

**REPORT OF THE  
VIRGINIA BAR ASSOCIATION ON**

**FINANCIAL ABUSE OF VULNERABLE  
ADULTS AND THE DURABLE POWER  
OF ATTORNEY**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**HOUSE DOCUMENT NO. 13**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1995**



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The Honorable George Allen  
Governor  
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The General Assembly  
Richmond, Virginia

Dear Governor Allen and Ladies and Gentlemen:

I have the honor of forwarding to you The Virginia Bar Association's Report, *Financial Abuse of Vulnerable Adults and the Durable Power of Attorney*. This Report is submitted in response to House Joint Resolution 84 which asked The Virginia Bar Association to study durable powers of attorney.

As noted, this is a preliminary report as the Committee is continuing to study and explore methods for strengthening civil remedies to enhance protection of adults who are vulnerable to financial exploitation.

The Virginia Bar Association is pleased to have been asked to conduct this study and hopes that its Report will be useful to the Governor's office and the legislature in connection with this important issue.

Very truly yours,

M. Langhorne Keith

Enclosure

A voluntary organization, established in 1888, for the purpose of improving the law and the administration of justice, and upholding the standard of honor and integrity in the legal profession.

## ACKNOWLEDGEMENTS

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The Virginia Bar Association conducted this study at the request of the 1994 Virginia General Assembly through House Joint Resolution Number 84. A committee of members from the Virginia Bar Association was instrumental in studying the issues, making recommendations and drafting legislation to implement recommendations. Staff assistance to the study committee was provided by Joy Duke of the Virginia Department of Social Services and Cyrano Pyles of the Virginia Department for the Aging.

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# I. INTRODUCTION

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## Study Charge

House Joint Resolution 84 requests the Virginia Bar Association, with the assistance of the Department of Social Services and the Department for the Aging, to study durable powers of attorney. The resolution specified that the study include:

- the use and potential abuse of durable powers of attorney; and,
- the need for strengthening civil remedies for financial exploitation.

This document was prepared in response to HJR 84 which is provided in Appendix A.

## Study Objectives

An assessment of the study request led to the following objectives:

- To review the potential for abuse inherent in the use of powers of attorney;
- To review the extent and nature of known power of attorney abuse in Virginia;
- To assess demographic trends likely to impact future use and potential abuse of powers of attorney;
- To review actions taken in a sample of states to prevent or diminish the incidence of power of attorney abuse; and,
- To review legislative options for strengthening protection to individuals who may be susceptible to durable power of attorney.

## Scope of this Study

The study committee focused on the use and potential abuse of durable powers of attorney for this first phase of its response to HJR 84. This report presents that response. HJR 84 also request the study committee to explore methods for strengthening civil remedies to enhance protection of adults who are vulnerable to financial exploitation. The study committee's work on the second charge is continuing and a subsequent report will be made to the Governor and the General Assembly.

## **Background**

There have been an increasing number of media and anecdotal accounts of abuse of authority by persons entrusted with the control of another's assets through a durable power of attorney. Very frequently durable powers of attorney are held by family members who are given very broad powers under the power of attorney. The extent of the authority given is sometimes related to the agent's position of trust as a family member and at other times it is related to the principal's lack of understanding of the extent and nature of the power being conferred. A growing number of case situations in which older or incapacitated adults are financially victimized are being identified. The known number of occurrences are believed to be only a small representation of the total problem since most occurrences are not reported to authorities and no record is made. The National Aging Resource Center on Elder Abuse estimated, in a national study conducted in 1988, that 20 percent of all victims of elder abuse were financially exploited.<sup>1</sup>

The elderly are made more vulnerable to financial exploitation by their increased susceptible to certain illnesses (arthritis, hypertension, congestive heart failure, Parkinson's Disease, diabetes, dementia). They are also more likely than other segments of the population to sustain permanent disability as a result of falls and fractures. Any decrease in physical ability or mental capacity increases vulnerability to victimization.

A relatively small percentage of those who are victims of financial exploitation are victimized by a person holding their power of attorney. In 1993 the Virginia Department of Social Services examined 543 cases in which financial exploitation was substantiated by an adult protective services investigation. In 11% of those cases, the vulnerable adults were victimized by persons holding guardianships or powers of attorney.

