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## **"POWERS OF ATTORNEY"**

When a person thinks of "Estate Planning" the focus is usually on a Will, a Trust, or another related estate planning tool. Unfortunately, not enough attention is given to a tool known as "POWER OF ATTORNEY".

The primary use of a Power of Attorney is to effectively administer an incapacitated individual's business affairs in the event the individual cannot manage his finances himself. If a person becomes incapacitated or is missing there would be a need for a guardianship of the property proceeding in the State of Hawaii. The attorney's fees for this "simple proceeding" may cost anywhere from a couple hundred dollars to thousands of dollars. The use of a power of attorney is a simple and inexpensive cure to what could be an expensive guardianship proceeding that is burdensome in time as well as money.

There is a misconception that powers of attorney should only be done at the time of an emergency. But think of it, if you are missing or incapacitated you no longer have the ability legally and/or practically to do a power of attorney and assign such authority to someone who you trust. In short, IT'S TOO LATE.

For those who have reservations about naming an attorney-in-fact who has the ability to "sign one's life away", an alternative is a power of attorney that can only be used upon certification that the signor of the power of attorney is incapacitated. This power of attorney is different from a power of attorney that is "presently" effective and that can be used immediately upon the signing of the power of attorney by the assignor of the power and certification by a notary public.

Unfortunately, a power of attorney that is effective only upon the disability of the signer has its disadvantages as well. If the individual in question has not been treated on a regular basis by his or her attending physician, it may take anywhere from one to two months or more before certification of the assignor's incapacity can be made, and it may be too late to accomplish what the power of attorney was intended to do.

Also, there is no law at the present time that would allow the attorney-in-fact (the person who is assigned the power of attorney) to exercise that authority in the event the assignor of the property is missing. There is no way that a certification of incompetence or disability can be obtained from a physician when a person is missing. The simple solution is to execute a power of attorney that is "presently effective".

Who needs to execute a power of attorney? Anyone who is age 18 or over and competent. Even if a person owns no property of substantial value, the individual may be entitled to income such as social security benefits if the person is disabled and/or the individual may inherit or be gifted property which will need to be managed. Without adequate preparation for the unexpected the attorneys of the world will enhance their lifestyle by handling the initial guardianship proceedings and the subsequent accountings that are required by law, including the final accounting when the incapacitated person dies.

This handout is not intended to provide specific legal advice to anyone, and anyone who wishes to act on the content of this handout should contact a qualified attorney to discuss preparation and execution of a power of attorney and other alternatives.