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## CHAPTER 11.94. POWER OF ATTORNEY

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§ 11.94.010. Designation -- Authority -- Effect of acts done -- Appointment of guardian, effect -- Accounting -- Reliance on instrument

(1) Whenever a principal designates another as his or her attorney-in-fact or agent, by a power of attorney in writing, and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney-in-fact or agent is exercisable on behalf of the principal as provided notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or the principal's guardian or heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. A principal may nominate, by a durable power of

attorney, the guardian or limited guardian of his or her estate or person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. If a guardian thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if the principal were not disabled or incompetent, to revoke, suspend or terminate all or any part of the power of attorney or agency.

(2) Persons shall place reasonable reliance on any determination of disability or incompetence as provided in the instrument that specifies the time and the circumstances under which the power of attorney document becomes effective.

(3) (a) A principal may authorize his or her attorney-in-fact to provide informed consent for health care decisions on the principal's behalf. If a principal has appointed more than one agent with authority to make mental health treatment decisions in accordance with a directive under chapter 71.32 RCW, to the extent of any conflict, the most recently appointed agent shall be treated as the principal's agent for mental health treatment decisions unless provided otherwise in either appointment.

(b) Unless he or she is the spouse, state registered domestic partner, or adult child or brother or sister of the principal, none of the following persons may act as the attorney-in-fact for the principal: Any of the principal's physicians, the physicians' employees, or the owners, administrators, or employees of the health care facility or long-term care facility as defined in RCW 43.190.020 where the principal resides or receives care. Except when the principal has consented in a mental health advance directive executed under chapter 71.32 RCW to inpatient admission or electroconvulsive therapy, this authorization is subject to the same limitations as those that apply to a guardian under RCW 11.92.043(5) (a) through (c).

(4) A parent or guardian, by a properly executed power of attorney, may authorize an attorney-in-fact to make health care decisions on behalf of one or more of his or her children, or children for whom he or she is the legal guardian, who are under the age of majority as defined in RCW 26.28.015, to be effective if the child has no other parent or legal representative readily available and authorized to give such consent.

(5) A principal may further nominate a guardian or guardians of the person, or of the estate or both, of a minor child, whether born at the time of making the durable power of attorney or afterwards, to continue during the disability of the principal, during the minority of the child or for any less time by including such a provision in his or her power of attorney.

(6) The authority of any guardian of the person of any minor child shall supersede the authority of a designated attorney-in-fact to make health care decisions for the minor

only after such designated guardian has been appointed by the court.

(7) In the event a conflict between the provisions of a will nominating a testamentary guardian under the authority of RCW 11.88.080 and the nomination of a guardian under the authority of this statute, the most recent designation shall control.

HISTORY: 2007 c 156 § 31; 2005 c 97 § 12; 2003 c 283 § 27; 1995 c 297 § 9; 1989 c 211 § 1; 1985 c 30 § 25. Prior: 1984 c 149 § 26; 1974 ex.s. c 117 § 52.

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§ 11.94.020. Effect of death, disability, or incompetence of principal -- Acts without knowledge

(1) The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by RCW 11.94.010, does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

(2) An affidavit, executed by the attorney-in-fact, or agent, stating that the attorney did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability, or incompetence, is, in the absence of a showing of fraud or bad faith, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

(3) This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

HISTORY: 1985 c 30 § 26. Prior: 1984 c 149 § 27; 1977 ex.s. c 234 § 27; 1974 ex.s. c 117 § 53.

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§ 11.94.030. Banking transactions

If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney-in-fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney-in-fact or agent has all the powers the principal

would have if alive and competent, then that language, notwithstanding chapter 30.22 RCW, includes the authority (1) to deposit and to make payments from any account in a financial institution, as defined in RCW 30.22.040, in the name of the principal, and (2) to enter any safe deposit box to which the principal has a right of access, subject to any contrary provision in any agreement governing the safe deposit box.

HISTORY: 1985 c 30 § 27. Prior: 1984 c 149 § 28.

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#### § 11.94.040. Liability for reliance on power of attorney document

(1) Any person acting without negligence and in good faith in reasonable reliance on a power of attorney shall not incur any liability.

