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WRITTEN TESTIMONY OF ATTORNEY BARRY D. HOROWITZ BEFORE THE
JUDICIARY COMMITTEE OF THE GENERAL ASSEMBLY IN OPPOSITION TO THE
ADOPTION OF THE CONNECTICUT UNIFORM POWER OF ATTORNEY ACT RAISED
BILL NO. 6774

Dear Honorable Committee Members:

My name is Attorney Barry Horowitz. I am a member of the Connecticut Bar Association Estate Planning and Probate Section, the Elder Law Section, and the Ethics Committee. I am also a founding member of the Hartford law firm of Nirenstein, Horowitz & Associates, a law firm that does exclusively estate planning law. I am before you today to express my concerns regarding the Connecticut Uniform Power of Attorney Act, Raised Bill No. 6774 (hereinafter referred to as the "Act").

The Act is an attempt to provide a national power of attorney with accompanying laws. However, the Act has proved to be controversial, burdening parties to powers of attorney with restrictions and liability they are not currently subject to under Connecticut law.

The Act is voluminous, 63 pages. To date, after 9 years of debate only 17 states have enacted the Act, many with significant changes. Only one other state besides Connecticut is considering the Act this year. None of the states that we normally look to for guidance have chosen to enact it. In the Northeast only Maine and Pennsylvania have enacted the Act.

Issues that I believe will be of concern to Connecticut residents are as follows:

Under Connecticut law, the appointment of a Conservator for a ward will automatically cancel that ward's powers of attorney to prevent a conflict of authority. Under the Act, the cancellation is not automatic if the power of attorney provides otherwise, so if a court is unaware of a prior power of attorney (which they certainly may be if the ward is incompetent) there may be two agents acting at odds with one another, one under a power of attorney and one under the conservatorship. Section 8(b) of the Act.

The Act also greatly burdens the Agent with excessive liability. Unless the power of attorney provides otherwise, if the Agent has actual knowledge of another agent's intent to breach the power of attorney and if he does not take appropriate steps to protect the Principal's interest or notify the Principal, he will be liable for reasonably foreseeable damages. Section 11(d) of the Act. Consider two siblings with powers of attorney for their parents. Not many siblings would want this liability for the actions of the other sibling. So virtually all powers of attorney where there are co-agents, of which there are tens of thousands in Connecticut, will need to be rewritten to avoid this result, a very time consuming process for attorneys and a needless expense for clients.

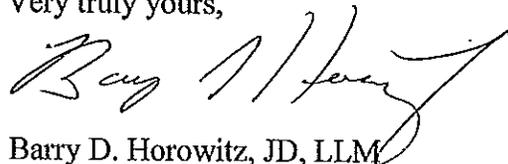
Most distressing is the provision that allows any person or institution without actual knowledge to ignore a person's termination of his powers of attorney. Section 10 (d) of the Act. This provision means that a person will have to notify any person or organization who might possibly be presented with the power of attorney of his revocation, a hopeless task, especially if the Principal is already disabled. A person cannot even protect himself from such a result by limiting the power of attorney to end upon disability. Section 10(e) of the Act. Furthermore, even if the person has somehow been able to notify all possible institutions that he has revoked his power of attorney, the revocation could still be ignored if an employee being asked to accept a revoked power of attorney did not personally know of its revocation, regardless of what the institution may know or should have known. Section 19(f) of the Act. In this situation the person who would want to revoke his power of attorney would have to notify every possible institutions' employee of his revocation as well, even if the person is disabled, or hospitalized. This would be impossible in practice and would be a dramatic change in Connecticut common law and the law of agency in general. See Generally Hall-Brooke Foundation, Inc. v. City of Norwalk, 58 Conn App 340 (2000); Restatement 3rd of Agency, Sec. 1.04, comment d.

Furthermore, these rules and liabilities will apply as well to powers of attorney that are already in existence, Section 45 (a)(1) of the Act, and the rules and liabilities will relate back to October 1, 2014, even though the Act was not then in existence. Section 45(a),(b) of the Act.

Finally, the Act has an exceedingly complex power of attorney form in Section 41 of the Act. This Act and the form (which goes on for 11 pages) are far too complex for a layperson to implement and complete accurately, though by publishing a form many laypeople will attempt to do so to their detriment.

For all these reasons, at this time, Raised Bill No 6774 entitled the Connecticut Uniform Power of Attorney Act should not be allowed to leave the Judiciary Committee until it has been extensively reworked. In its current form it is a "make work" bill for attorneys, and represents a dramatic change in Connecticut Law, shifting a great deal of responsibility and liability onto our residents who may be the least capable of protecting themselves.

Very truly yours,



Barry D. Horowitz, JD, LL.M.