

# It's the Law: Guardianships, Powers of Attorney, Representative Payees

*Duties, legal limits, and common problems*



# Overview of surrogate decision making

- \* Adult (18 and over) is the only one who can make decisions for that adult
- \* WI law treats family members, including spouses, as strangers for decision making purposes
- \* Family members are not authorized to make decisions for capacitated or incapacitated adult family members (not a next-of-kin state)

# Overview of surrogate decision making

- \* Decision making authority can be delegated to others (sometimes called “surrogates”) by a principal who is “of sound mind”
  - \* Joint tenancy or property incl. bank accounts
  - \* POAs for Finances and Health Care
  - \* Power of Attorney bank accounts
  - \* Trusts

# Overview of surrogate decision making

- \* The law also delegates decision-making authority to surrogates
  - \* Guardians of Person or Estate (Ch. 54 of Wis. Statutes)
  - \* Court orders pursuant to Ch. 51 (mental health) and Ch. 55 (protective placement and services) of Wisconsin Statutes
  - \* Representative Payees for Social Security benefits
  - \* Implied consent in medical emergencies

# Overview of surrogate decision making

- \* Other types of Advance Directives
  - \* Living Will (aka “Declaration to Physicians”)
  - \* Do Not Resuscitate (DNR) Orders
  - \* Oral Advance Directives
    - \* In context of POA-HC, authority of agent is to implement wishes of principal (“substituted judgment”) which have been:
      - \* communicated orally prior to incapacity by principal to agent or to someone else
      - \* communicated in writing prior to incapacity by principal in POA-HC document or another document, or
      - \* Communicated during incapacity by principal to agent or to someone else
        - \* If wishes of principal are unknown, “best interest” standard applies

# Overview of surrogate decision making

- \* Oral Advance Directives in context of Guardianship
  - \* Guardian is to make decisions for ward based on “best interests” of ward
  - \* If guardian can demonstrate by preponderance of evidence a clear statement, made by ward, while still competent, of the ward’s desires regarding end-of-life decision making, it is in best interests of ward to honor those wishes. *In re Edna M.F.*, 210 Wis.2d 558, 563 N.W.2d 485 (1997).

# Incompetency v. Incapacity

- **Incompetency standard applies for Guardianships**
- Must be based on medical/ other expert opinions
- \* **Incompetency**, guardian of the PERSON (Ch. 54.10 of Wis. Statutes):
  - \* Determination by judge or court commissioner in a **guardianship** proceeding that because of an impairment, the individual is “unable effectively to receive and evaluate information or to make or communicate decisions to such an extent that the individual is unable to meet the essential requirements for his/her physical health and safety”

# Incompetency v. Incapacity

- \* **Incompetency, Guardian of the ESTATE (Ch. 54.10 of Wis. Statutes):**
  - \* Determination by judge or court commissioner in a guardianship proceeding that because of an impairment, the individual is unable effectively to receive and evaluate information or to make or communicate decisions related to management of his/her property or financial affairs, to the extent any of the following applies:
    - \* The individual has property that will be dissipated in whole or in part
    - \* The individual is unable to provide for his/her support
    - \* The individual is unable to prevent financial exploitation



# Incompetency v. Incapacity

(**Incompetency** in guardianships cont'd):

In either case, person must have an impairment that fits a listed category

- \* Developmental disability
- \* Serious and persistent mental illness
- \* Degenerative brain disorder
- \* Other like incapacities
- \* Must be impairment that results in substantial, long term disability
- \* Physical disability alone not basis of guardianship order unless makes person unable to communicate

# Incompetency v. Incapacity

- \* **(Incompetency in guardianships cont'd):**
  - \* Proposed ward must be at least 17 yrs., 9 mos. old
  - \* Finding that need for assistance in decision making or communication is unable to be met effectively and less restrictively through appropriate and reasonably available training, education, support services, health care, assistive devices, other means the person will accept.

