



Handling Another Adult's Affairs -- *de facto* control, advanced directives, & court action

What do these people have in common?

Someone acting under powers of attorney, acting as a trustee, or otherwise acting by way of a document empowering the agent on behalf of the principal, **someone** who assumes management of another's affairs, a **guardian ad litem**, and **someone** court-appointed to handle another's personal, legal, and financial affairs, whether family, friend, VA, a neighbor, or someone charging a fee -- **Answer: *Fiduciary Duties***

Whether implementing a plan or struck with an emergency, anyone can need legal assistance handling his/her affairs. Depending upon the circumstance, events can develop in a controlled ripple or a consuming wave. There are three basic categories of how one comes to handle another's affairs, but countless duties and tasks that hopefully establish and maintain a high quality of life. Those three basic descriptions of how one "takes over" do not signal a right or wrong or unlawful activity – rather, each puts the actor in a powerful position undertaking fiduciary duties to the principal. At today's event, we will review:

1. documents permitting the activity and authorizing the actor;
2. just stepping in and taking over;
3. court orders.

Authorizing Documentation for Another Adult to Handle One's Affairs?

You've heard the term "estate planner" broadly used. By pre-deciding whom to authorize and directing that those chosen actors be provided lawful authority in proper well-drafted documentation, many families will be spared the often costly and difficult alternatives to assisting their loved ones in times of incapacity. Your presenter suggests that adults with mental capacity meet one-on-one with an attorney about preparing for later vulnerability or incapacity. Documents when custom-drafted with an attorney often take advantage of other lawfully permitted tools. For instance, providing for funeral or disposition arrangements; and spousal delegation of guardianship upon the first spouse's passing for a minor or surviving spouse. Although seeing an attorney is beneficial to avoid error and minimize legal challenges later, for those who will not see an attorney, you may download and customize forms for free from these governmental websites if you have capacity. Do NOT designate anyone whom you do not fully trust to be honest and capable of handling your affairs later.:

<https://www.azag.gov/sites/default/files/sites/all/docs/lifecare/Life-Care-Planning-Packet-Complete.pdf>

providing each of these documents in English or Spanish with instruction and explanations:

- [Durable Health Care Power of Attorney](#)
- [Durable Mental Health Care Power of Attorney](#)
- [Living Will \(End of Life Care\)](#)
- [Letter to My Agent \(Representative\)](#)
- [Pre-Hospital Medical Directive \(Do Not Resuscitate\)](#) (must be printed on ORANGE paper)

Your Northtown Community Phoenix Neighborhood Patrol will provide you access to those and also to a sample [General, Durable Power of Attorney](#) provided by the Area Agency on Aging.

“Advanced Directives”

Adults who have legal “capacity” may execute (sign) a number of documents to authorize a different person to handle his/her affairs. For example, a general, durable power of attorney AND limited (or “special”) power of attorney, a durable health care power of attorney (often accompanied by a living will), and a mental health care power of attorney. (Only when appropriate some people might consider executing “trusts” of various sorts.) The person who signs a power of attorney is the PRINCIPAL and the person who acts for the Principal is the AGENT under the POA. Food for Thought: The “Orange Card” is a Do Not Resuscitate instruction. The effect of a DNR is that the unconscious patient may not be saved, even if it turned out to be for non-life threatening injury. A principal may prefer to leave well-informed decision-making to his agents rather than to pre-determine his fate with an Orange Card posted to the door or refrigerator.

Assuming duties is a fiduciary undertaking.

It is a class 5 felony for a de facto guardian or conservator to permit the life of a vulnerable adult to be endangered or his “health to be injured or endangered.” (A.R.S. 46-455); De Facto Guardians or Conservators are “in a position of confidence” with respect to “us[ing] the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult or the person's relatives” except pursuant to the exceptions listed in A.R.S. 46-456.

"DE FACTO CONSERVATOR" OR "DE FACTO GUARDIAN" EACH MEAN ANY PERSON WHO TAKES POSSESSION OF THE ESTATE OF A VULNERABLE ADULT, OR RESPECTIVELY, OF THE PERSON OF THE VULNERABLE ADULT, WITHOUT RIGHT OR LAWFUL AUTHORITY. A DE FACTO CONSERVATOR OR GUARDIAN IS SUBJECT TO ALL OF THE RESPONSIBILITIES THAT ATTACH TO A LEGALLY APPOINTED CONSERVATOR, TRUSTEE, OR GUARDIAN.

Letters of Authority - Court Orders That Authorize A Third Party to Handle Another's Affairs
For a brief class, go to www.azcourts.gov/probate/Training.aspx

GUARDIANS and CONSERVATORS are appointed by the Superior Court. Conservators may be appointed when the protected person is unable to manage his/her estate and affairs, if there is property that will be wasted or dissipated, or to obtain funds for the support, care and welfare of the person or those entitled to be supported by him/her. A guardian over an incapacitated person is someone who is appointed by the court or someone who files an acceptance of appointment made in an appropriate document by a parent or spouse and follows statutory requirements. (Guardianships over minors is not covered in today's topic.) A guardianship can be limited in scope or general.

Prevent the Event - Detect and Protect. ¹.

Know these warning signs of financial exploitation of a vulnerable adult:

- Isolation;
- Sudden change in life, health, or mentation (cognition);
- A new “BFF” (best forever friend);
- The new BFF handling the accounts;
- An estranged person suddenly taking over.

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Please phone if Debbie may be of service, and feel free to explore information at www.weecksllaw.com.

¹Coined for a seminar by Dawn Savatone of The Area Agency on Aging and by Ms. Weecks.