

Temporary Delegation of Parental Rights in Minnesota

Parents of minor children who are planning on traveling away from home for an extended period of time, military personnel who are deploying away from home who have minor children to care for, and parents or guardians who are facing some type of scheduled medical procedures which may involve extended recovery time, may have a need to temporarily delegate parental rights over their minor children or wards.

There are two statutory provisions in Minnesota which allow a parent or guardian to temporarily delegate parental and custody rights, and supervisory authority, over a minor child for a limited time:

1. The first provision is identified in Minnesota Statutes, Chapter 524.
2. The second provision is identified in Minnesota Statutes, Chapter 257B.

Minnesota Statutes, Chapter 524

Pursuant to Minnesota Statutes, Chapter 524:

- ◆ **A parent**, legal custodian, or guardian of a minor or incapacitated person,
- ◆ by a properly executed **power of attorney**,
- ◆ **may delegate** to another person,
- ◆ for a **period not exceeding one year**,
- ◆ **any powers** regarding **care, custody, or property** of the minor or ward,
- ◆ **except** the power to consent to marriage or adoption of a minor ward.

Since the delegation is to be made pursuant to a properly executed **power of attorney**, the applicable form is fairly simple, and may be subject to the provisions of Minnesota Statutes, Chapter 523, which are generally applicable to powers of attorney.

Who is Authorized to Create a Minnesota Power of Attorney?

Any **competent** adult may, as principal, designate another **person** as the principal's **attorney-in-fact** pursuant to a **written power of attorney**.

The Minnesota power of attorney statutes do not define the term “*competent*”, although judicial decisions have found a principal to be competent while he or she has sufficient mental capacity to understand the nature and effect of his or her signature on a power of attorney document.

An alternate statutory term - “*incapacity*” - refers to a person’s state of being during which legal grounds exist for the appointment of a guardian or conservator for such person.

What are the Execution Requirements for a Minnesota Power of Attorney?

A Minnesota power of attorney is validly executed when:

- it is **dated and signed** by the principal,
and
- the principal's signature is **acknowledged before a notary public**.

What are the Signature Requirements for a Minnesota Power of Attorney?

If the principal is physically unable to sign the power of attorney document, it can be signed by either:

- another person **on the principal's behalf**,
or by
- the principal - **by means of making a mark** on the document in lieu of a signature,

providing that such signature or mark is acknowledged before a notary public.

When Does a Minnesota Power of Attorney Become Effective?

Absent other provisions to the contrary, a Minnesota power of attorney form becomes effective immediately when it has been properly executed and acknowledged by a principal before a notary public.

What Rights of Notification Does a Noncustodial Parent Have With Respect to a Temporary Delegation of Parental Authority by the Custodial Parent?

A parent who executes a temporary delegation of parental authority power of attorney must mail, or give a copy of the document, to any other parent within 30 days of its execution **unless**:

- (1) the other parent:
 - ♦ **does not have parenting time**
 - or
 - ♦ **has supervised parenting time;**
 - or
- (2) there is an existing order for protection under Minnesota statutes, chapter 518B, or a similar law of another state in effect against the other parent to protect
 - ♦ the **parent, legal custodian, or guardian** executing the delegation of powers,

or

- ♦ **the child.**

When Does a Minnesota Temporary Delegation of Parental Authority Power of Attorney Terminate?

Any Minnesota power of attorney which temporarily delegates parental authority will terminate upon the earliest to occur of:

- ♦ its **revocation** by the principal,
- ♦ the **death of the principal**,
- ♦ the **expiration of a termination date** properly stated in the document,

or,

- ♦ **one year** from its date of execution.

How Does a Principal Revoke a Minnesota Temporary Delegation of Parental Authority Power of Attorney?

A previously executed Minnesota power of attorney may be revoked only by a **written instrument of revocation** which is either:

- **actually signed by the principal**,
- **signed on behalf of the principal by another person**, which signature is acknowledged by the principal before a notary public,

or

- **signed by the principal by making a mark in lieu of a signature**, which mark is acknowledged by the principal before a notary public,

and

- **delivered to the attorney-in-fact.**

A duly appointed conservator or guardian of the principal may also revoke, suspend, or terminate all or any part of a power of attorney to the same extent that the principal would have had the power to do so if the principal were not incapacitated or incompetent.