# Incompetency v. Incapacity

- \* **INCAPACITY (POA-HC):**

- \* A determination by 2 MDs or 1 MD and 1 licensed psychologist that an individual is “unable to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his/her health care decisions” (sec. 155.01(8) Wis. Statutes)
- \* Standard used to “activate” a POA-HC

# Incompetency v. Incapacity

## **INCAPACITY (POA-F):**

- inability of an individual to manage property, finances, or business affairs because he/she meets one of the following criteria:

(a) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.

(b) Is missing.

(c) Is detained, including incarceration in a correctional facility.

(d) Is outside the United States and unable to return.

# Incompetency v. Incapacity

- \* **INCAPACITY** (POA-F, cont'd):
  - \* to be determined by one physician or psychologist unless otherwise specified
  - \* if missing/detained/incarcerated or outside US and unable to return, a judge or appropriate govt. official may determine incapacity
    - \* **NOTE: POA-F now by default, generally active immediately regardless of incapacity**

# Incompetency v. Incapacity

- \* Person may be found incapacitated for purposes of activating a POA, then later be determined medically incompetent.
  - \* If POA(s) meet person's needs, court determination of incompetence and appt. of guardian not necessary
- \* Incompetency is 'higher' standard but not easy to distinguish from incapacity. Main difference is which legal process it initiates

# Power of Attorney for Health Care (POAHC)

- \* Overview

- \* document that the principal completes and signs, naming another (the 'agent') to make health care decisions for the principal if the principal ever becomes permanently or temporarily unable to make those decisions for him/herself (see incapacity)
- \* If no POAHC completed, but later unable to make own health care decisions, family member not automatically authorized to make health care decisions on behalf of other family member unless a POAHC is drafted, naming family member as agent
  - \* May be necessary for family or others to seek appointment of a guardian of the person

# Power of Attorney for Health Care (POAHC)

- \* POAHC v. “Living Will”
  - \* Living will (Declaration to Physicians) is set of instructions signed by patient telling doctor what to do in very limited situations
    - \* When person in ‘persistent vegetative state’
    - \* When person ‘terminally ill and death is imminent’
  - \* Living will does not name an agent who makes decisions for you
  - \* If have both POAHC and Living Will, make sure wishes expressed consistently in both documents
    - \* Note: if the provisions of a principal's valid POAHC directly conflict with any provisions of the living will, the POAHC supersedes.



# Power of Attorney for Health Care (POAHC)

- \* POAHC agent's power activated upon determination of incapacity by 2 MDs or 1 MD and 1 psychologist; principal able to change manner of activation by specifying number or type of professionals that should activate document
- \* Principal continues to handle all his/her own health care decisions as long as retains capacity to make own health care decisions

# Power of Attorney for Health Care (POAHC)

- \* Decisions a POAHC agent **may** make:
  - \* Specific decisions about services, procedures, treatment, care
    - \* Choosing a doctor
    - \* Treating a medical condition
    - \* Managing pain
    - \* Maintaining/ refusing artificial nutrition and hydration
    - \* Consenting to or refusing surgery
  - \* POAHC agent doesn't have power to make decisions about non-health care related issues (consider POAF)

# Power of Attorney for Health Care (POAHC)

Decisions a POAHC agent may **not** make:

- **may not** consent to experimental mental health research or to psychosurgery, electroconvulsive treatment or drastic mental health treatment procedures for the principal.
- **may not** consent to admission of the principal on an inpatient basis to any of the following:
  - An institution for mental diseases
  - An intermediate care facility for persons with an intellectual disability
  - A state or publicly or privately operated treatment facility under s. 51.01(15) or s. 51.01 (19).
    - ch. 51 or ch. 55 proceeding for these admissions

# Power of Attorney for Health Care (POAHC)

- \* PRINCIPAL RETAINS HIS/HER LEGAL RIGHTS AT ALL TIMES:
  - \* Agent “shall act in good faith consistently with the desires of the principal as expressed in the POAHC or *as otherwise specifically directed by the principal to the health care agent at any time*”. Wis. Stats. Sec. 155.20(5)
  - \* Without a specific directive by the principal or if the principal's desires are unknown, the health care agent “shall, in good faith, act in the best interests of the principal in exercising his or her authority”.

