and suffering
 - Preservation or restoration of function
 - Extent and quality of life sustained
- Consider the preference of the patient
- Serving as interpreter of patient's values

Fiduciary Liability & Protection Techniques

- If any personal representative by his negligence or improper conduct, loses any debt or other money, he shall be charged with the principal of what is so lost, and interest thereon, in like manner as if he had received such principal
- Find several professional advisors to assist you trust
- Mandatory Reporting under Virginia Law
- Develop relationships with 3 people that you trust and ask them to keep watch

Case Scenario: Maureen

Maureen (not her real name), an elderly woman living alone, hired Philip to work on her house. Feeling sorry for him because he was living in his van and it was winter time; she invited him to sleep on her couch. Once moved in, Philip began to financially exploit Maureen, obtaining more than \$100,000 for cell phones, vehicles, and clothing and as payment for his work (which he never completed). As Maureen later explained to a judge, she believed that if she helped Philip get on his feet, he would move out. Instead, he quit working and demanded that she support him and, when he got angry, broke property, hit Maureen, and verbally abused her. Philip trashed the house so badly that Maureen could not have friends over. She was too embarrassed to tell her family what was going on.

After several years of abuse, Maureen at last confided in her nephew whom she gave a power of attorney. Her nephew helped her file a petition for a restraining order. With her nephew's help, Maureen was able to successfully rid herself of Philip.

- What could Maureen have done to prevent this situation?
- What other scenarios present this same type of issue?
- What steps have you taken to ensure that this does not happen to you, someone you love or a neighbor?

Case Scenario: Pink Hat and White Gloves

“She wore a pink hat and white gloves” that’s what the bank teller remembered. She also remembered that this little sweet “old “lady would come into the bank religiously every Friday at 2pm and withdraw \$1000 in cash of only \$100 bills. The representative’s voice hardened as she added that a man was always with the little sweet lady and that he did not speak a word but remained by the woman’s side at every moment. On the surface everything seemed okay and the little sweet lady did not appear to be in danger or suffering and even smiled as she collected the bills commenting that the gentleman was her gardener.

Suddenly a sense a worry came to my mind and I asked if the little sweet lady had family members or any else who helped her or came into the bank to assist. The reply was no and that this weekly ritual went on for eight years. Then suddenly the little sweet old lady never returned to the bank. I asked why didn’t someone intervene on behalf of the lady and the reply was, “we are a bank and cannot invade the privacy of an individual without an invitation”. Seemed like the right legal answer so why did I feel something was very wrong.

This is not the first time I’ve heard stories like this. I could not help the lady in the pink hat and white gloves, nor could you, but we can offer tips to prevent it from happening to anyone else!

- **What steps should have been taken by the Lady with the Pink Hat?**
- **What steps should have been taken by the bank?**
- **What is the role of an agent under a power of attorney?**