(2) If the attorney-in-fact presents the power of attorney to a third person and requests the person to accept the attorney-in-fact's authority to act for the principal, and also presents to the person an acknowledged affidavit or declaration signed under penalty of perjury in the form designated in RCW 9A.72.085, signed and dated contemporaneously with presenting the power of attorney, which meets the requirements of subsection (3) of this section, and the person accepting the power of attorney has examined the power of attorney and confirmed the identity of the attorney-in-fact, then the person's reliance on the power of attorney is presumed to be without negligence and in good faith in reasonable reliance, which presumption may be rebutted by clear and convincing evidence that the person accepting the power of attorney knew or should have known that one or more of the material statements in the affidavit is untrue. It shall not be found that an organization knew or should have known of circumstances that would revoke or terminate the power of attorney or limit or modify the authority of the attorney-in-fact, unless the individual accepting the power of attorney on behalf of the organization knew or should have known of the circumstances.

(3) An affidavit presented pursuant to subsection (2) of this section shall state that:

(a) The person presenting himself or herself as the attorney-in-fact and signing the affidavit or declaration is the person so named in the power of attorney;

(b) If the attorney-in-fact is named in the power of attorney as a successor attorney-in-fact, the circumstances or conditions stated in the power of attorney that would cause that person to become the acting attorney-in-fact have occurred;

(c) To the best of the attorney-in-fact's knowledge, the principal is still alive;

(d) To the best of the attorney-in-fact's knowledge, at the time the power of attorney

was signed, the principal was competent to execute the document and was not under undue influence to sign the document;

(e) All events necessary to making the power of attorney effective have occurred;

(f) The attorney-in-fact does not have actual knowledge of the revocation, termination, limitation, or modification of the power of attorney or of the attorney-in-fact's authority;

(g) The attorney-in-fact does not have actual knowledge of the existence of other circumstances that would limit, modify, revoke, or terminate the power of attorney or the attorney-in-fact's authority to take the proposed action;

(h) If the attorney-in-fact was married to the principal at the time of execution of the power of attorney, then at the time of signing the affidavit or declaration, the marriage of the principal and the attorney-in-fact has not been dissolved or declared invalid; and

(i) The attorney-in-fact is acting in good faith pursuant to the authority given under the power of attorney.

(4) Unless the document contains a time limit, the length of time which has elapsed from its date of execution shall not prevent a party from reasonably relying on the document.

(5) Unless the document contains a requirement that it be filed for record to be effective, a person may place reasonable reliance on it regardless of whether it is so filed.

HISTORY: 2001 c 203 § 2; 1985 c 30 § 28. Prior: 1984 c 149 § 29.

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#### § 11.94.043. Durable power of attorney -- Revocation or termination

The durable power of attorney provided for under this chapter shall continue in effect until revoked or terminated by the principal, by a court-appointed guardian, or by court order.

HISTORY: 1989 c 211 § 2.

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#### § 11.94.046. Durable power of attorney -- Validity

(1) A durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989, that specifically authorizes an attorney-in-fact to make decisions relating to the health care of the principal shall be deemed valid, except for the exemptions provided for in RCW 11.94.010(3).

(2) Nothing in this chapter affects the validity of a decision made under a durable power of attorney executed pursuant to chapter 11.94 RCW before July 23, 1989.

HISTORY: 1989 c 211 § 3.

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§ 11.94.050. Attorney or agent granted principal's powers -- Powers to be specifically provided for -- Transfer of resources by principal's attorney or agent

(1) Although a designated attorney-in-fact or agent has all powers of absolute ownership of the principal, or the document has language to indicate that the attorney-in-fact or agent shall have all the powers the principal would have if alive and competent, the attorney-in-fact or agent shall not have the power to make, amend, alter, or revoke the principal's wills or codicils, and shall not have the power, unless specifically provided otherwise in the document: To make, amend, alter, or revoke any of the principal's life insurance, annuity, or similar contract beneficiary designations, employee benefit plan beneficiary designations, trust agreements, registration of the principal's securities in beneficiary form, payable on death or transfer on death beneficiary designations, designation of persons as joint tenants with right of survivorship with the principal with respect to any of the principal's property, community property agreements, or any other provisions for nonprobate transfer at death contained in nontestamentary instruments described in RCW 11.02.091; to make any gifts of property owned by the principal; to make transfers of property to any trust (whether or not created by the principal) unless the trust benefits the principal alone and does not have dispositive provisions which are different from those which would have governed the property had it not been transferred into the trust, or to disclaim property.

(2) Nothing in subsection (1) of this section prohibits an attorney-in-fact or agent from making any transfer of resources not prohibited under chapter 74.09 RCW when the transfer is for the purpose of qualifying the principal for medical assistance or the limited casualty program for the medically needy.

HISTORY: 2001 c 203 § 12; 1989 c 87 § 1; 1985 c 30 § 29. Prior: 1984 c 149 § 30.

