

## RCW 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.

[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.]

## Notes:

**Severability -- Part headings not law -- 2003 c 283:** See RCW 71.32.900 and 71.32.901.

**Short title -- Application -- Purpose -- Severability -- 1985 c 30:** See RCW 11.02.900 through 11.02.903.

**Severability -- Effective dates -- 1984 c 149:** See notes following RCW 11.02.005.

**Application, construction -- Severability -- Effective date -- 1974 ex.s. c 117:** See RCW 11.02.080 and notes following.