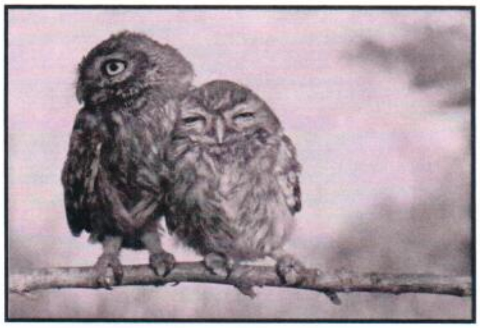

Wise Fiduciary Decision-Making:

Risks, Rewards, & Regulation

Presented by

Dianne McNamara, MA, JD, LLM

Coventry Vernon Roberts | Professional Fiduciary Associates

Serving with Compassion & Integrity

Senior Connections Speakers Bureau

June 27, 2024

1

Agenda

- Introductions
- Estate planning considerations
- Types of fiduciaries
- Fiduciary roles & responsibilities
- Guardianships / conservatorships
- Oversight and regulation
- Key considerations for choosing fiduciaries wisely

Please note that this presentation is not intended to provide legal advice.

2

Introduction & Background

- Attorney licensed in Georgia & Arizona
- Consultant, employee benefits & executive compensation
- Master's level education – Gerontology
- Elder law / estate planning / probate
- Director of Estate Services: Coventry, Vernon, & Roberts, LLC in Prescott

3

Coventry
Vernon
Roberts
Professional
Fiduciary
Associates
Serving with Compassion & Integrity

20 years ANNIVERSARY

- Limited Liability Company; 3 members
- Glendale, Mesa & Prescott offices
- 25 associates with varied credentials and backgrounds, such as
  - Nursing
  - Law
  - Accounting
  - Real estate
  - Financial services
  - Customer service

4

Fiduciary Definition

A **fiduciary** is someone who accepts the responsibility for taking care of the needs or property of another person … for the benefit of that person….

..... **Potentially, someone who is vulnerable or incapacitated and**

..... **For the benefit of that person, *not* the fiduciary's benefit**

The fiduciary serves in a role of trust.

5

Estate Planning

Important Legal Documents...		*Nominate fiduciaries...*
Health Care Power of Attorney	➡	Agent for health care decisions
Durable (Financial) POA	➡	Agent for managing finances
Last Will Testament	➡	Executor/Personal Representative
Trust (revocable living trust)	➡	Trustee, upon incapacity or death

Best Practice: Nominate a successor, and preferably two (2) successor fiduciaries, in case a fiduciary cannot serve for any reason.

6

Types of Fiduciaries

- Individuals
  - ✓ Family members
  - ✓ Trusted friends
- Institutional
  - ✓ Banks
  - ✓ Trust companies
    - ✓ **With minimum asset requirements
- Public fiduciary (by County)
- Private fiduciary companies**

**Oversight by AZ Supreme Court and Fiduciary Licensing Board

7

Agent under Power of Attorney

General Durable POA*

Bill paying
Marshal assets
Investments
Accountings
Insurance
Legal actions
Pension & public benefits
Credit cards & debt
Establish trusts
Much more if POA includes

Health Care POA or "Advance Directives"

Consent to treatments
Correspondence with medical teams
Medication management
Public benefits
Pre-need arrangements
End-of-life wishes (living will)

*** Authority under a financial POA ends at Principal's death.**

8

Trustee or Executor of Will

Trustee of Any Type of Trust

- Follow the terms of the *Trust*
- Pay expenses
- Preserve assets
- Review & choose investments
- Sell real property
- Accountings
- Distributions to beneficiaries
- Personal property disbursement
- Taxes

Executor is called "Personal Representative" in Arizona

- No authority until death
- Follow the terms of *Last Will & Testament*
- Many of the same duties as a trustee …. but through the Court system known as **Probate**

9

9

Estate Disputes & Complexities

- 2^{nd} marriages – stepchildren issues
- Family member influence or capacity issues
- Unintentional asset ownership problems
- Personal property disputes – guns, wedding rings, family photos, art collections, etc.
- Inconsistent amendments requiring interpretation
- Ineffective letters or post-nuptial agreements
- Complaints about administration

10

10

No Estate Plan Is a Plan

Potential outcomes include:

- Guardianship
- Conservatorship
- Legal fees, court costs
- Public proceedings
- Court supervision and permissions
- State determination of intestate heirs

Confusion

Stress

Expense

Crisis

11

Caregiving & Fiduciary Challenges

Real Estate & Relocation
Cognitive Impairment
Advance Directives Advocacy
DNR
Rehab Nursing Home
Trust
Medication Management
In Home Health Care
Assistive Technology
Disease Specific Therapy
Geriatric Care Manager
Special Needs Children
Church Ministries
Aging-in-Place Specialist
Scams/Abuse/Exploitation
Neighborhood Support
Assisted Living
Adult Day Care

Hospice
Social Worker
Meals on Wheels
Employment Pressures
Financial Planner
CPA
Elder Law
Estate Planning Attorney
Insurance Agent
Retirement Savings
Family Wealth
Social Security
Medicare
Medicaid
Sustainability
Veterans Benefits
Long Term Care Insurance
Disruptive Family Members

12

Professional Fiduciaries - Code of Conduct

- Highest degree of trust, loyalty and fidelity
- Manage and protect personal and monetary interests
- Foster independence and self-reliance
- Avoid self-dealing
- Be independent of other service providers
- Vigorously protect against infringement of third-parties
- Extreme care and diligence
- Communicate information to the protected person
- Follow the preferences of the protected person if at all possible
  - Or best interests of the protected person
- Accurate record-keeping

AZ Code Judicial Administration 7-202(J)

13

13

Fiduciary Decision-Making

1. Does fiduciary have the legal authority to make the decision?
2. What is the realistic timeline to make the decision?
3. Who are the stakeholders impacted? Are they incapacitated?
4. Does a cost/benefit analysis support the decision?
5. What are likely outcomes under various options?
6. Is this a legal issue? Should a court order be sought?
7. What other information is needed to make a better decision?

14

14

Choose a Fiduciary Wisely*

- Timely decision-making
- Operates within authority and seeks guidance when needed
- Excellent communication
- Variety of services and capabilities
- Efficient and transparent fee structure
- Willingness to work with and cooperate with client's lawyers and investment advisors

*Resource: "Questions You Should Pose To a Potential Fiduciary"

15

Thank you, Senior Connection

Dianne O. McNamara
Dianne@ArizonaFid.com; (928) 583-7993
122 North Cortez Street, Suite 208, Prescott, AZ 86303

www.ArizonaFid.com

Coventry
Vernon
Roberts
Professional
Fiduciary
Associates
Serving with Compassion & Integrity

Please note that this presentation is not intended to provide legal advice. Please consult your attorney.

16