In fiscal years 1993 and 1994, in Virginia, 543 and 637 cases respectively, were substantiated by local departments of social services through adult protective services (APS) investigations.<sup>2</sup> The impact of financial exploitation can be both immediate and severe. With most of their earning capacity behind them, older victims find it impossible to regain lost resources and the results are often permanently devastating.<sup>3</sup>

## **Approach and Methodology**

Responsibility for conducting the study was delegated by the General Assembly through House Joint Resolution 84 to the Virginia Bar Association. To assist with the study, the Virginia Bar Association formed a study committee composed of members of the bar.

Staff support for the study was provided by the Virginia Departments of Social Services and Aging. Refer to the Acknowledgements for a complete listing of members.

Approaches used to respond to the study objectives included: a review of statistical information relative to the prevalence and nature of financial exploitation cases substantiated through adult protective services investigations in Virginia for fiscal years 1993 and 1994; testimony from witnesses with direct experience with financial exploitation; committee review of a national study on the abuse of the durable power of attorney conducted by the Government Law Center of Albany Law School published in March, 1994; review of applicable law; and research and personal experience of committee members.

□ **Organization of this Report**

This report is organized into five chapters. Chapter II is a review of a demographic trend toward an older population and the implication that has for greater numbers of victims. This chapter also examines the increase in the known number of financial exploitation victims in Virginia during the past several years. Chapter III describes the purposes of the durable power of attorney, its value and its potential for abuse. This chapter also provides a brief review of responses taken by selected states. Chapter IV provides an overview of a recent national study of this topic. Chapter V presents conclusions and outlines recommendations of this study committee.

## II. AN OVERVIEW OF THE PROBLEM

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### Demographic Trends and Implications

Industrialized nations are experiencing a significant aging of their populations as birth rates remain low and life expectancy increases.<sup>4</sup> Since 1900, the percentage of Americans age 65 and over has more than tripled, from 4.1% in 1900 to 12.7% in 1992, and the total number has increased over 10 times, from 3.1 million in 1900 to 32.3 million in 1992 (AARP, 1993).<sup>5</sup> It is estimated that two-thirds of all the people who have ever lived to the age of 65 are alive today.

As the numbers and proportion of the population living to advanced age have increased, individuals with functional impairments are living longer and their vulnerability to victimization increases. The potential for escalation in all forms of elder abuse, including financial exploitation, is very real.

### The Virginia Experience

All categories of adult abuse have seen a steady increase over the last decade. In no category is the increase more dramatic than in the financial exploitation category where the increase in substantiated cases from 1990 to 1994 is 800% (that is, 70 substantiated cases in fiscal year 1990 and 630 substantiated cases in fiscal year 1994). Persons who work in Medicaid eligibility determination are in an especially advantageous position for detecting financial exploitation. In five public forums which were held as a part of the 1993 study for financial exploitation, testimony by Medicaid workers reveal that suspected exploitation was not being reported by Medicaid workers due to a misinterpretation of Medicaid regulations. The workers believed regulations prohibited them from reporting. Had reports been made by Medicaid workers, the number of those identified as financially victimized by the power of attorney and others would have been greater.

Most victims of financial exploitation have either a physical or a mental impairment. In 1993 the Department of Social Services conducted a study in response to Senate Joint Resolution Number 308 which was passed by the 1993 General Assembly. SJR 308 requested a study of financial exploitation of incapacitated adults in the Commonwealth. That study found, in cases handled through the APS system, that 90% of victims had both physical and mental impairments.<sup>6</sup> The perpetrator of the exploitation is most often a family member (75%). The family member who exploits is most often an adult child of the victim. In 11% of all reported cases the perpetrator held the victim's power of attorney or guardianship.<sup>7</sup> The case situations include perpetrators who believe they

are entitled to the resources of the older person. There are also those who go to great lengths to gain access to the incapacitated adult's resources.

Seventy-three percent of all exploitation cases reviewed for the 1993 General Assembly study involved the theft of cash, checks, or bank accounts. More than half of those victimized sustained losses of less than \$1,000. Twelve people lost assets valued in excess of \$50,000.

