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Civil Procedure

Civil Procedure; powers of attorney

NEV. REV. STAT. §111.— (new).

SB 22 (Committee on Judiciary); 1983 STAT. Ch 12

Chapter 12 alters the common law rule that the death or incapacity of a principal terminates the authority of the principal's agent to act on the principal's behalf.¹ Patterned after the Uniform Durable Power of Attorney Act,² Chapter 12 provides that if a principal executes a written power of attorney showing an intent to confer authority despite a later disability, the *attorney in fact* or agent (hereinafter referred to as *attorney in fact*) will have the legal power to exercise this authority regardless of any subsequent disability, incapacity to contract, or uncertainty as to whether the principal is dead or alive.³ Acts performed pursuant to the power during these periods are binding upon the principal, and the principal's guardian, heirs, devisees, and personal representatives.⁴ Chapter 12 also provides that if a guardian is appointed for the principal, the *attorney in fact* must account to the guardian rather than to the principal.⁵ The guardian, therefore, has the same power as the principal to revoke, suspend, or terminate all or any part of the power of attorney.⁶

In addition, under Chapter 12 a written power of attorney will remain in effect when an attorney in fact or other person acts in good faith under the power without actual knowledge of the principal's death, disability, or incompetence.⁷ Unless otherwise invalid or unenforceable, the acts of the *attorney in fact* bind the principal and the principal's heirs, devisees, and personal representatives.⁸ Furthermore, Chapter 12 specifies that in the absence of a showing of fraud or bad faith, an affidavit executed by the *attorney in fact* stating that at the time of the act the *attorney in fact* did not have actual knowledge of the death, disability, or incompetence of the principal, will be conclusive

1. RESTATEMENT (SECOND) OF AGENCY §§120-22 (1957).

2. See UNIF. DURABLE POWER OF ATTORNEY ACT §§1-10, 8 U.L.A. 81 (Supp. 1983).

3. 1983 Nev. Stat. c. 12, §2, at 16.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* c. 12, §3(1), at 17.

8. *Id.*

proof of the non-revocation or non-termination of the power at that time.⁹ Additionally, Chapter 12 provides that if the power of attorney necessitates execution and delivery of a recordable instrument, the authenticated affidavit will also be recordable.¹⁰ Finally, the provisions of Chapter 12 will not alter or affect a provision for revocation or termination contained in the power of attorney.¹¹

9. *Id.*

10. *Id.*; see, e.g., NEV. REV. STAT. §111.330 (power of attorney to convey real property must be recorded).

11. 1983 Nev. Stat. c. 12, §3(3), at 17.

Civil Procedure; judgments in favor of minors

NEV. REV. STAT. §17.025 (amended).

SB 20 (Committee on Judiciary); 1983 STAT. Ch 11

Chapter 11 increases the discretionary power of the court to direct the disposition of a money judgment in favor of a minor,¹ and eliminates the dollar amount of the judgment as being determinative of the court's course of action.² Under prior law, when either a money judgment or a court arranged settlement³ was entered in favor of a minor who lacked an appointed guardian,⁴ the amount of the judgment determined its disposition.⁵ If the judgment was for an amount less than \$2,500, the court had the discretion to pay the judgment to the child's parents or to the parent having custody of the child.⁶ If the judgment exceeded \$2,500, the court was compelled to pay the judgment to a court appointed guardian for the minor.⁷

With the enactment of Chapter 11, the court can direct payment of a judgment⁸ entered in favor of a minor to either parent,⁹ the custodial

1. NEV. REV. STAT. §159.023 (definition of a minor).

2. Compare *id.* §17.025 (amended by 1983 Nev. Stat. c. 11, §1, at 15) with 1979 Nev. Stat. c. 277, §1, at 392 (enacting NEV. REV. STAT. §17.025).

3. See NEV. REV. STAT. §41.200 (procedure for compromising claims of minors).

4. *Id.* §159.017 (definition of a guardian).

5. 1979 Nev. Stat. c. 277, §1, at 392 (enacting NEV. REV. STAT. §17.025).

6. *Id.*

7. *Id.*

8. Compare NEV. REV. STAT. §17.025 (amended by 1983 NEV. STAT. c. 11, §1, at 15) with 1979 Nev. Stat. c. 277, §1, at 392 (enacting NEV. REV. STAT. §17.025) (reference to a judgment for a minor without an appointed guardian and court approved settlement have been deleted by Chapter 11.). NEV. REV. STAT. §17.025 (as amended by 1983 Nev. Stat. c. 11, §1, at 15), can be read as applying to any judgment for a sum of money entered in favor of a minor. Compare NEV. REV. STAT. §17.025 (amended by 1983 Nev. Stat. c. 11, §1, at 15) with 1979 Nev. Stat. c. 277, §1, at 392 (enacting Nev. Rev. Stat. § 17.025).

9. NEV. REV. STAT. §17.025(1) (amended by 1983 Nev. Stat. c. 11, §1, at 15).