

POWER OF ATTORNEY "WATCH DOG"

Published in the November 1994 Issue of *The NAELA News*

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A Durable Power of Attorney is a very powerful document. There are serious concerns that the attorney-in-fact could abuse the authority given in the document.

Several years ago, a client of mine was concerned that an elderly neighbor was being "fleeced" by a man who was appointed attorney in fact for the elderly lady. We could get no information from the attorney-in-fact or the banks. Incidentally, the Power of Attorney was on a form obtained from an office supply store.

For several years, I have added to the Durable Power of Attorney a provision which allows designated individuals to obtain information. I do not know if the authority has ever been exercised. Nearly all Powers of Attorney I draft have more than one attorney-in-fact.

So that an attorney-in-fact, and if desired, someone other than the attorney-in-fact, can find out what actions an attorney-in-fact has taken, the Durable Power of Attorney provides:

"Notwithstanding other provisions herein, I have appointed three (3) persons as my attorney-in-fact and any one of them may act alone with all the powers set forth herein. All agents named herein shall have the authority to make and enforce medical care decisions on my behalf and I grant each of the attorneys in fact appointed all of the powers herein provided.

ATTORNEYS-IN-FACT MUST FULLY DISCLOSE THEIR ACTIONS

I specifically require that if anyone I appointed in an unrevoked durable power of attorney or _____ or _____ requests of my attorney-in-fact accountings of the acts and actions of the attorney-in-fact, then the attorney-in-fact shall in writing (or orally as they shall agree) furnish such information to the requesting person as is reasonable.

THIRD PARTY DISCLOSURE

I specifically require that if anyone I appointed in an unrevoked durable power of attorney or _____ or _____ requests of any third party, with whom my attorney-in-fact has had contact of any nature, direct or indirect, accountings of the acts and actions of the attorney-in-fact, then the third party with whom my attorney-in-fact has had contact, shall in writing (or orally as they shall agree) furnish such information to the requesting person as is reasonable. Any third party releasing information regarding the acts and actions of my attorney-in-fact under this paragraph shall not be liable for the release of said information, confidential or otherwise. The person releasing the information need not advise the attorney-in-fact of the inquiry and the information released.

This does not give any authority to stop improper actions but at least a designated and interested person can be a "watchdog".

How do you protect the principal from inappropriate actions of the attorney in fact? If a client signs a Durable Power of Attorney which you recommended and the attorney-in-fact abuses the power, do you have potential liability.

An attorney I met in New Orleans says that for most of his clients, he keeps all the original Powers of Attorney. He has written authority from the client to deliver the documents to the attorneys-in-fact only after the attorney has decided it is necessary for the attorney-in-fact to utilize the document.

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