# Power of Attorney for Health Care (POAHC)

- \* Whose wishes control after POAHC completed?
  - \* Agent begins acting “in good faith, consistent with wishes of principal” after principal determined to be incapacitated
    - \* Imperative to discuss health care wishes with agent before possible incapacity
    - \* Follow wishes verbally expressed/ written in POAHC document
  - \* If principal incapacitated and still able to express wishes, agent is required to follow *current* expression of wishes
  - \* If wishes of principal unknown, agent must act in principal’s “best interests”

# Power of Attorney for Health Care (POAHC)

Example – current wishes control:

- \* Mom has activated POAHC naming daughter as agent. Determined incapacitated due to Alzheimer's diagnosis. POAHC specifically authorizes 'long term' admission to nursing home, but mom has been strenuously protesting the nursing home placement.
  - \* Position of WI GSC that if principal protesting admission to NH, even with activated POAHC that allows for long term NH admission, a guardianship and protective placement order must be obtained.
  - \* See Wis. Stats. Secs. 155.20(1) and 155.20(5) – agent must still follow principal's current expression of wishes if principal able to express his/her wishes

# Power of Attorney for Health Care (POAHC)

- \* POAHC agent's ability to admit to nursing home or CBRF for long term care:
  - \* In order for agent to have authority to admit principal to nursing home / CBRF for long term care, must specifically grant that power in the POAHC
  - \* Without the power granted, agent may only admit for short-term stays
    - \* Recuperative care for less than 3 months and admission directly from hospital (unless hospitalization was for psychiatric treatment)
    - \* Admission for respite care for less than 30 days and principal and agent live together
  - \* Remember, agent may withdraw authority by objecting!

# Power of Attorney for Health Care (POAHC)

- Will completing a POAHC always avoid need for a guardian?
  - Usually but not in certain cases:
    - Agent unable to fulfill duties and no alternate agent named
    - If principal didn't authorize nursing home /CBRF admission and these services now needed
    - If principal objects to any decisions agent is making which were previously authorized
    - Any decisions that need to be made that were not addressed in POAHC document



# Power of Attorney for Finances (POAF)

- \* Overview

- \* Document that the principal completes and signs, naming another individual ('agent' or 'attorney-in-fact') to manage principal's finances
- \* Principal determines money and property agent has authority over as well as specific authority he/she wants agent to have (can be broad or specific)

# Power of Attorney for Finances (POAF)

## Overview, cont'd:

- \* Presumed durable – meaning agent has authority to act on principal's behalf even if principal becomes temporarily/permanently unable to make own decisions - unless expressly provided (e.g. 'terminated by incapacity of principal')
- \* Effective when executed unless otherwise specified (see Incapacity, POAF)
- \* Notarization of principal's signature not required but is only 'presumed genuine' if notarized

# Power of Attorney for Finances (POAF)

Agent's duties, generally:

- Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, if those expectations are not known, in the principal's best interest.
- Act in good faith.
- Act only within the scope of authority granted in the power of attorney.

# Power of Attorney for Finances (POAF)

Agent's duties, cont'd:

- General authorities
  - All purpose authorities, not specific to certain subject of authority
- Subject authorities
  - 13 authorities specifically listed by subject matter in the POAF. General authority applies to these subjects as long as principal grants agent authority over each of the subjects (Wis. Stats. Secs. 244.44-244.56)
- Authorities requiring a specific and express grant of authority
  - Authorities that agent may exercise only if the POAF expressly grants the agent the authority to exercise (ie. gifting, creating/changing beneficiary designation among others)

