

The Law and You Leaving Family and Assets Behind

We are a highly mobile society. We often relocate to other states. Without a doubt, we are a nation on the move.

In my own case, I first left the State of Utah in 1956 when my father accepted a promotion with his employer. We moved to Indianapolis, Indiana. I then moved with my parents to Denver, Colorado where I graduated from high school.

I returned to Utah to attend the University of Utah. Following graduation from the U, my wife and I resided in Oklahoma, Texas, Massachusetts, New York, New Jersey and once again in Massachusetts.

As a Nation, some reports show that on average we move every seven years. Indeed, we are very mobile.

Sometimes a new job requires relocation in phases. A husband or wife may have to begin working at the new location before the rest of the family can fully relocate. Housing needs may dictate this. Children may want to complete the current school year before moving. There may be other reasons.

In Utah, there are many adult couples who give of their time by serving missions for 6, 12, 18, or even 24 months. While such couples remain together, they leave behind most of their assets.

In times of war, like now, members of the Reserve and the Guard leave their families and assets for extended periods of time.

During these absences, it is important to use a power of attorney to protect family and assets.

Two examples should be helpful.

First, assume that you are a member of the Reserve or Guard and you have been ordered to serve in Iraq or Afghanistan. Further assume that you have custody of a minor child born to someone other than your current wife.

In your absence, your wife will have no legal authority to make decisions about your child's well being. What arrangements can you make to give your wife authority to make critical decisions for your child?

Fortunately, Utah's Probate Code provides a way for a parent to delegate his or her parental role to someone else. In particular, § 75-5-103, Utah Code Ann. provides:

A parent or a guardian of a minor or incapacitated person, by a properly-executed power of attorney, may delegate to another person, for a period not exceeding six months, any of his powers regarding care, custody, or property of the minor child or ward, except his power to consent to marriage or adoption of a minor ward.

You can easily have a power of attorney prepared that conforms to the above statute. The delegation cannot exceed six months. By legally empowering your current wife, she can consent to medical treatment, deal effectively with your child's school or teachers, and make any other necessary and important decisions in your absence.

Similarly, you might merely be on a week's vacation. Or, you may be gone for months. As long as it is not longer than six months, you can delegate all of your legal powers to someone who is providing care for your minor child. That "someone" may be a grandparent, a friend, or a spouse.

For a second example, assume that you and your spouse leave your home and family for an extended period of time, say 12 months. You should empower one of your adult children, or a sibling, or a friend to deal with

problems that may arise during your absence. These problems may concern your home or other property left behind. Problems may also arise from business interests or investments you may have. Regardless, it is often helpful to have someone be able to sign or negotiate documents on your behalf.

The next time you will be away from your minor children you should have a power of attorney that conforms to the above statute. You can then be assured that whoever has temporary custody of your children also has the necessary authority to act in your place.

If you are a grandparent and you are asked to care for your grandchildren, request a power of attorney to have all the necessary authority.

For professional help, contact your attorney or consult with the Yellow Pages under Elder Law Attorneys. Also, check with the National Academy of Elder Law Attorneys at (520) 325-7925 or at their web site: www.naela.com.