Trusts, Conservatorships & Fiduciary Responsibility

OR – “What the heck is a Fiduciary and what do they do?”

1

Paul M. Seideman
National Certified Guardian/Fiduciary

President of TrESCo of Idaho, an independent fiduciary company based in Boise ID.

Past President of the National Guardianship Association and Idaho Guardian and Fiduciary Association

More than 25 years experience in financial services and probate administration

2

So What Is A Fiduciary?

- A fiduciary is a person/entity that is entrusted with managing money or property on behalf of someone else
- Can include responsibility for real property, personal property, income and financially related decisions
- Scope of authority depends on type of authority granted and source of that authority

3

Common Types of Fiduciary Roles

Power of Attorney – Atty-In-Fact
- Granted by individual during lifetime
- Scope based on POA document

Conservator of Estate
- Granted by court during lifetime, temporary or permanent
- Scope based on Orders granted or defined in statutes

Personal Representative of Estate
- Granted by Probate court after death
- Scope defined in statutes/ terms of Will
- Only over assets in decedent's name

Trustee of Trust
- Granted by Grantor (settlor of trust)
- Scope defined in trust documents
- Only over assets/ beneficiaries of trust

4

What Can A Fiduciary Do?

- Buy/Sell Real Estate
- Access Bank Accounts/Investments
- Manage income/retirement benefits

POA	Conservator	Trustee
Yes	Yes	Trust Only
Yes	Yes	Trust Only
Yes	Yes	No

5

How Does a Fiduciary Make Decisions?

- ALWAYS LIMITED BY SCOPE OF AUTHORITY
- Direction from Person
  - Reflects their stated preferences
  - May not always be Best Interest
- Substituted Judgment
  - Based on known preferences/values
  - "What would they do?"
- Best Interest
  - Balancing preferences with safety/prudence
  - Risk of making decisions contrary to Person's desires

6

Ethics Considerations for Fiduciaries

The National Guardianship Association's Standards of Practice provide an excellent reference for how guardians/fiduciaries should conduct their roles and responsibilities

https://www.guardianship.org/standards/

AVOID ALL CONFLICTS OF INTEREST

- Avoid Self-Dealing where a transaction provides benefit to the fiduciary or a close associate/family member
- Hiring associates/family members to perform work that is paid from the persons funds
- Purchasing, selling, transferring or gifting property to yourself/family members
- Loaning money to or from the person, accepting or making gifts
- Use the person's money to benefit someone other than the person
- Commingling assets of the person with the fiduciary's funds

7