# Power of Attorney for Finances (POAF)

- \* Agent's duties, cont'd:
  - \* Keep all records of receipts, disbursements, transactions
  - \* Attempt to preserve estate plan of principal
  - \* Act loyally and in good faith
  - \* Avoid conflicts of interest
    - \* Agent acting in good faith not liable solely because agent also benefits from act or has conflicting interest
  - Always disclose identity as the agent
  - Cooperate with HCPOA agent/guardian of person

# Power of Attorney for Finances (POAF)

- \* Gifting power

- \* POAF does not authorize gifting, self-dealing (agent taking money for him/herself), or oral amendment (agent can't act against provisions of document even if principal told agent something different) unless otherwise expressly specified
- \* Self dealing prohibited unless spouse/domestic partner or expressly added
- \* Rules for agents to gift:
  - \* Must be consistent with principal's objective if actually known
  - \* Consistent with best interests of principal based on various factors (value of principal's property, foreseeable obligations, personal history of gifting by principal, etc)

# Basic powers of a guardian

- \* Generally: best interests standard
  - \* Ward's wishes are to be seriously considered, but not required to be followed. Guardian has a legal duty to act in ward's best interests
  - \* Duty to 'exercise degree of care, diligence, and good faith when acting on behalf of ward that an ordinarily prudent person exercises in his / her own affairs'
    - \* Not just a 'rubber stamp' for suggestions of providers

# Guardian of Person

- \* Have only the authority granted by the court
- \* Ward retains all rights not specifically removed
  - \* Four categories of rights and powers, detailed in Letters of Guardianship and Determination and Order
    - \* Rights the Ward Retains
    - \* Rights to be removed from ward in full
    - \* Rights ward may exercise only with consent of guardian of person
    - \* Powers to be transferred to guardian of person in full or in part



# Guardian of Person

- \* Rights that wards always retain/ don't need consent of court or guardian to exercise
  - \* Have access to and communicate privately with court and government, and with the protection and advocacy agency (DRW) and long term care ombudsman
  - \* Have access to, communicate privately with, retain an attorney
  - \* Protest placement, review need for guardianship and protective services
  - \* Exercise constitutional rights (ie. freedom of religion and association)

# Guardian of Person

- \* Rights a court may fully remove from ward:
  - \* Consent to marry
  - \* Execute will
  - \* Serve on jury
  - \* Hold driver's, hunting, or fishing license
  - \* Hold professional certification or license
  - \* Consent to sterilization
  - \* Consent to organ, tissue, bone marrow donation
  - \* Vote

# Guardian of Person

- \* Rights a court may allow ward to exercise only with consent of guardian of person:
  - \* Marry
  - \* Hold driver's, hunting, fishing license
  - \* Professional certification or license
  - \* Consent to sterilization
  - \* Consent to donate organs, tissue, bone marrow

# Guardian of Person

- \* Powers a court may transfer to guardian of person:
  - \* All or part of the following if finds by clear and convincing evidence that ward lacks evaluative capacity to exercise the power:
    - \* Provide informed consent to voluntary/involuntary medical examination and treatment if in the ward's best interest, including voluntary receipt of medication by ward (including psychotropic medication in ward's best interest, if first make good faith attempt to discuss with ward and ward doesn't protest)
      - \* May only consent to involuntary admin of psychotropic medication under court order for protective services

# Guardian of Person

- \* Power to consent to ward's participation in research in certain defined / narrow circumstances
- \* Power to consent to experimental treatment in very narrow circumstances
- \* Power to provide informed consent to social and supportive living services
- \* Power to provide informed consent to release of confidential records other than court, treatment, patient health care records
- \* Make decisions regarding travel and mobility
- \* Power to choose providers of medical, social, supportive living services
- \* Make decisions re: initiating divorce petition
- \* Receiving notices on ward's behalf
- \* Acting in all proceedings as ward's advocate
- \* Power to apply for protective placement / commitment of ward
- \* Having custody of ward

