

HB 374 Power of Attorney

EXHIBIT 3
DATE 2/7/2011
HB 374

More and more people - particularly the elderly - use powers of attorney not only for convenience prior to any incapacity but also as an inexpensive, non-judicial method of surrogate property management in the event of later incapacity. Unfortunately, the common practice of vulnerable elders appointing a power of attorney has increased the opportunity for unscrupulous agents to misuse the power granted.

LONG TERM CARE FACILITIES ARE IN FACT EXPERIENCING SERIOUS PROBLEMS when agents fail to pay for the health care services being provided to frail and vulnerable elderly who have granted a family member or other trusted person a power of attorney. Facilities are put in the unenviable position of having to either provide services without payment or take steps for involuntary discharge of frail residents for non-payment of services. Under current Montana law, they have little or no recourse against the agent.

HB 374 ADOPTS THE UNIFORM POWER OF ATTORNEY ACT drafted by the National Conference of Commissioners of Uniform State Laws (NCCUSL) and approved and recommended for enactment in all states.

The uniform act is designed to provide clarity and stability to a critical area of law affecting all states - powers of attorney. The Act codifies both state legislative trends and collective best practices, and strikes a balance between the need for flexibility and acceptance of an agent's authority and the need to prevent and redress financial abuse.

MONTANA'S POWER OF ATTORNEY (POA) STATUTE PROVIDES NO REAL PROTECTION

for those granting powers of attorney. It fails to:

- provide standards for fiduciary duties;
- include safeguards against abuse by the agent;
- include remedies and sanctions for abuse by the agent; and
- specify who has standing to request judicial review of the agent's conduct.

THE UNIFORM ACT includes these important provisions as well as others including portability and protection for those who rely on a power of attorney. It also includes a statutory form power of attorney.

While the act contains safeguards for the protection of an incapacitated principal, it also preserves the principal's freedom to choose both the extent of an agent's authority and the principles to govern the agent's authority.

This legislation provides important protection for the elderly and others who grant powers of attorney and for the financial institutions and others who rely on powers of attorney. It addresses all of the issues identified by the NCCUSL as necessary for a well-conceived and well-drafted power of attorney statute.

PLEASE SUPPORT HB 374.

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