

## Powers of Attorney: Private Discovery May Present Abuses

It is a stark and shameful reality that some people (the “agents”) who have been entrusted with authority over the financial affairs of another (the “principal”) by virtue of a durable power of attorney succumb to the temptation to take funds for themselves. More often than not, it seems, the misappropriation is not discovered until the resources of the grantor of the power have been depleted by the offending agent. Someone close to a principal now suffering from incapacity may suspect exploitation, but may be unable or unwilling to file suit to remedy the threat. Fortunately, the Virginia General Assembly has paved some well-marked legal avenues for such individuals to determine whether their suspicions are well-founded and, if so, to remedy those circumstances without committing to full-fledged litigation.

Recent enhancements to Virginia’s law governing powers of attorney provide that certain persons may demand that an agent disclose all information and records pertaining to actions which he or she has taken on behalf of an incapacitated principal within at least the past five (5) years. Generally, if the agent fails to provide those disclosures within thirty (30) days, then a court can order the agent to disclose the information and to pay the petitioning party’s expenses, including reasonable attorney’s fees incurred to obtain the discovery.

This “private” discovery procedure enables members of the principal’s family (including a spouse or child) and other interested individuals to inquire into the financial dealings by the agent in cases of suspected improprieties without having to resort to a petition for full conservatorship. In the event improprieties are discovered, the agent may be found liable to the principal or the principal’s successors in interest for the amount required to restore the value of the principal’s property to what it would have been had the impropriety not occurred, as well as to reimburse the principal for attorney’s fees and costs paid on the agent’s behalf.

At a time when the “age wave” finds more and more citizens vulnerable to financial exploitation, Virginia law offers a streamlined, common sense approach to the prevention of the unfettered abuse of principals by their agents named in their powers of attorney.