# Guardian of Estate

- \* Powers and duties of guardian
  - \* Generally: responsible for managing and holding ward's property for ward's benefit
  - \* All property subject to the guardianship belongs to ward; guardian has right to take possession and manage it according to Letters of Guardianship but it is not the guardian's property
    - \* Must annually account for value of property to the court

# Guardian of Estate

- \* Duties – guardian of estate (include but not ltd. to):
  - \* Provide ward with greatest amount of independence and self determination with respect to property management in light of ward's impairment
  - \* Consider ward's personal preferences/desires
  - \* Use least restrictive forms of intervention
  - \* Use ward's income / property to maintain and support ward and his/her dependents
  - \* If rep payee for govt. benefits has not been appointed, guardian of estate must apply or ensure one is appointed
  - \* Determine if ward executed a will; upon death, deliver ward's assets to entitled persons
  - \* Perform other duties as required by court

# Guardian of Estate

- \* What may a guardian of the estate do without court approval? (including but not ltd. to):
  - \* Support another person the ward is legally obligated to support
  - \* Enter into contracts on behalf of ward
  - \* Exercise options to purchase securities, other property
  - \* Authorize access to or release of ward's confidential financial records
  - \* Apply for public/private benefits for ward
  - \* Pay legally enforceable debts from ward's assets/income
  - \* Sell personal property at FMV
  - \* Manage investments prudently
  - \* Appear for and represent ward in actions such as court hearings



# Guardian of Estate

- \* What are some things a guardian of the estate may do only **after obtaining court approval?**
  - \* Make gifts of ward's property/ money
  - \* Sell, mortgage, lease ward's real estate
  - \* Transfer funds to existing revocable living trust
  - \* Establish SNT's for ward's benefit
  - \* Purchase annuity or insurance contract and exercise ownership rights
  - \* Support someone the ward is not legally obligated to support
  - \* Continue the ward's business
  - \* Make loans from ward's funds
  - \* Pay yourself from ward's funds for own time and services or be reimbursed for out of pocket expenses incurred on ward's behalf
  - \* Purchase the ward's property

# Guardian of Estate

- \* May the guardian charge a fee for work done?
  - \* Generally yes but court must approve fee or compensation for services as guardian
  - \* Court decides which amount is just and reasonable
    - \* Also depends on ward's ability to pay
    - \* With court approval, may pay actual, reasonable, necessary expenses incurred as guardian out of ward's property – incl. lawyer, accountant, broker, agent fees
    - \* Itemize these on the accounting

# Possibilities

- \* POAHC
- \* POAF
- \* POAHC and POAF
- \* Guardian of Person
- \* Guardian of Pstate
- \* Guardian of Person, Guardian of Estate
- \* POAHC, Guardian of Estate
- \* POAHC, Guardian of Person
- \* POAF, Guardian of Person
- \* POAF, Guardian of Estate
- \* POAHC, POAF, Guardian of Person
- \* POAHC, POAF, Guardian of Estate
- \* POAHC, POAF, Guardian of Person, Guardian of Estate

# Concerns about POA agent or guardian's behavior?

- \* POAHC: Wis. Stats. §155.60(4)
  - \* Any interested party may petition the court to review whether the health care agent is performing his or her duties in accordance with POAHC. If the court finds that the agent hasn't, it may do any of the following:
    - \* 1. Direct the health care agent to act in accordance with the terms of the POAHC
    - \* 2. Require the agent to report to the court
    - \* 3. Rescind all powers of the health care agent to act under the POAHC
  - \* Revocation of POAHC and drafting of new POAHC, naming new agent

# Concerns about POA agent or guardian's behavior?

- \* POAF: Wis. Stats. §244.16 – judicial review of agent's conduct
  - \* Other safeguards to consider:
    - \* Agent bonded
    - \* Prohibiting/limiting gifts
    - \* Requiring regular accountings from agent to be sent to others
    - \* Including statement of agent's fiduciary duty in document
    - \* No joint accounts with principal and agent
  - \* Revoke POAF (see GWAAR POAF revocation packet)

