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ESTABLISHING EFFECTIVE FIDUCIARY RELATIONSHIPS (Part 3) *By Thomas D. Begley, III, CELA*

A frequently contentious area in the elder law arena is the establishment of effective fiduciary relationships. In the elder law arena, such relationships are established through powers of attorney, living trusts and other inter vivos documents. Problems frequently arise when documents, establishing these relationships, are poorly drafted and when fiduciaries are not properly selected. Such problems are further compounded when no legal direction is either sought or given after the establishment of such relationships.

In the first installment, I provided a basic overview of the issues in this area and discussed the types of fiduciary relationships which exist. In the second installment, I covered how fiduciary relationships are properly established. Today's installment analyzes the most sensitive, but arguably most important, issue - selecting the proper fiduciary.

Selection of a Fiduciary

Over the years, I have participated in far too many court matters regarding fiduciary abuse or neglect. Unfortunately, many charges that are raised are accurate. A parent has selected an adult child to handle his or her finances as an agent under a power of attorney or as an executor under a will. Yet the assets are misappropriated or mismanaged. In my opinion, virtually all of these cases could have been avoided. The problem is that most people do not get proper guidance in choosing a fiduciary for their various estate planning documents. Thus, rather than making a logical choice, they make selections based on emotional factors.

Selecting a fiduciary is an extremely important task. Unfortunately, many attorneys merely ask the name and address of a proposed agent rather than inquiring into the individual's capabilities. For example, in a living will, the health care proxy or health care power of attorney ought to be someone that has the best medical background and/or can make a medical decision to remove life-sustaining treatment. Moreover, an individual that is entrusted to handle finances through a power of attorney, will or trust document must have some level of financial common sense and high degree of integrity.

People, however, frequently make appointments to documents, when appointing children, on the following grounds:

Age (e.g., He or she is the oldest.)

Gender (e.g., He is the man of the house.)

Proximity (e.g., She lives closest to me.)

Feelings (e.g., I don't to hurt her feelings.)

Certainly, if one were to open a financial enterprise, they would never hire anyone based on these qualifications. When someone selects a fiduciary, they need to treat it as if they were hiring a chief financial officer of their company. Obviously, legal, financial and accounting backgrounds are not

necessary. However, it is imperative for the client to know that they need to appoint someone based on a high integrity and common sense.

In the final installment of this series, I will discuss the need for fiduciaries to obtain competent representation and advice after estate planning documents have been executed.

Thomas D. Begley, III
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Announcements

“Begley, Begley & Bookbinder, P.C.” would like to wish all of you a Happy Thanksgiving!

Speakers

If you are interested in having an Elder & Disabilities Law Attorney from Begley, Begley, & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

Begley, Begley & Bookbinder

Begley, Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and Huntington Valley, Pennsylvania and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

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