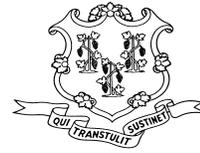


**Practical Probate:
Beware! POAs, Trustees and
Liability**

**Domenick N. Calabrese, Judge
Region 22 Probate District**



Having just completed my sixteenth year as a Connecticut probate judge, I've noticed an increase in litigation against fiduciaries; several of these have resulted in criminal prosecution of the guilty parties.

Most everyone has heard the word "fiduciary", but I suspect most don't understand what a fiduciary is and the serious personal liability inherent in serving as one.

A fiduciary is a person or organization (such as a financial institution) required to place the interests of another person above theirs. It's a very high legal standard.

In probate, examples of fiduciaries are lawyers, executors, administrators, guardians, conservators, trustees, health care representatives and agents under a power of attorney.

A significant mistake – one that frequently leads to litigation – is the failure of the fiduciary to understand their powers and responsibilities.

Fiduciary powers and responsibilities come from 3 sources: court orders, the law, and a document, such as a trust, will, or power of attorney.

Under the new Connecticut Uniform Power of Attorney Act, complex powers of attorney have become more common. While this complexity is designed to increase the flexibility of powers of attorney, it can make the agent's authority and limitations difficult to understand and carry out without the services of an experienced trusts and estates attorney.

Wills and trusts can be complex. It's not unusual for a trust to be 60 pages or more in length. Serving as an administrator, executor or trustee should not be done without hiring an experienced trusts and estates lawyer; it's virtually impossible for the average layperson to understand a trust, and even difficult for a general practice attorney with minimal trust experience to do so.

All fiduciaries engaging in financial transactions – paying claims and expenses, managing income and assets - must keep complete and accurate records. A fiduciary must be prepared to submit accountings to the court, even if the legal document establishing their authority excuses accountings. If the fiduciary's dealings are called into question, it is the fiduciary's responsibility to establish by clear and convincing evidence that their actions were proper and within the law.

Another area ripe for litigation is conflicts of interest. An example is when a widower gave his girlfriend authority over his finances under a power of attorney. If the girlfriend used the widower's assets to pay her own expenses, or to pay the expenses of another (for example, the girlfriend's children), a court could find that she breached her fiduciary duty. The consequences could include restitution, and even criminal charges.

There are many more areas of importance for fiduciaries to be aware of that cannot be covered here.

Because of the complexity and potentially serious consequences, I strongly recommend anyone serving as a fiduciary retain an experienced trusts and estates lawyer to advise and protect them. While some fiduciaries may exercise their duties without a lawyer, the stakes are too high to risk something going wrong.

**THIS ARTICLE IS FOR
INFORMATIONAL PURPOSES
ONLY. IT IS NOT INTENDED TO
BE, NOR SHOULD IT BE RELIED
UPON AS LEGAL ADVICE.
CONSULT A QUALIFIED
ATTORNEY FOR ADVICE
REGARDING YOUR SITUATION.**

**COPYRIGHT © 2019
DOMENICK N. CALABRESE
ALL RIGHTS RESERVED
NO PART OF THIS ARTICLE MAY
BE PUBLISHED, REPRODUCED OR
DISSEMINATED WITHOUT THE
EXPRESS WRITTEN CONSENT OF
THE AUTHOR.**

About the Author



Dom Calabrese has been a Connecticut Probate Judge since 2003. He's currently the judge in the Region 22 Probate District in Southbury, Connecticut and is the administrative judge in the Waterbury Regional Children's Court.

Dom also practices law with offices in Watertown and Stamford Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

For more of Dom's articles and presentations, please visit:

Website:
<https://www.DCalLaw.com>

Blog:
ConnecticutEstatePlanningSite.com