# Concerns about POA agent or guardian's behavior?

- \* Guardianship

- \* Wis. Stats. §54.68, review conduct of guardian for:
  - \* Failing to file timely an inventory or account, as required under this chapter, that is accurate and complete.
  - \* Committing fraud, waste, or mismanagement.
  - \* Abusing or neglecting the ward or knowingly permitting others to do so.
  - \* Engaging in self-dealing.
  - \* Failing to provide adequately for the personal needs of the ward from the ward's available assets and income
  - \* Failing to exercise due diligence and reasonable care in assuring that the ward's personal needs are being met in the least restrictive environment consistent with the ward's needs and incapacities.
  - \* Failing to act in the best interests of the ward
    - .... Among other duties

# Representative Payees

- \* Rep payees appointed to manage Social Security funds only
- \* Payees have no legal authority to manage non-Social Security income or medical matters
- \* For Social Security purposes, a POA-F is NOT an acceptable way to manage a person's monthly benefits Rep payees may not take fee from beneficiary's funds for services as rep payee
- \* Rep payees may not mix beneficiary's funds with own funds / other funds
  - \* Accounts: title "(beneficiary's name) by (rep payee's name), representative payee"

# Representative Payees

## \* Duties

- \* First job: to make sure beneficiary's daily needs for food and shelter are met
- \* Next, funds can go to beneficiary's medical / dental care that is not covered by health insurance and for personal needs like clothing and recreation
- \* If money left over after needs covered, must be saved, preferably in interest bearing account or Savings Bonds
- \* If beneficiary in a nursing home or other institution, rep payee should use benefits to pay for usual charges of care
  - \* Set aside small amount each month for beneficiary's personal needs (\$45)
- \* Note about SSI beneficiaries: no resources over \$2000
  - \* Must be sure you are following rules in order to not make them ineligible for SSI



# Representative Payees

- \* Duties, cont'd
  - \* If beneficiary gets back benefits, first spend money on current needs, ie. rent, food, furnishings
  - \* Next, may spend money to improve daily living conditions or for better medical care (ie. reconstructive dental work, motorized scooter, school tuition/training, recreational activities)
  - \* May make special purchases
    - \* Use funds for down payment or current house payments
    - \* Home improvements
    - \* Necessary furniture / replacement
    - \* Car payments or down payment on car
  - \* Rep payee responsible for yearly Rep Payee Report to SSA, even if serving as guardian
  - \* Responsible to report certain changes in beneficiary's living situation

# Common Drama

- \* Making medical decisions in general
  - \* **Guardian of Person:** act in ward's best interests, taking into consideration ward's wishes, risks/benefits, nature/consequences of decision, exercising degree of care, diligence, good faith that an ordinarily prudent person exercises in own affairs
  - \* **POAHC:** follow principal's wishes; if not expressed, act in principal's best interests
  - \* Someone may have BOTH: if a principal, after executing POAHC is adjudicated incompetent (under guardianship), the POAHC remains in effect unless good cause shown to revoke/invalidate, or limit authority of agent

# Common Drama

- \* Access to Medical Records
  - \* Generally, the only person with a legal right to your medical records is you, and whomever you legally authorize
    - \* **Guardian of Person:** must endeavor to secure any necessary care/services for the ward that are in best interests based upon examination of ward's patient health care records and treatment records and authorization for redisclosure as appropriate
    - \* **POAHC:** authority contingent upon what is in document (State form allows for access and consent to disclosure). Principal's wishes prevail; otherwise best interest standard applies

# Common Drama

- \* Regulating visitation
  - \* Guardian of Person: may only restrict visitation if in ward's best interests
  - \* POAHC agent: may restrict visitation if in accordance w/ principal's wishes or wishes unknown and the visits are detrimental to principal's health
    - \* Primary reason to restrict visitation in either case is because visit's harm patient's health