### III. THE DURABLE POWER OF ATTORNEY

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#### **The Purpose and Value of the Durable Power of Attorney**

"A power of attorney is a legal document which gives an agent, also known as an attorney-in-fact, the power to perform various transactions on behalf of another individual. For the power of attorney to be valid, the principal must be competent when the document is executed. The power of attorney is durable if the agent's power is not terminated by the incapacity of the principal."<sup>8</sup> In any event, the power ceases at the death of the principal. The Commonwealth of Virginia lead the nation in introducing the durable of attorney in 1954. Other states began introducing the durable power of attorney in the 1960s. General powers of attorney that are not durable have the disadvantage of becoming useless just when it may be needed most. In response to this problem, all states and the District of Columbia have enacted laws authorizing general durable powers of attorney. They are widely used once individuals become unable to manage their own affairs. Durable powers are thus a useful planning tool for persons concerned about later incapacity.<sup>9</sup> The document offers a simple, inexpensive alternative to court proceedings normally required for third party financial management.

#### **Potential for Abuse of the Durable Power of Attorney**

The preparation of a document conferring durable power of attorney is usually inexpensive. Although legal advice is desirable it is not required by law. Standard forms are readily available and are often executed without full awareness of the extent of authority conferred or the risk involved. The lack of regulation and monitoring adds to the appeal of the durable power of attorney as an advance planning tool. These same qualities which make the durable power of attorney popular as an advance planning tool also contribute to its susceptibility to abuse. The challenge is to strengthen protection without destroying the qualities which make the document valuable to a large number of older and disabled persons.

#### **Responses of Other States**

In recent years state legislatures responded to concerns about durable powers of attorney by amending statutes. Most amendments are intended to make it easier for the public to create durable powers, to enhance third party acceptance of an agent's authority, or to strengthen protection against abuse of the authority of the agent. Colorado, New Hampshire, North Carolina, Wisconsin, and California are among the states that have enacted legislation to curtail abuse of the durable power of attorney.

The 1994 Colorado legislature passed a bill which specifies that an agent has a fiduciary duty of care to the principal and mandates that the agent keep a record of receipts, disbursements, and significant actions taken under the agency. Third parties with cause to question an agent's authority may bring an interpleader action in the appropriate court. If the principal has lost capacity, any interested persons may petition the court to interpret the document or for a decision about whether the agent's actions are in accord with the agency instrument or are in the best interest of the principal (§ 15-14-601 through 15-14-611).

New Hampshire has a statute (New Hampshire RSA § 506:7) which allows such persons as are designated in the law to compel an accounting of the agent holding a durable power of attorney. The request may be for either a financial accounting, a personal accounting or both. If the agent does not comply within a given period of time, the person requesting the accounting may file a petition in the superior court or the probate court to ask the court to order the accounting.

North Carolina law (General Statute § 32a-8) specifies that, to be valid, a durable power of attorney must be registered in the office of the register of deeds of the county. Within 30 days after being registered the attorney in fact must file a copy of the power of attorney with the clerk of the court. The North Carolina law requires an inventory statement at the time of filing and annually thereafter and also at the time of death. However, the principal can and usually does waive the requirement for the inventory filing. Powers given are typically very broad giving sweeping powers to the attorney-in-fact. The law does not require oversight or accountability after filing the document. The law has had no impact on the incidence of financial exploitation in North Carolina.

A new Wisconsin law (Public Law 94-299) provides that recording of durable powers of attorney is permissible and that powers which are recorded should be filed with the register of deeds.

California has revised its statute and added sections on modification and revocation. The revised statutes describes duties and authorities of agents including agents selected because of special skills. When an agent is selected because of special skill or because he presents himself as having special skill, that agent has a higher standard of responsibility.

□ **Current Research on Durable Power of Attorney**

The most comprehensive study of durable power of attorney abuse to date was conducted by the Government Law Center of Albany Law School and published in March 1994 as *Abuse and the Durable Power of Attorney: Options for Reform*. The following section presents a brief synopsis of that study.

## IV. A NATIONAL STUDY

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### Purpose of the National Study

Two law students at the Government Law Center at Albany Law School conducted a national research project on *Financial Abuse of the Elderly through Durable Powers of Attorney*. The focus of the research was on determining whether abuse exists and, if so, what types of legal reforms are needed to minimize abuse.<sup>10</sup> The dearth of research in this area and the factual information gathered makes this study especially significant.

