
Do I Have Any Recourse Against an Agent Appointed Pursuant to a Power of Attorney Who I Believe is Taking Advantage of My Loved One?

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An agent acting under a power of attorney, also known as an “attorney-in-fact,” is a fiduciary. A fiduciary owes the highest standard of care and loyalty to the principal. As a fiduciary, the agent usually has the burden of initially demonstrating that his or her actions were in the best interests of the principal. If the agent has exceeded his or her authority or has engaged in self-dealing or misappropriation of the principal’s assets, the agent may be liable to the principal for breach of the agent’s fiduciary duties.

North Carolina law provides that any interested person can file a petition to adjudicate an individual incompetent, even if only to a limited extent, and have a guardian appointed. The process generally must be completed within approximately thirty (30) days from the filing of the petition. A guardian is endowed with certain statutory powers and is generally responsible for managing the ward’s finances under the supervision of the Clerk of Superior Court. A guardian may, and usually does, revoke any power of attorneys upon his or her appointment. Accordingly, a guardianship is often an effective means to protect both the person and estate of an incompetent adult.

About the Author

Stephen Brown focuses his practice on business formation and structuring, wealth transfer planning, and litigation involving fiduciaries, trusts, estates and guardianships. If you have questions regarding whether or not to open a probate estate, please contact Stephen at 919-861-5508 or sab@youngmoorelaw.com.

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