

THE LYTLE LETTER

Question of the Week



Integrity. Experience. Results.

Integrity. Experience. Results.

Brian, a friend of mine has power of attorney for her incompetent mom. Can she transfer the house to herself and then sell?

Probably not. This question raises several important points regarding powers of attorney.

First, we need determine whether the power allows the attorney-in-fact (the donee of the power) to act during the donor's incompetency (disability). In Virginia a power of attorney does not survive disability unless it specifically says it does (which is why you'll see such powers sometimes called "durable" powers of attorney).

Second, the attorney-in-fact is a fiduciary. The Virginia Supreme Court says that in such a situation "any transaction to the benefit of the [fiduciary] and to the detriment of the other is presumptively fraudulent" and

that "the burden is on the [fiduciary] to overcome the presumption of constructive fraud by clear and convincing evidence." This is referred to as self-dealing.

That is tough language, and as a result a title insurance company will be loathe to insure title where this has occurred in the chain. It is possible, of course, depending on the specific facts and the specific language of the power to overcome the problem, which is why the answer is not an outright no.

Please be careful where there has been such a transfer (or will be) and have the client get legal advice beforehand.

I'm here if you need me.



Lytle Law & Lytle Title

Are proud to support the United States Marine Corp Reserve Toys for Tots program

Each day we will put the collection box outside of our offices, and we would love to have your support. Toys for Tots needs toys for children from ages 0-2 and ages 11-13 in particular. They do not allow toys with military themes, toys related to weapons, toys with candy, used toys or toys with chemicals. New toys around the \$10 or above price range are preferred. The local Marine Corps Reserve center has decided to give toys to children less than 14 years old only (except in special needs cases).

Thanks to Lytle Law's Lara Beck for coordinating and planning this effort each year.

Semper Fidelis.



It Depends

random thoughts, observations, and more ...

Riddle Me This: What can run but never walks, has a mouth but never talks, has a bed but never sleeps, has a head but never weeps? **Wow** LandAmerica, formerly Lawyer's Title, is in bankruptcy. Another reason to use strong affiliates and partners. Like me. Just sayin' **Read this article** for NAR's proposed solution to the market (note the banks out of

brokerage recommendation). **Happy December Birthdays** to Janet (6th), Greg (7th), Cindy 4th), Amerika (14th), Carol (25th) and Ronda (29th)! **Save This Date** - May 16th for the Lytle Law 5k. Game on Peggy, you slowpoke. **Miles to Go Before I Sleep Award** to Sherry, Tee, Connie and Liz for being first in the parking lot every morning. After me.