Social workers and attorneys who work with older persons and who are knowledgeable about this issue have a range of opinions on whether there is a problem and the extent of the problem. Some have expressed a belief that documented incidence of abuse by persons holding durable powers of attorney is so minimal as to be statistically insignificant. Others believe the documented incidence is but a small indicator of a very large problem. The National Center on Elder Abuse and other authorities on elder abuse take the later position on this issue.

### Conclusions from the National Study

Some social workers and attorneys who are familiar with the problem of financial exploitation and who were participants in this study believe that this form of mistreatment is much more prevalent than available statistics suggest. At a minimum, the study finds that some degree of financial abuse is perpetrated by individuals holding durable powers of attorney. Sixty-six percent of those responding to the research survey reported personal knowledge of some degree of durable power of attorney abuse. Some legislative solutions may curb durable power of attorney abuse but may also have the effect of impeding the proper use of the document as a simple, inexpensive financial management tool. The study identifies and analyses a number of options for minimizing abuse legislative options for minimizing abuse. Legislative solutions which enhance protection of the vulnerable adult with minimal impact on the ease and expense with which the document is used seems warranted.

## V. CONCLUSIONS AND RECOMMENDATIONS

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The durable power of attorney is valued as an efficient, effective, inexpensive method to affect advance planning and to avoid guardianship hearings. This study committee affirms the value of the durable power of attorney and asserts that it is an invaluable advance planning tool.

It appears that cases of financial exploitation are under-reported to Adult Protective Services, the program with statutory responsibility for receiving and investigating complaints of adult abuse, neglect, and exploitation. This type of abuse is difficult to discover and more difficult to prove. There is seldom prosecution of the case and stolen property is rarely recovered. Those adults least able to protect themselves are most vulnerable.

The study committee believes that a simple method of calling the agent to reveal actions taken under the durable power of attorney is appropriate, would not have a negative effect on the usefulness of the document and would help to deter and detect abuse. The study committee recommends accounting by the attorney-in-fact as described in the following section.

### Accounting by the Attorney-In-Fact

If an attorney-in-fact is required to share with proper persons information regarding actions taken under the authority conferred by the power of attorney, past improper acts would be uncovered. An agent who knows that actions taken under a power of attorney are subject to review and that misconduct will likely be discovered is less likely to abuse authority.<sup>11</sup> Legislation is needed to provide a remedy where attorneys-in-fact refuse to share information with proper persons regarding activities taken under the power of attorney.

Under current law, the only remedy where abuse is suspected or known is a proceeding brought by a guardian or committee to terminate the authority of the attorney-in-fact and to obtain an accounting. Since only a competent grantor or the guardian of an incompetent grantor has standing to compel an accounting, there exist a gap in Virginia law. Where no adjudication of incapacity has been had, and thus there is no guardian or committee serving, such an adjudication is currently a prerequisite to obtaining relief. However, formal accounting is expensive, proceedings seeking determinations of incapacity are often considered distasteful by interested relatives of principals who are in fact incapacitated, and furthermore, principals who have granted durable powers of

attorney usually have done so with a purpose, at least in part, of avoiding the need for formal adjudications of incapacity.

Abuses would be discouraged if attorneys-in-fact could be required to report their activities to and permit inspection of records by proper persons interested in the welfare of the principal. Such proper persons include family members, co-attorneys-in-fact and successor attorneys-in-fact, and the Adult Protective Services unit of local Social Services Boards. Recommendations are submitted as follows:

○ ***Recommendation***

1. Amend § 11-9.1 of the Code of Virginia to expand the authority of courts to remove or limit the authority of attorneys-in-fact where no guardian or committee has been appointed for the incapacitated principal. (See Appendix B, proposed language of § 11-9.1 as amended.)
2. Enact a new section, § 11-9.6 which imposes on attorneys-in-fact a duty, on reasonable request of a proper person, to disclose actions taken and to permit inspection of records pertaining to such actions. (See Appendix C, proposed language of § 11-9.1.)
3. Enact a new section, § 37.1-132.1, to empower a court, on petition of a proper person, to order discovery of actions taken under a power of attorney and records pertaining to such action. Discovery is authorized to the extent available under Part Four of the Rules of the Supreme Court applicable to civil actions at law and in equity. The discovery remedy is cumulative, and not in limitation of remedies otherwise available. (See Appendix D, proposed language of § 37.1-132.1.)

