

WYTYCHAK ELDER LAW NEWS

PO Box 1888, Coeur d' Alene, ID 83816, (208) 765-3595

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Warm Summer Wishes from
Wytychak Elder Law!

In the News:

- Kate Monroe Coyle will be speaking on **August 11, 2011** from 4:00 to 6:00 pm at the **Coeur d' Alene Public Library**, 702 E. Front Street (*please note that the location has changed from the Lake City Senior Center*). RSVP to PJ Christo at the Alzheimer's Association at 666-2996. This is a free presentation with dinner included courtesy of Four Seasons Assisted Living!
- The office will be closed on September 5, 2011 for the Labor Day Holiday.
- September 21, 2011 is WORLD ALZHEIMER'S DAY!

What Does "Fiduciary" Mean? By- Kate Monroe Coyle

Part of my experience at law school included learning an entirely foreign language: what we attorneys refer to as "Legalese." It's a blend of Latin, English, and Jibberish (in my opinion); and unfortunately it is what we have been saddled with since the signing of the Magna Carta in the year 1215. Some of my favorite examples of legalese are: "prima facia," "larceny," "habeus corpus," "intestate," "res ipsa loquitur," and even "jurisprudence."



One legal word that gets thrown around a lot, especially in this office, is the word "fiduciary." Chances are you have heard this word, but few people truly understand the meaning of this word and the responsibilities it implies. Black's Law Dictionary defines fiduciary as "a person who is required to act for the benefit of another person on all matters within the scope of their relationship, one who owes to another the duties of good faith, trust, confidence, and candor." In Latin, fiduciary means "holding, in trust."

Examples of people with fiduciary duties are: Attorneys- in- Fact under a Power of Attorney, Trustees, Personal Representatives/ Executors, Guardians, Conservators, and many, many more. A fiduciary duty is the highest standard of care that the law can impose on a person. In a nutshell, a fiduciary relationship is created when one person is given the ability to make decisions and manage property for another person. In this practice, it is common to name family members and friends as fiduciaries. There are also professional fiduciaries who take on these roles for certain fees when it is not appropriate for a family member or layman to act as a fiduciary.

When a fiduciary relationship is created, there are three duties that our law places upon the fiduciary: the duty of loyalty, the duty of prudence, and the duty of impartiality. Let's look at these duties a little closer.

- Duty of Loyalty: The fiduciary must be loyal to the person for whom they are acting. The duty of loyalty includes the duty not to self- deal (such as a personal representative selling property to him or herself for a lower price than he would sell to a third party for), and the duty to avoid conflicts of interest (such as a trustee favoring a family member).

- Duty of Prudence: The fiduciary must act prudently and reasonably in making decisions and managing and investing trust property. The idea here is that you can't play with someone else's money as if it is Monopoly money. A fiduciary must make sure that investments are sound and reliable. Think of it like a golden rule standard: treat someone else's money as if you would treat your own.

- Duty of Impartiality: The fiduciary must collect and protect the assets that he or she is entrusted with, earmark (properly identify) those assets, and take measures not to co-mingle the assets with his or her own assets. An example of co-mingling would be if an Attorney- in- Fact under a Power of Attorney is entrusted with \$10,000.00 of the Principal's money. Instead of creating a new bank account specifically for the Power of Attorney, the fiduciary places the \$10,000.00 in his or her own account.

Idaho law imposes the rule of "reasonableness" on fiduciaries. It is a case- by- case analysis of whether the fiduciary acted reasonably under the given circumstances. The way I look at it is: does it pass the smell test? If so, the fiduciary is probably acting reasonably and is therefore acting within the fiduciary duties. If something is fishy, it is probable that the fiduciary has breached his or her fiduciary duties.

If a court finds a fiduciary in breach of his or her duties, he or she may be personally liable to the beneficiaries or principals for any damages that have been caused by the breach of duty.

In closing (or "summation" in Legalese), the point that I want to get across is that it taking on the role of fiduciary is a big deal. I certainly do not intend to scare anyone off of accepting these roles, because by and large, most of our clients want to name friends and family members as fiduciaries, however my goal is to make sure that it is understood by both the principle and the fiduciary that these roles impose a high standard of care.

"Like a welcome summer rain, humor may suddenly cleanse and cool the earth, the air and you."

- Langston Hughes



If you haven't already done so, please take a look at our website at:

www.wytychakelderlaw.com