



Death and Dysfunction: Abusing Fiduciary Relationships

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CONFLICTS INVOLVING TRUSTS AND ESTATES ARE OFTEN DIFFICULT AND COMPLEX, both legally and emotionally. Instead of taking the shape of typical civil litigation, the emotional and familial aspects are more like those of a divorce. These conflicts can be referred to as “fiduciary litigation,” “financial elder abuse” or “will or trust contests.” They typically involve a person, acting in a fiduciary capacity, taking advantage of another person through undue influence and/or exploiting their incapacity. These conflicts have multiplied in recent years. Demographics play a role, too. As the baby-boomer population ages and ultimately dies, and as family members are differently situated financially, opportunity for conflict over financial assets arises. Although all families can have conflict over inheritances, blended families are more prevalent today and these dynamics can lead to more disputes.

Many cases we handle involve someone taking advantage of an elderly person and gaining access to their financial assets, or convincing a person to change their estate plan. The most likely perpetrators are those who have influence and access to the elderly — spouses, children, other relatives, caretakers, employees, and even lawyers, or other trusted advisers.

Abuse of Financial Powers of Attorney

Malfiance is often not discovered until the person is of a diminished capacity or dies. At that point, family members, heirs or beneficiaries may discover that the scope of the person’s assets is much different than they expected. Assets may have been depleted during the person’s lifetime by someone who gained access to accounts via a power of attorney or other means, or a deed or beneficiary designation was changed to divert assets away from the estate plan. Such actions are easier than convincing someone to change their Will or trust, which involves a lawyer who could frustrate the objective. Sometimes these actions may even occur without the person knowing their financial agent has changed his or her beneficiaries.

When powers of attorney are involved, Wisconsin law provides a number of safeguards that may allow a person some recourse when agents go astray. These protections require a person acting under a power of attorney to act only within the scope of that power of attorney. Certain actions must be specifically authorized otherwise they are impermissible. Agents who act outside the scope of their authority must restore the property to what it would have been had a violation not occurred.

Trustee Malfiance

Another type of conflict we increasingly see is where a fiduciary, typically a trustee, abuses his or her position of power. A fiduciary has a duty to manage financial assets for the benefit of the named beneficiaries and to keep those beneficiaries sufficiently informed about the trust administration. When the fiduciary instead uses his

or her power to enrich him or herself (for example, by taking excessive fees, controlling a business or other assets for the fiduciary’s benefit, or diverting funds for his or her own use), or fails to give beneficiaries the information to which they are entitled, this is a breach of those duties. Trustees who breach their duties to trust beneficiaries are subject to a wide variety of remedies, including, removal, restoring the trust assets to what they would have been had the breach not occurred, and/or payment of attorney fees.

Disputes over family assets can be one of the most trying times in a family’s history. Reinhart’s Trust, Estate and Fiduciary Litigation attorneys handle all aspects of estate planning with a primary objective of avoiding future family discord. However, when these disputes arise, Reinhart’s team has developed a reputation for achieving creative and effective resolutions that minimize family conflicts, expense and publicity. If you have questions about trust, estate or fiduciary litigation matters, please contact attorneys Jennifer R. D’Amato or Caitlyn B. Sikorski.



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