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QUALITY LEGAL SERVICES FOR A SECURE FUTURE

The Right to Demand an Accounting

A power of attorney is a useful instrument which allows a person to appoint another person to act on their behalf.

A review of the terminology may be helpful. The person establishing the power of attorney is called the "principal." The person appointed to act on behalf of the principal is called the "attorney in fact." It has nothing to do with being an attorney. It is simply the name of the person acting in a fiduciary capacity for the principal.

Furthermore, a power of attorney may either be effective immediately upon signing, or of the "springing" variety, which becomes effective only upon the incapacity or disability of the principal. The attorney in fact's power to act for the principal always terminates on the death of the principal.

It is common for a parent to name a child as the attorney in fact so they can pay bills and make financial decisions when the parent is no longer able to do so.

What happens if the attorney in fact will not share information with other siblings. Or worse, what if the other siblings are concerned that child appointed is not using the funds appro-

priately? Sometimes a child may think that since they were appointed, they do not have to share financial information with siblings.

While beneficiaries under a trust have the right to receive accountings, and the heirs under a will receive information on a probate estate, and a conservator will have to report annually to the court, the attorney in fact does not have such an automatic reporting responsibility.

As a result of the lack of accountability for an attorney in fact, Missouri law has a statute whereby any family member, or indeed, any interested party, can petition the probate court for an accounting by the attorney in fact if the principal is incapacitated.

The court will order the attorney in fact to provide an accounting of the income and expenses of the principal, along with bank statements and receipts for payments.

The court has wide discretion in applying remedies, including dissolving the power of attorney or replacing the attorney in fact. An attorney in fact is thus not allowed to operate in secret and to refuse information to those concerned about the welfare of the principal.



Any interested person may demand an accounting by petition to the Probate Court.

New Limits on Discovery In Litigation



Missouri has enacted several significant changes to the rules of civil procedure, which should streamline litigation. The major new provisions are:

- Discovery now has to be both relevant and proportional to the case. Demanding unnecessary information will be prohibited.
- Only 25 interrogatories, including all subparts, may be served. In the past, interrogatories could have an unlimited number of subparts.
- Finally, a party may not take more than 10 depositions without leave of the Court.

Remote Notarization: What is it and When does Missouri get it?

In order to have your signature notarized in Missouri, you must appear in person before a person licensed by the state of Missouri to be a notary public. If you are unknown to the notary, they will usually request identification, such as a driver's license.

But 36 states have now approved some form of "remote notarization, which allow the signor to appear before the notary, not in person, but through some type of communication technology, such as a video conference call.

Virginia became the first state to authorize remote notarization through live audio-video calls. The person having their signature notarized could be anywhere. The notary, however, had to be in the state in which they were licensed.

Missouri has joined the states permitting remote notarization. Beginning July 1, 2020, if the law requires a document to be the original to be record-

ed, it can be an electronic record if it meets all other recording requirements. An electronic signature of a witness or notary is deemed to meet the signature requirements for the recording of a document.

A prime area is which the law will be used is in remote signing of deeds. If a seller is out of state, documents have to be emailed and returned to be recorded. With this law, a signor in California can be notarized remotely by a Missouri Notary without the need to wait for the document to return in the mail or by overnight courier.

In order to perform remote notarizations, the notary must register with the Secretary of State of Missouri and identify the technology to be used. Then a journal of the remote notarization and a copy of the video and audio recording must be retained by the notary for 10 years.

Within 12 months after passage of the law, the Secretary of State is charged



Remote notarization is coming to Missouri next year.

with the responsibility of developing rules to implement the remote notarization law. The new law will facilitate transactions and real estate closings when one of the parties is out of the state of Missouri.

Duties of a Trustee (Hint—there are a lot of them!)

Clients do not always consider the many responsibilities of a trustee. Some of the duties of a trustee are:

- *Duty to Account.* The trustee must periodically provide a written account of the assets, including its income and expenses, to the beneficiaries.
- *Duty Not To Delegate.* Some responsibilities may be delegated, but the Trustee must perform most of the duties.
- *Duty of Loyalty.*
- *Duty to Avoid Conflict of Interest.* The Trustee is a fiduciary and cannot act for self-benefit.
- *Duty to Segregate Trust Property.* Trust property must be separately maintained and not commingled.

- *Duty of Impartiality.*
- *Duty to Invest.* The assets must be invested prudently.
- *Duty to Enforce & Defend Claims.*
- *Duty to Administer Trust by its Terms.* The Trustee must follow the trust instrument.
- *Duty of Skill & Care.*
- *Duty to Give Notice.*
- *Duty of Confidentiality.*
- *Duty to Furnish Information.* Beneficiaries are entitled to know the status of the trust assets.

Naming an individual as successor trustee is not always advisable. A corporate trustee is prepared to perform all duties



and is fully insured. If an individual makes a bad decision, or worse, mismanages the assets, there is usually no recourse.

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