

**POWER OF ATTORNEY
USES & ABUSES**

Morgan R. Thurston
Assistant Welfare Attorney
Onondaga County Department of Law

AUTHORITY – REVOKE

You do not give up your independent authority to continue to act or your ability to revoke the power of attorney

COMPLICATED

The implementation of it has become more involved. The reason for this is that was major changes to the power of attorney legislation in 2009.

LICENSE TO STEAL

Powers of attorney have often been called a license to steal - The reason being that you have given someone authority to manage your assets. What happens thereafter the loved one, family member, friend or professional you have appointed to act on your behalf takes advantage of that authority and accesses your assets for their benefit often to your detriment and because they had the authority to do so law enforcement would not view these actions as a criminal matter.

CIVIL MATTER

It was a civil matter with often little recourse against the individual.

STANDARD OF CARE

In dealing with property of the principal, an agent shall observe the standard of care that would be observed by a prudent person dealing with property of another.

FIDUCIARY DUTIES

To act according to any instructions from the principal or, where there are no instructions, in the best interest of the principal.

To avoid conflicts of interest.

The agent may not make gifts to the principal's property to himself or herself without specific authorization in a power of attorney.

FIDUCIARY DUTIES

To keep the principal's property separate and distinct from any other property owned or controlled by the agent, except for property that is properly jointly owned by the principal and agent

FIDUCIARY DUTIES

Keep a record of all receipts and disbursements

Make such record and power of attorney available to the principal or to third parties at the request of the principal.

RECORD

The agent shall make such record and a copy of the power of attorney available within 15 days of a written request by any of the following:

- 1) a monitor;
- 2) a co-agent or successor agent acting under the power of attorney;
- 3) a government entity, or official thereof;
- 4) a court evaluator;
- 5) a guardian ad litem;
- 6) the guardian or conservator of the estate of the principal;
- 7) the personal representative of the estate of a deceased principal.

SPECIAL PROCEEDING

If the Agent fails to provide the power of attorney or the accounting within 15 days, a special proceeding can be commenced

SPECIAL PROCEEDING - REMEDIES

To determine whether the power of attorney is valid

SPECIAL PROCEEDING - REMEDIES

To determine whether the principal had capacity at the time the power of attorney was executed

SPECIAL PROCEEDING - REMEDIES

To determine whether the power of attorney was procured through duress, fraud or undue influence

SPECIAL PROCEEDING - REMEDIES

To determine whether the agent is entitled to receive compensation or whether the compensation received by the agent is reasonable for the responsibilities performed

SPECIAL PROCEEDING - REMEDIES

To approve the record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal

SPECIAL PROCEEDING - REMEDIES

To remove the agent upon the grounds that the agent has violated, or is unfit, unable, or unwilling to perform, the fiduciary duties under the power of attorney

SPECIAL PROCEEDING - REMEDIES

To determine how multiple agents must act

SPECIAL PROCEEDING - REMEDIES

To construe any provision of a power of attorney

SPECIAL PROCEEDING - REMEDIES

To compel acceptance of the power of attorney in which event the relief to be granted is limited to an order compelling acceptance

SPECIAL PROCEEDING -COMMENCEMENT

- 1) The agent;**
- 2) The spouse, child or parent of the principal;**
- 3) The principal's successor in interest, or any third party who may be required to accept a power of attorney;**
- 4) Those listed before that may request an accounting.**
(Slide 10)

SPECIAL PROCEEDING

If a power of attorney is suspended or revoked or the agent is removed by the court, the court may require the agent to provide a record of all receipts, disbursements and transactions entered into by the agent on behalf of the principal and to deliver any property belonging to the principal and copies of records concerning the principal's property and affairs to a successor agent, a government entity or the principal's legal representative

CRIMINAL PROSECUTION

POA is no longer a license to steal

Variety of Different Potential Charges

CASES & QUESTIONS