## NOTES

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1. Tatara, Toshio, Ph.D., testimony given on behalf of the National Aging Resource Center on Elder Abuse before Subcommittee on Health and Long-Term Care, Select Committee on Aging, U.S. House of Representatives. May 1, 1990. Reported in *Elder Abuse: Questions and Answers*. NARCEA. 1990, Wash. D.C., page 6.
2. Virginia Department of Social Services, *Adult Protective Services Annual Statistical Report*, State Fiscal Year 1993 and *Adult Protective Services Annual Statistical Report*, State Fiscal Year 1994.
3. Blunt, A. Paul. "Financial Exploitation of the Incapacitated: Investigation and Remedies." *Journal of Elder Abuse & Neglect*, Volume 5, Number 1, 1993, p. 19.
4. Harshbarger, Scott, *Elderly Protection Project: Advanced Law Enforcement Training Manual*, Third Edition.
5. Reams, Betty J., et. al., *Identifying Curriculum and Resources for the Long-Term Care Workforce*, (unpublished report), September 30, 1994.
6. Department of Social Services report to the Governor and the General Assembly of Virginia, "*Financial Exploitation of Older Adults and Disabled Younger Adults in the Commonwealth*," Senate Document No. 37, 1994.
7. Ibid.
8. Federman, Jonathan and Meg Reed, *Abuse and the Durable Power of Attorney: Options for Reform*, Government Law Center of Albany Law School, March 1994, p.9.
9. Stiegel, Lori A., Salley Balch Hurme, and Michael Stone, *Durable Powers of Attorney: An Analysis of State Statutes*. Clearinghouse Review, October, 1991.
10. Federman and Reed. Op. Cit., p. 108.
11. Federman and Reed. Op. Cit., p. 86.

## 1994 SESSION

LD8143761

## HOUSE JOINT RESOLUTION NO. 84

Offered January 21, 1994

Requesting the Virginia Bar Association, with the assistance of the Department of Social Services and the Department for the Aging, to study the use and potential abuse of durable powers of attorney and the need for strengthening civil remedies for financial exploitation.

Patrons—Giesen, Diamonstein, Hellig and Mayer

Referred to Committee on Rules

WHEREAS, some older adults and disabled younger adults who are victims of financial exploitation are victimized by persons to whom they have given their power of attorney; and

WHEREAS, 11 percent of all cases in which financial exploitation was substantiated in fiscal year 1993 involved a perpetrator who held the victim's power of attorney or guardianship; and

WHEREAS, vulnerable adults sometimes do not know how or may not be able to rescind the power of attorney, or the power of attorney may be durable; and

WHEREAS, residents of long-term care facilities are at high risk of being discharged for non-payment when persons holding their power of attorney fail to use the residents' resources to pay for care; and

WHEREAS, adult protective services investigations document a lack of accountability of persons holding durable powers of attorney for persons who are not competent; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Bar Association, in collaboration with the Department of Social Services and the Department for the Aging, be requested to conduct a study to (i) examine the use and potential abuse of powers of attorney and (ii) explore methods for strengthening civil remedies to enhance the protection of vulnerable adults from financial exploitation.

In conducting the study, input shall be sought from agencies and organizations representing the elderly and individuals with disabilities. The Department of Social Services and the Department for the Aging shall assist the Virginia Bar Association in conducting the study and other agencies of the Commonwealth shall provide assistance upon request.

The Virginia Bar Association shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.

## Official Use By Clerks

## Agreed to By

The House of Delegates  
 without amendment   
 with amendment   
 substitute   
 substitute w/amdt

Agreed to By The Senate  
 without amendment   
 with amendment   
 substitute   
 substitute w/amdt

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Proposed Language for Section 11-9.1 as Amended

