

*Utah Spirit*

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### **Provide Protection for a Minor or Incapacitated Person**

Before getting into this month's topic, I want my readers to be assured that the photograph above is really the same person who has been writing this column for more than two and one-half years. I am a bit older and have less hair. What hair I do have, I cut very short to accommodate my motorcycle helmet. So, I decided it was time to update my photo.

Now to the important stuff.

In last month's column, I addressed the need for a Will, regardless of age. I made the point in that column that none of us know with certain when we will die. Even a young couple with children are subject to accidents that may take their lives at the same time.

What happens to the minor children in the event of such a tragedy? That is one question that parents consider when preparing a Will, whether young or not so young. They should nominate in advance of such a tragedy a guardian for their minor children. This can be done in their Will.

There is also a need to provide a guardian for minor children on a temporary basis. For example, suppose you take a vacation and leave your children with a family member, a parent, or a friend. What arrangements do you make to give them authority to make critical decisions for your children?

Fortunately, Utah's Probate Code provides a way for a parent to delegate their 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 prepare a power of attorney which conforms to the above statute. Make sure that the delegation does not exceed six months. By legally empowering the person with whom you leave your minor children, they can consent to medical treatment, deal effectively with your children's school or teachers, and make any other necessary and important decisions in your absence.

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 the care of your minor children.

It should be noted that a "minor" is anyone under the age of 18 years.

It is also noteworthy that the above statute also permits a parent or guardian to also delegate authority for an incapacitated person. This means that even if your child is no longer a minor but is incapacitated, you can also delegate to someone else the authority to act in your absence.

The statute also appears to permit a court-appointed guardian to delegate the guardian's authority for a limited time. For example, if you are a court-appointed guardian and you must be absent for some period of time, not exceeding six months, you can, without court approval, delegate to another the care and authority to act for you. This could be for the care of an elderly, incapacitated person for whom a guardian has been appointed.

Of course, a limited power of attorney can be prepared to cover a variety of situations while you are away, even longer than six months. However, such powers of attorney are to meet *your* individual needs and not the needs of another person.

Assume you are away on assignment but need to have someone back home contract for the repair of your house or for the sale of your vehicle. You could grant to them a limited power of attorney to act for you in those transactions. In such a limited power of attorney, however, you could not grant your agent, the one holding the power of attorney, the power to control the care or custody of another person, unless it conforms to the statute.

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 your child to prepare a conforming power of attorney so that you will have all the necessary authority. It is better to be safe than to have a need arise and have no power.

For professional help, contact your attorney or consult with the Yellow Pages under Elder Law Attorneys or Wills, Trusts and Estates.