



# POWERS OF ATTORNEY



# TRIFECTA OF FIDUCIARY ROLES

- A fiduciary is a person who has been appointed to act for another person
- A power of attorney is one of three fiduciary roles during a person's lifetime

# THREE ROLES

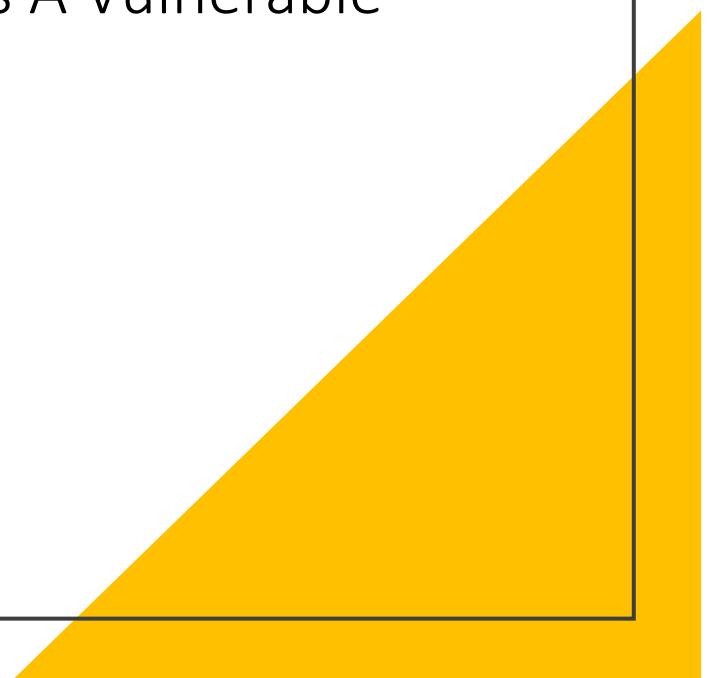
Attorney  
in Fact

Trustee


Guardian

These Fiduciary Roles Can Be Useful If The Individual Is A Vulnerable Adult Or An Incapacitated Person



Sometimes There Will Be A Combination Of Roles



A Personal Representative of a decedent's estate is a fourth form of fiduciary



A Power of Attorney will Have No Effect over Assets in a  
Trust



# Trusts

- If A Trust Exists, The Power Of Attorney Will Control Assets *Not* In The Trust
- Determine What Assets Are In The Trust And Which Are Not
- Don't Assume That All Of The Assets Are In The Trust Or Even Any Assets

# Guardianships

- Can The Establishment Of A Guardianship Affect A Power Of Attorney? Yes.
- A Guardianship Usually Replaces A Power Of Attorney
- But Not Always
- Hybrid Of Power Of Attorney And Guardianship



# Personal vs. Financial Fiduciary Roles

- Powers Of Attorney Can Affect Both Personal And Financial Matters
- Trusts Do Not Affect Personal Matters
- Guardianships Can Govern Both Personal And Financial Matters Or One Or The Other



# TERMS

- Principal
- Attorney-in-Fact or Agent

# Powers of Attorney

- Can Pertain to Personal or Financial Matters and Both
- Sometimes Two Powers of Attorney are Executed
- Carefully Review the Power of Attorney
- Always check to See if there is a Second Power of Attorney
- Don't Assume that a Power of Attorney for Personal Matters Exists-It Might Be a Different Document such as a Health Care Directive

# Effectiveness

- When Powers of Attorney are Effective is a Key Issue
- There are a Variety of Triggering Mechanisms
- Effective Immediately
- Effective upon Disability or Incompetency
- Effective after Statement from a Physician

# DEFINITION OF INCAPACITY

- The inability of an individual to manage property, business, personal, or health care affairs because the individual: (a) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or (b) is: (i) an absentee, as defined in chapter 11.80 RCW; or (ii) outside the united states and unable to return.

# Breakout Room

- Share your experiences acting as a fiduciary

# Powers

- There is No Such Thing as a Standard or Form Power of Attorney
- Some are Very Broad with General Language
- Some Follow the New Statutes and Recite Numerous Powers
- Some Allow Gifting
- Some Allow Estate Planning



# Powers Under New Statute

- A Power Of Attorney Grants Numerous Powers That Are Too Many To List Here
- Certain Special Powers That Must Be Referred To







# Powers That Must Be Provided For

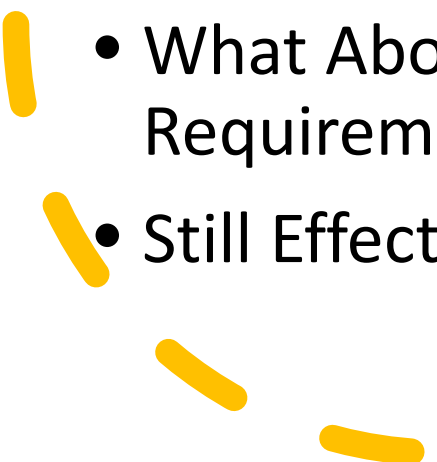
- Create, Amend Or Revoke Trust
- Designation Of Payable On Death Beneficiaries
- Designation Of Joint Tenant With Right Of Survivorship
- Make Gifts, subject to limitations