§ 11-9.1. When power of attorney, etc., not terminated by principal's disability; exception. -- Whenever any power of attorney or other writing, in which any principal shall vest any power or authority in an attorney-in-fact or other agent, shall contain the words "This power of attorney (or his authority) shall not terminate on disability of the principal" or other words showing the intent of the principal that such power or authority shall not terminate upon his disability, then all power and authority vested in the attorney-in-fact or agent by the power of attorney or other writing shall continue and be exercisable by the attorney-in-fact or agent on behalf of the principal notwithstanding any subsequent disability, incompetence, or incapacity of the principal at law. All acts done by the attorney-in-fact or agent, pursuant to such power or authority, during the period of any such disability, incompetence or incapacity, shall have in all respects the same effect and shall inure to the benefits of, and bind the principal as fully as if the principal were not subject to such disability, incompetence or incapacity. If any guardian or committee shall thereafter be appointed for the principal, the attorney-in-fact or agent shall, during the continuance of such appointment, account to such guardian or committee as he would otherwise be obligated to account to the principal. ~~However, the guardian or committee shall have the same right and power, which the principal would have, in the absence of such disability, incompetence or incapacity, to revoke, suspend or terminate all or any part of the power and authority of the attorney in fact or agent if, granted such power of revocation by the circuit court that appointed him in a proceeding to which the attorney in fact or agent was made a party.~~ The appointment of a guardian or committee pursuant to Title 37.1 shall not of itself revoke or limit the authority of the attorney-in-fact or other agent. However, in a proceeding in which the attorney-in-fact or other agent is made a party, the court which appointed the guardian or committee may revoke, suspend, or otherwise limit such authority. Furthermore, where no guardian or committee has been appointed, the circuit court of the city or county where the principal resides or is located, in a proceeding brought by a person interested in the welfare of the principal as defined in § 37.1-132.1, and in which the attorney-in-fact or other agent and the principal are made parties, may terminate, suspend, or otherwise limit the authority of the attorney-in-fact or other agent upon a finding that such termination, suspension or limitation is in the best interests of the principal or his estate.

Proposed Language for a New Section 11-9.6

**Certain duties of attorneys-in-fact and agents empowered to act under § 11-9.1. -- An attorney-in-fact or other agent empowered to act under § 11-9.1 shall, on reasonable request made by a person interested in the welfare of a principal who is unable to properly attend to his affairs, as set forth in § 37.1-132.1, disclose to such person the extent to which he has chosen to act and the actions taken on behalf of the principal, and shall permit reasonable inspection of records pertaining to such actions by such person unless such disclosure or inspection is specifically prohibited by the terms of the instrument under which he acts.**

## Proposed Language for a New Section 37.1-132.1

**Discovery of information and records regarding actions of certain agents and attorneys-in-fact. -- A.** Any person interested in the welfare of a principal believed to be unable to properly attend to his affairs, may, for the purpose of obtaining information pertinent (1) to the need or propriety of instituting a proceeding under this Chapter or (2) to the need or propriety of terminating, suspending or limiting the authority of an attorney-in-fact or other agent, petition a circuit court for discovery from the attorney-in-fact or other agent of information and records pertaining to actions taken pursuant to powers or authority conferred by a power of attorney or other writing described in § 11-9.1.

**B.** Such petition may be filed in the circuit court of the county or city in which the attorney-in-fact or agent resides or has his principal place of employment, or if a non-resident, in any court in which a determination of incompetency, incapacity or impairment of the principal is proper under this Title, or, if a committee or guardian has been appointed for the principal, in the court which made the appointment. The court, after reasonable notice to the attorney-in-fact or agent and to the principal if no guardian or committee has been appointed, may conduct a hearing on the petition. The court, upon hearing on the petition and upon consideration of the interests of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the attorney-in-fact or agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent or attorney-in-fact to make discovery, the court may make and enforce such further orders respecting discovery as would be proper in a civil action subject to such Rules, and may award expenses, including reasonable attorney's fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery, and the attorney-in-fact or agent had been informed of the intention of the petitioner to file a petition hereunder if the request were not fully honored, may, in its discretion, order the attorney-in-fact or agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney fees.

**C.** A "principal believed to be unable to properly attend to his affairs" means an individual believed in good faith by the petitioner to be a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other causes to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. A "person interested in the welfare of a

**principal" includes members of the principal's family, persons who are co-agents or co-attorneys-in-fact and alternate and successor agents and attorneys-in-fact designated under the power of attorney or other writing described in § 11-9.1 and the Adult Protective Services Unit of the local Social Services Board for the city or county where the principal resides or is located at the time of the request.**

**D. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the attorney-in-fact or other agent.**