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§ 11.94.060. Conveyance or encumbrance of homestead

If a principal, pursuant to RCW 11.94.010 or 11.94.020, has given a designated attorney-in-fact or agent all the principal's powers of absolute ownership or has used language to indicate that the attorney-in-fact or agent has all the powers the principal would have if alive and competent, then these powers include the right to convey or encumber the principal's homestead.

HISTORY: 1985 c 30 § 30. Prior: 1984 c 149 § 31.

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§ 11.94.070. Limitations on powers to benefit attorneys-in-fact

(1) The restrictions in RCW 11.95.100 through 11.95.150 on the power of a person holding a power of appointment apply to attorneys-in-fact holding the power to appoint to or for the benefit of the powerholder.

(2) This section applies retroactively to July 25, 1993.

HISTORY: 1994 c 221 § 67.

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§ 11.94.080. Termination of marriage or state registered domestic partnership

(1) An appointment of a principal's spouse or state registered domestic partner, as attorney-in-fact, including appointment as successor or coattorney-in-fact, under a power of attorney shall be revoked upon entry of a decree of dissolution or legal separation or declaration of invalidity of the marriage or termination of the state registered domestic partnership of the principal and the attorney-in-fact, unless the power of attorney or the decree provides otherwise. The effect of this revocation shall be as if the spouse or state registered domestic partner, resigned as attorney-in-fact, or if named as successor attorney-in-fact, renounced the appointment, as of the date of entry of the decree or declaration or filing of the certificate of termination of the state registered domestic partnership, and the power of attorney shall otherwise remain in effect with respect to appointments of other persons as attorney-in-fact for the principal or procedures prescribed in the power of attorney to appoint other persons, and any terms relating to service by persons as attorney-in-fact.

(2) This section applies to all decrees of dissolution and declarations of invalidity of marriage entered after July 22, 2001.

§ 11.94.090. Court petition

(1) A person designated in RCW 11.94.100 may file a petition requesting that the court:

- (a) Determine whether the power of attorney is in effect or has terminated;
- (b) Compel the attorney-in-fact to submit the attorney-in-fact's accounts or report the attorney-in-fact's acts as attorney-in-fact to the principal, the spouse or domestic partner of the principal, the guardian of the person or the estate of the principal, or to any other person required by the court in its discretion, if the attorney-in-fact has failed to submit an accounting or report within sixty days after written request from the person filing the petition, however, a government agency charged with the protection of vulnerable adults may file a petition upon the attorney-in-fact's refusal or failure to submit an accounting upon written request and shall not be required to wait sixty days;
- (c) Ratify past acts or approve proposed acts of the attorney-in-fact;
- (d) Order the attorney-in-fact to exercise or refrain from exercising authority in a power of attorney in a particular manner or for a particular purpose;
- (e) Modify the authority of an attorney-in-fact under a power of attorney;
- (f) Remove the attorney-in-fact on a determination by the court of both of the following:
  - (i) The attorney-in-fact has violated or is unfit to perform the fiduciary duties under the power of attorney; and
  - (ii) The removal of the attorney-in-fact is in the best interest of the principal;
- (g) Approve the resignation of the attorney-in-fact and approve the final accountings of the resigning attorney-in-fact if submitted, subject to any orders the court determines are necessary to protect the principal's interests;
- (h) Confirm the authority of a successor attorney-in-fact to act under a power of attorney upon removal or resignation of the previous attorney-in-fact;
- (i) Compel a third person to honor the authority of an attorney-in-fact, provided that a third person may not be compelled to honor the agent's authority if the principal could not compel the third person to act in the same circumstances;

(j) Order the attorney-in-fact to furnish a bond in an amount the court determines to be appropriate.

(2) The petition shall contain a statement identifying the principal's known immediate family members, and any other persons known to petitioner to be interested in the principal's welfare or the principal's estate, stating which of said persons have an interest in the action requested in the petition and explaining the determination of who is interested in the petition.

HISTORY: 2008 c 6 § 808; 2001 c 203 § 3.

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#### § 11.94.100. Persons allowed to file court petition

(1) A petition may be filed under RCW 11.94.090 by any of the following persons:

(a) The attorney-in-fact;

(b) The principal;

(c) The spouse or domestic partner of the principal;

(d) The guardian of the estate or person of the principal; or

(e) Any other interested person, as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary, and that the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests.

