

Supreme Court of Virginia Sounds Warning to Fiduciaries

By Wayne Eig

Paley Rothman's Estate & Trust Administration and Estate Planning groups are frequently called upon to explain to fiduciaries (Personal Representatives, Trustees, agents under a Power of Attorney) the duties they owe to their principals. We remind these individuals that fiduciaries must act at all times for the sole benefit of their principal.

In *Ayers v. Shaffer* the Supreme Court of Virginia warned that a presumption of undue influence arises when a fiduciary obtains a benefit from the principal **even if the transactions were not accomplished using the instrument creating the fiduciary relationship.**

In *Ayers*, after the death of her husband, Elsie R. Smith, who was then 80 years old and suffering from diabetes, dementia and other medical problems, executed a durable power of attorney naming a neighbor as her agent. Elsie also entered into contracts and changed the title of certain assets and beneficiary designations which personally benefited the neighbor.

The Court, remanding the case to circuit court, explained that the relationship between a principal and an agent may give rise to a **presumption of undue influence**. Citing precedent, the Court further explained that "a confidential relationship springs from any fiduciary relationship, and when such relationship is found to exist, **any transaction to the benefit of the dominant party and to the detriment of the other is presumptively fraudulent** (emphasis added)."

Fiduciaries may under certain circumstances accept from their principal a personal benefit. However, because doing so may give rise to a presumption of undue influence, a fiduciary would be well advised to speak with an attorney *prior* to contracting with the principal.

Paley Rothman can provide fiduciaries an independent evaluation of the degree of risk exposure associated with certain proposed transactions and suggest recommendations to minimize the risks.