

# **A LICENSE TO STEAL:**

## *Power of Attorney Abuse in Maryland*

### **I. Manifestations of Power of Attorney Abuse**

- Who? Relatives, caregivers, and opportunistic strangers
- Why: Broad decision-making authority, no oversight, or unintentional.
- How: Fraud in creating the document or in using the document in unauthorized ways

### **II. Efforts in Maryland to Curb Power of Attorney Abuse**

- Maryland General and Limited Power of Attorney Act in 2010 (Loretta's Law) - increases accountability of agents and acceptance of powers of attorney by financial institutions.
- The new law helps to curb abuse by:
  1. Notarized and witnessed
  2. More parties authorized to demand an accounting or petition the court to review
  3. Compensation prohibited unless specifically provided in POA
  5. Outlining the duties of an agent
    - a. Modifiable duties: avoiding a conflict of interest, acting loyally, keeping all records, and attempting to preserve the principal's estate plan.
    - b. Non-Modifiable duties: acting with care, competence, and diligence in accordance with the principal's expectations and best interest, and acting within the scope of authority granted by the principal.

### **III. Non-Statutory Ways to Reduce the Potential for Power of Attorney Abuse**

- Hire an attorney: assesses capacity and undue influence, helps select appropriate agents, explains safeguards to reduce the risk of abuse, can educate agent, and can physically hold POA until it needs to be utilized.
- Notify your family members and financial institutions re: POA.
- Include provision re: gifts, commingling funds, changing beneficiary designations, personally benefitting, and receiving compensation.
- Accounting to third party?
- Don't sign a POA without understanding its contents and risks.
- Agent must be trustworthy and capable
- Notify family and financial institutions in writing to revoke

### **IV. Ways to Reduce the Risk of Other Forms of Financial Abuse**

- Review your bank statements for unauthorized payments or withdrawals.
- Use direct deposit
- Don't re-title your assets to another person or jointly with another person
- Don't sign blank checks for another person to fill in the amount.
- Don't give another person control over your ATM card.

### **V. What to do if Financial Abuse Occurs**

Call the Maryland Department of Human Resources at 1-800-917-7383. The Department will contact Adult Protective Services in the appropriate county to investigate. You can also contact an attorney of your choice for advice regarding immediate steps to take to prevent further abuse.

*Please contact the Law Office of Jill A. Snyder, LLC at 410-864-8788 or [jill@snyder-law.net](mailto:jill@snyder-law.net) for assistance with your estate planning needs.*