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LEGAL BRIEFS

Uniform Power of Attorney Act, Part II

Efforts to provide meaningful reform for general powers of attorney in this year's General Assembly seem to be falling short of expectations.

In a recent column, legislation that was to be introduced in the General Assembly this year that affects general powers of attorneys was discussed. This legislation was designed to be a comprehensive rewrite of the law affecting these very important legal documents.

Briefly, one of the primary purposes for including general powers of attorney in a comprehensive estate plan is to provide an affordable means to manage our assets during any period of disability, without having to resort to an expensive and public guardianship process.

The major concern expressed by advocacy groups in Annapolis is that a key provision of the model legislation that was drafted by a nationally-recognized group of legal experts from around the country has been omitted from the legislation that was introduced.

Briefly, this omitted provision would have allowed an agent, on behalf of a disabled person, to ask a court to intervene if a bank or other financial institution refused to honor a general power of attorney without a reasonable basis for that refusal. If a court were to determine that the refusal was unwarranted, the court could order the bank or financial institution to accept the agent's authority to act on behalf of the disabled person. The court could also order the bank or financial institution to reimburse reasonable attorneys fees to the disabled person.

This provision is critical to having banks and financial institutions look carefully at the general powers of attorney before accepting or denying them.

One of the frustrating aspects of working with a client to prepare a comprehensive estate plan is that the client cannot be assured that taking responsible steps to plan for his disability will not be ignored by the client's bank or financial institution.

At a hearing before the Judicial Proceedings Committee in Annapolis against this bill, representatives of Maryland's banking community testified that the omitted provision should not be included in the legislation because no other state has adopted this provision. In other words, Maryland should not be first to protect its citizens from banks and other financial institution's arbitrary decisions not to accept a power of attorney.

Indeed, it was argued that this legislation would deprive banks and other financial institutions from protecting the depositor's accounts from unscrupulous abusers of these documents. Of course, nothing could be further from the truth. So long as a bank or financial institution has a reasonable basis, there is no liability whatsoever for refusing to honor a power of attorney.

Unfortunately, it appears that the banks may win this round and successfully defer any consideration for including a provision that may create liability for banks and financial institutions for another day. This means that a very good piece of legislation will most likely fail to be passed this year. Ironically, this failure will most impact those of who had the foresight and ability to try and plan for their own disabilities. Sadly, this failure will also affect those of us who are the most vulnerable in our community.