(2) Notwithstanding RCW 11.94.080, the principal may specify in the power of attorney by name certain persons who shall have no authority to bring a petition under RCW 11.94.090 with respect to the power of attorney. This provision is enforceable:

(a) If the person so named is not at the time of filing the petition the guardian of the principal;

(b) If at the time of signing the power of attorney the principal was represented by an attorney who advised the principal regarding the power of attorney and who signed a certificate at the time of execution of the power of attorney, stating that the attorney has advised the principal concerning his or her rights, the applicable law, and the effect and consequences of executing the power of attorney; or

(c) If (a) and (b) of this subsection do not apply, unless the person so named can establish that the principal was unduly influenced by another or under mistaken beliefs when excluding the person from the petition process, or unless the person named is a government agency charged with protection of vulnerable adults.

HISTORY: 2008 c 6 § 809; 2001 c 203 § 4.

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#### § 11.94.110. Ruling on court petition

In ruling on a petition filed under RCW 11.94.090 and ordering any relief, the court must consider the best interests of the principal and will order relief that is the least restrictive to the exercise of the power of attorney while still adequate in the court's view to serve the principal's best interests. Upon entry of an order ruling on a petition, the court's oversight of the attorney-in-fact's actions and of the operation of the power of attorney ends unless another petition is filed under this chapter or unless the order specifies further court involvement that is necessary for a resolution of the issues raised in the petition.

HISTORY: 2001 c 203 § 5.

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#### § 11.94.120. Award of costs on court petition

In any proceeding commenced by the filing of a petition under RCW 11.94.090 by a person other than the attorney-in-fact, the court may in its discretion award costs, including reasonable attorneys' fees, to any person participating in the proceedings from any other person participating in the proceedings, or from the assets of the principal, as the court determines to be equitable. In determining what is equitable in making the award, the court must consider whether the petition was filed without reasonable cause, and order costs and fees paid by the attorney-in-fact individually only if the court determines that the attorney-in-fact has clearly violated his or her fiduciary duties or has refused without justification to cooperate with the principal or the principal's guardian or personal representative. In a proceeding to compel a third party to accept a power of attorney, the court may order costs, including reasonable attorneys' fees, to be paid by the third party only if the court determines that the third party did not have a good faith concern that the attorney-in-fact's exercise of authority would be improper. To the extent this section is inconsistent with RCW 11.96A.150, this section controls the award of costs and attorneys' fees in proceedings brought under RCW 11.94.090.

HISTORY: 2001 c 203 § 6.

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§ 11.94.130. Applicability of dispute resolution provisions to court petition

The provisions of chapter 11.96A RCW, except for RCW 11.96A.260 through 11.96A.320, are applicable to proceedings commenced by the filing of a petition under RCW 11.94.090.

HISTORY: 2001 c 203 § 7.

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§ 11.94.140. Notice of hearing on court petition

(1) The following persons are entitled to notice of hearing on any petition under RCW 11.94.090:

- (a) The principal;
- (b) The principal's spouse or domestic partner;
- (c) The attorney-in-fact;
- (d) The guardian of the estate or person of the principal;

(e) Any other person identified in the petition as being interested in the action requested in the petition, or identified by the court as having a right to notice of the hearing. If a person would be excluded from bringing a petition under RCW 11.94.100(2), then that person is not entitled to notice of the hearing.

(2) Notwithstanding subsection (1) of this section, if the whereabouts of the principal are unknown or the principal is otherwise unavailable to receive notice, the court may waive the requirement of notice to the principal, and if the principal's spouse is similarly unavailable to receive notice, the court may waive the requirement of notice to the principal's spouse.

(3) Notice must be given as required under chapter 11.96A RCW, except that the parties entitled to notice shall be determined under this section.

HISTORY: 2008 c 6 § 810; 2001 c 203 § 8.

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§ 11.94.150. Mental health treatment decisions -- Compensation of agent prohibited --  
Reimbursement of expenses allowed

No person appointed by a principal as an agent to make mental health treatment decisions pursuant to a mental health advance directive under chapter 71.32 RCW shall be compensated for the performance of his or her duties as an agent to make mental health treatment decisions. This section does not prohibit an agent from receiving reimbursement for reasonable expenses incurred in the performance of his or her duties under chapter 71.32 RCW.

HISTORY: 2003 c 283 § 28.

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§ 11.94.900. Application of 1984 c 149 §§ 26-31 as of January 1, 1985

Sections 26 through 31, chapter 149, Laws of 1984 apply as of January 1, 1985, to all existing or subsequently executed instruments but shall not apply to any instrument the terms of which expressly or impliedly make those sections inapplicable.

HISTORY: 1985 c 30 § 140.

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