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WRITTEN TESTIMONY OF ATTORNEY BARRY D. HOROWITZ BEFORE THE
JUDICIARY COMMITTEE OF THE GENERAL ASSEMBLY IN OPPOSITION TO THE
ADOPTION TO THE CONNECTICUT UNIFORM RECOGNITION OF SUBSTITUTE
DECISION-MAKING DOCUMENTS ACT, RAISED BILL NO. 6928

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 Recognition of Substitute Decision-Making Documents Act (hereinafter referred to as the "Act").

The Act attempts to provide a process for a power of attorney executed outside Connecticut to be enforced inside Connecticut. This Uniform Law was just completed this summer on July 17, 2014 and to date no state has enacted it. No other state is considering it for enactment this year. As far as I am aware, the Estate Planning and Probate Section and Elder Law Section of the Connecticut Bar have not studied it, and no Connecticut practitioner has worked on it.

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

According to the uniform act drafters, the uniform act is "modeled after the Uniform Power of Attorney Act", hereinafter referred to as the UPOAA. Prefatory Note to the Uniform Act. As such, consideration of the provisions the Act is premature since this Committee is still studying the provisions of the Connecticut Uniform Power of Attorney Act.

Secondly, portions of the Act conflict with the current version of the Connecticut's proposed UPOAA. This Act exculpates institutions from liability if they did not have actual knowledge that the document or decision maker's authority is void, invalid or terminated. Section 5(a) of the Act. Connecticut's proposed version of the UPOAA exculpates institutions if merely the particular employee being asked to respect the power of attorney did not know that it or the presenter's authority is now void, invalid or terminated, regardless of what the institution knows

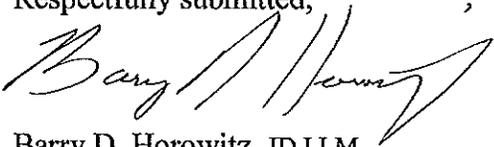
or should have known. See Section 19(f) of Connecticut's proposed UPOAA. Under the Act a person asked to accept a power of attorney may rely on any assertion of fact that a person presenting a power of attorney may make, while under Connecticut's proposed UPOAA that assertion must be in the form of a written Certification under penalties of perjury. Compare Section 5(b)(1) of this Act with Section 19(d)(1) of the proposed Connecticut UPOAA. The Act says that a power of attorney shall be accepted within a "reasonable time" and exempts documents if the person "makes, or has actual knowledge that another person, has made, a report to the Office of Protection and Advocacy for Persons with Disabilities..." Connecticut's proposed version of the UPOAA has specific actions to be taken when not respecting a power of attorney, not just relying on a "reasonable time" standard, and reference reports to the Department of Aging, not the Office of Protection and Advocacy. Such conflicts have been acknowledged by the drafters of this Uniform Act. See Comments to Section 5 and 6 of the Uniform Law.

Thirdly, enforcement of Powers of Attorney executed outside of Connecticut is already covered under the Connecticut Power of Attorney Act currently under consideration. See Section 6(c) of Connecticut's proposed UPOAA.

Finally, portions of the Act conflict with the common law. Under the common law an institution will be liable for respecting an invalid power of attorney if the institution knew or should have known that it was invalid. See Restatement 3rd of Agency, Section 1.04, comment d, under the Act "Actual Knowledge" is required. See Sections 5 and 6 of the Act. In this regard the Act's "Legislative Note" for Section 6 states that "the enacting jurisdiction should examine its laws that authorize delegation of substitute decision-making authority for property, healthcare, and personal care to determine whether those have different requirements..."

For all these reasons Raised Bill No. 6928 entitled An Act Concerning The Uniform Recognition Of Substitute Decision-Making Documents Act should not be allowed to leave the Judiciary Committee until it has been extensively reworked by the Bar Association.

Respectfully submitted,



Barry D. Horowitz, JD LLM