

TRUST & PROBATE LITIGATION NAVIGATOR

HUTCHISON & STEFFEN

ATTORNEYS

ISSUE 9

POWER OF ATTORNEY

Russel J. Geist practices primarily in the Firm's trust and probate litigation department, handling cases concerning will, trust, and probate disputes. In addition, he works with clients to facilitate asset protection and business planning and corporate transactions. Russel and other attorneys at the Firm work closely with clients' trust and estate planning professionals to maximize clients' opportunities for successful resolution of disputes. Russel may be reached at 702.385.2500 or rgeist@hutchlegal.com.

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Imagine four scenarios. The first is an individual suffering from the debilitating effects of Alzheimer's disease. The second is an accident victim unconscious because of injuries. The third is traveling abroad and leaving at home minor children. The fourth is a couple selling their house and the bank requiring both spouses to sign documents, but one spouse is on professional assignment overseas. In all four cases, someone is incapable of making or executing a decision for themselves, either permanently or temporarily. Those decisions could range from when to cease life-sustaining medical support to paying employees to authorizing medical treatment for a child.

Most of us will one day face similar circumstances. The inability or incapacity to make decisions because of physical or mental health failings or physical absence for some reason can be a sobering thought. Important decisions relating to medical treatment, money and asset management, business matters, children, and other interests can be adversely affected when a person is incapable of making decisions. Age

is a common reason, but illnesses, accidents, travel, and professional assignments can call for a surrogate to make decisions for someone else.

The law anticipates these kinds of situations through a legal document known as a Power of Attorney. This document can provide comfort and protection when the inability to make or execute decisions surfaces. A Power of Attorney authorizes someone to act on behalf of another. The person who gives the authority is known as the grantor (or principal) and the person to whom the authority is granted is the agent (or attorney-in-fact).

A Power of Attorney is generally a straightforward legal document that is well worth the relatively moderate effort and time required to create it. The document can spare an individual or family untold grief and stress and extraordinary costs, including professional fees and costs, which often arise without one. Retaining experienced legal counsel to draft the Power of Attorney is essential to protect the interests of both the grantor and the agent.

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The key is to draft the Power of Attorney to define in writing exactly what the parties intend. The document can be drafted broadly or narrowly. It can provide sweeping authority or be limited to one subject or matter. It's important for the grantor and the agent to fully appreciate that the delegated authority is consequential and should not be given casually or taken lightly. The Power of Attorney grants authority for the agent to take actions that will legally bind the grantor. Therefore, a well-crafted document will:

- **Identify the grantor and the agent;**
- **Describe the circumstances under which the authority is granted and becomes effective (e.g., mental or physical incapacity, travel outside the country, professional assignment, or absence);**
- **Dictate specifically the authority granted;**
- **Detail the breadth or limitations of the authority;**
- **Identify the duration of the authority;**
- **Describe any events or circumstances terminating the authority.**

As noted before, most often the delegated authority relates to healthcare, finances/business, and minor children or dependents. It is often wise to create a separate Power of Attorney that relates to each of these matters. ■

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