# Common Drama

- \* Identifying Isolation
  - \* Inability to speak to or see ward/ principal in person at all or without supervision or monitoring
  - \* Restraining individual without means of communication or getting out (physical/chemical restraints, locked doors)
  - \* The ward/principal appears afraid to speak freely or see anyone without abuser present

# Common Drama

- \* Smoking allowed??
  - \* Guardian of person: may not prohibit ward from smoking unless in ward's best interests, ie. significantly detrimental to ward's health
    - \* 'generally bad for health' is insufficient
    - \* Smoking that may have direct, serious results can be prohibited (ie. smoking with Meniere's disease can lead to permanent hearing loss)
  - \* POAHC: agent follows wishes of principal; if no wishes expressed, same best interest as guardian standard above applies, but principal can trump at any time

# Common Drama

- \* Sexual Expression allowed??
  - \* Incapacity/incompetency not an automatic deterrent to ability to engage in consensual sexual conduct
  - \* Guardian/ agent can never consent on behalf of ward/principal
  - \* Consent must come from ward/principal who has capacity to give consent – anything else is abuse

# Common Drama

- \* Sexual expression, cont'd
  - \* Must consider:
    - \* Individual's expressed wishes
    - \* Individual's understanding of nature and consequences of decision
      - \* Ward/principal should understand sex is physical in nature, has special status, their body is private, they have right to refuse at any time, sex may result in STD's/pregnancy, there are social consequences to engaging in sex
    - \* Level of risk involved
    - \* Need for wider experience of individual
    - \* Value of opportunity for person to develop decision making skills



# Common Drama

- \* Compensation and Reimbursement
  - \* Guardian of Estate
    - \* Not without court approval
    - \* May incur expense prior to court approval for reimbursement but at risk of court not approving reimbursement
  - \* POAF
    - \* Reimbursement of actual expenses reasonably incurred and compensation reasonable under the circumstances (as of Sept. 1, 2010 POAFs)

# Common Drama

- \* Access to financial information
  - \* Guardian of Estate
    - \* may authorize access to or release ward's confidential financial records. . .on behalf of ward without first receiving court's approval
    - \* Subject to best interest standard, good faith standard, and exercise degree of diligence and prudence that ordinary prudent person exercises in own affairs
  - \* POAF:
    - \* Follow principal's wishes
    - \* Except as otherwise provided in the POA, agent not required to disclose receipts, disbursement or transactions conducted on behalf of principal unless order by a court or requested by principal, guardian, conservator, other fiduciary, govt. agency with regulatory authority to protect principal's welfare, or personal representative of principal's estate

# Common Drama

- \* Gifting

- \* POAF

- \* 22% of reported exploitation is POAF abuse

- \* Gifting generally prohibited

- \* To permit it, need to use express and unambiguous language authorizing agent to make gifts

- \* Accounting can be requested by principal, court, govt. agency having regulatory authority to protect welfare of principal, or upon death, the personal rep/successor of principal's estate

- \* Guardian of Estate

- \* Gifting subject to court approval, annual accounting to court needed

# Common Drama

- \* Useful tools for financial safety
  - \* Opt out of credit marketing lists: 1-888-5OPTOUT or [www.optoutprescreen.com](http://www.optoutprescreen.com)
  - \* Opt out of junk mail: [www.dmachoice.org/dma/member/regist.action](http://www.dmachoice.org/dma/member/regist.action)
  - \* State no call list: 1-866-966-2255
  - \* Federal no call list: [www.donotcall.gov](http://www.donotcall.gov)
  - \* Check credit reports annually: 1-877-322-8228 or [www.annualcreditreport.com](http://www.annualcreditreport.com)
  - \* Security freeze: (including \$10 or police report): [www.privacy.wi.gov](http://www.privacy.wi.gov) (send all 3 by certified mail)

# Contact Info

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