# Gifts

- Subject to Annual Exclusion Amount
- If More than Annual Exclusion, the Power of Attorney Must State That
- Also, The Gift Must Be Consistent With The Principal's Objectives, If Known, Or If Unknown, In The Principal's Best Interest
- Gifts to Qualify for Medicaid Can Be Made



# New Laws Regarding Powers of Attorney


- Power of Attorney Laws Completely Revised
  - The Law is Effective as to all Powers of Attorney Regardless of When Executed
  - Power of Attorney Must Be Signed Before a Notary or Before Two Witnesses
  - What About Older Powers of Attorney that Don't Meet Those Requirements?
  - Still Effective if Executed Before January 1, 2017
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# Witnesses

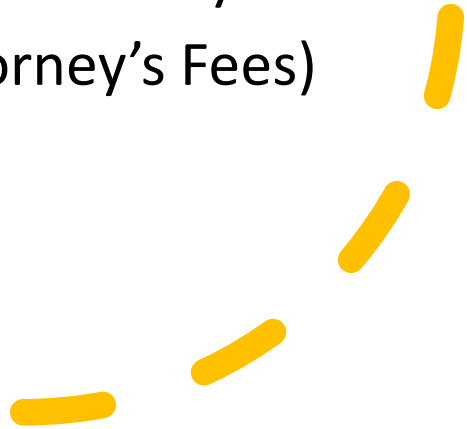
- Cannot Be Home, Adult Family Home or Long-Term Care Providers
- Cannot Be Related to the Principal or Agent By Blood, Marriage or State Registered Domestic Partnership



# Dealing with Third Parties

- Third Party Refuses to Acknowledge or Act on the Power of Attorney
  - Example: Bank that Decides that a Power of Attorney is “Too Old” or That It Must Have Been Executed Within a Certain Amount of Time
  - The New Statute Requires a Third Party to Accept a Power of Attorney Within 7 days (or to Request a Certification)
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# Certification Process

- If An Agent Produces A Statement Of Certification, The Third Person Must Accept It Within 5 Days.
  - Also, The New Statute Specifically States That A Third Party Cannot Demand Another Form Of Power Of Attorney
  - If The Third Party Does Not Comply With The Law, The Principal Or Agent Can Petition The Superior Court For An Order That Compels The Third Party To Accept The Power Of Attorney (And Attorney's Fees)
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# Revocation of Power of Attorney by Principal

- Powers Of Attorney Usually Contain A Provision That The Power Of Attorney Can Be Revoked In Writing By The Principal
  - Therefore, a Principal can Sign a Written Revocation to Nullify a Power of Attorney
  - What if There is No Provision Allowing Revocation?
  - The Principal can Execute a New Power Of Attorney Stating it Automatically Revokes Prior Ones
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# Revocation and Dueling Powers of Attorney

- Once In While, A Person May Have Multiple Powers Of Attorney Because Different People Are Getting The Principal To Sign Them
- Then The Issue Becomes Does A Second Power Of Attorney Trump The First One?
- Carefully Review each Power of Attorney With Respect to Revocation Language



# Death of Principal and Dissolution of Marriage

- A Really Common Misunderstanding Is That A Power Of Attorney Continues On After Death
- It Does Not
- Power Of Attorney Is Also Revoked When One Spouse Files A Dissolution Proceeding



# Multiple Attorneys-in-Fact

- What Happens If The Principal Names More Than One Person To Act As Attorney-in-fact?
- It Is Most Always Difficult To Have More Than One Person Acting And Especially If There Are Three Which Is More Common Than You Would Think
- Sometimes A Parent Does Not Want To Choose One Child Over Another



# NEW STATUTE

- In The Past, If A Power Of Attorney Did Not Address Whether People Could Act Independently, It Was Not Clear Who Had What Authority
- That Has Changed Under The New Law
- All Co-attorneys-in-fact Must Act *Jointly* Unless The Power Of Attorney States Otherwise
- If There Is More Than One Attorney-in-fact, One Attorney-in-fact Can Delegate Authority To The Other

# Power of Attorney in Guardianship

- Powers Of Attorney Can Include A Provision That Says Who The Principal Wants To Be Guardian In The Event a Guardianship Is Established
- This Is Important Because It Gives The Person Named a Priority Over Anyone Else Who Might Want To Be Guardian
- It Is Not Absolute However: The Court Can Ignore The Nomination For “Good Cause”



# Records

- Does an Agent Need to Keep Records? Yes
- New Statute Provides that Agents Keep Accounting Records of All Receipts, Disbursements, and Transactions Made on Behalf of The Principal



# Who Gets to See Records



This Has Changed



Unless The Power Of Attorney  
Requires It, Only Limited Persons  
Can Demand To Review The Records



Or Unless A Court Orders It Or The  
Requesting [Party Is The Principal A  
Guardian, Or Another Fiduciary.