FIDUCIARIES, GUARDIANS, & TRUSTEES
A Look Back and Ahead

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INTRODUCTION

As a result of Florida’s large population, wealth, and its reputation historically for being a retirement destination for the nation’s elderly population, for decades the state has been forced to be at the forefront of fiduciary laws. As a result of this Florida has a number of statutes and laws that are intended to map out the duties, powers, and overall interaction between an agent and principal (trustee/beneficiary, guardian/ward, personal representative/estate, etc.). This presentation is intended to give you some historical context for these laws as well as to lead a discussion on the underlying policies inherent in these laws to assist you in navigating the myriad of responsibilities.

POLICIES AND HISTORY OF FLORIDA’S CURRENT FIDUCIARY LAWS

I. COMMON LAW
   A. Meinhard v. Salmon, 249 N.Y. 458 (1928) – Not honesty alone, but the punctilio of an honor the most sensitive
   B. U.S. v. Chestman, 947 F.2d 551, 567 (2d Cir. 1991) – The relationship is focused on reliance and dependency.
   C. Doe v. Evans, 814 So. 2d 370 (Fla. 2002) – The fiduciary relationship stretches definition.

II. Florida’s Probate Code
   A. 1933-1975 - Florida Probate Law (Ch. 731-734)
   B. 1976-current – Florida Probate Code (Ch. 731-735)

III. Florida Trust Code
   A. 1776-2006 – Equity Courts and Chapter 737 (Pre-Trust Code)
   B. 2006 – Florida Uniform Trust Code (Ch. 736)

IV. Florida Power of Attorney Statute
   A. 1974 – Florida Durable Power of Attorney Statute – (§ 709.08)
   B. 2011 – Florida Power of Attorney Act (Ch. 709 Part II)

V. Florida Guardianship Law
   A. 1945 – Florida Guardianship Act
   B. 1975 – Florida Guardianship Law (Ch. 744)
RECENT AND UPCOMING CHANGES

I. Exploitation of the Elderly
   A. Criminal Exploitation (§ 825.103)
   B. Civil Theft (§ 772.11)
   C. Exploitation Injunction (§ 825.1035)

II. Florida Office of Public and Professional Guardians
    A. Professional Guardianship Oversight
    B. Application to Family Guardians

III. Response to Orlando Guardian Abuse (2019 SB 994)
    A. Do-Not-Resuscitate Orders and the Courts
    B. Conflicts of Interest
    C. Identification of Alternatives

IV. Florida Guardianship Code Rewrite
    A. Begun in 2010 based on Chapter 744
    B. Underlying Policies