When is a Revocation of a Minnesota Temporary Delegation of Parental Authority Power of Attorney Effective?

Revocation of a Minnesota power of attorney is not effective as to any attorney in fact until such person has **actual notice** of the revocation - which means that a written instrument of revocation has been received by such person.

How Does an Attorney-in-Fact Provide Evidence to a Third Party that a Minnesota Temporary Delegation of Parental Authority Power of Attorney Has Not Been Revoked or Terminated?

In the exercise of any power granted pursuant to a Minnesota power of attorney temporarily delegating parental rights:

- ◆ a signature made by an attorney-in-fact similar to the following:
 - ◆ "*attorney-in-fact for* (Name of the principal)"
- or
- ◆ "(Name of the principal) *by* (Name of the attorney-in-fact) *the principal's attorney-in-fact*"

or

- ◆ any comparable written disclosure of the **principal and attorney-in-fact relationship**, **constitutes an attestation** by the attorney-in-fact that the attorney-in-fact did not have, at the time of such signing or comparable written disclosure:

- ◆ **actual knowledge of the termination of the power of attorney, by the death of the principal,**

or

- ◆ **actual notice of the revocation of the power of attorney,**

and may be **conclusive proof** as to any party relying on the attestation that the power of attorney had not terminated or been revoked at the time that such signature or comparable written disclosure was made by the attorney-in-fact on behalf of the principal, except as to any party who has:

- ◆ **actual knowledge** that the power of attorney **had terminated** prior to such signature or comparable written disclosure,

or

- ◆ actual notice of **the revocation** of the power of attorney.

What are the Duties of an Attorney-in-Fact Appointed Pursuant to a Minnesota Power of Attorney?

In general, an attorney-in-fact appointed pursuant to a Minnesota power of attorney has **no statutory duty**:

- to exercise any power conferred upon the attorney-in-fact,
- or

- to act in any capacity on behalf of a principal in any transaction.

However, if the attorney-in-fact signs the power of attorney document and agrees to act as the principal's attorney-in-fact, the attorney-in-fact may have assumed the duty to act in the minor child's best interests until the parent can resume his or her parental duties.

In addition, if the attorney-in-fact **does exercise** any such power or act on behalf of the principal, the attorney-in-fact shall:

- exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs,
- have the interests of the principal - and the minor child - utmost in mind,
and
- **keep complete records of all transactions** entered into by the attorney-in-fact on behalf of such principal.

What Liability Does the Attorney-in-Fact Have for Misconduct While Acting Pursuant to a Power of Attorney?

An attorney-in-fact is **personally liable under the statute** to any person, including a principal - and perhaps a minor child - **who is injured** by:

- an action taken by the attorney-in-fact **in bad faith** under the power of attorney,
or
- the attorney-in-fact's **failure to account when the attorney-in-fact has a statutory duty to account.**

In addition, an attorney-in-fact who:

- ♦ knowingly **executes a false affidavit** regarding the attorney-in-fact's authority under a power of attorney,
or
- ♦ signs a document on behalf of a principal **knowing that the power of attorney has either been revoked, or has terminated,**

is liable for treble the amount of damages suffered by the principal.

Finally, the attorney-in-fact may also be held liable for any negligence or misconduct with respect to the care, custody, or property of the minor child.

Minnesota Statutes, Chapter 257B

A parent, legal custodian, or guardian of a minor child may also temporarily delegate:

- ♦ **any powers** regarding the **care, custody, or property** of a minor child or ward,

- ◆ **except** the power to consent to marriage or adoption of a minor ward

by designating a “*temporary custodian*” for such minor child pursuant to Minnesota Statutes, Chapter 257B.

However, the process for delegating parental authority to a custodian pursuant to Minnesota Statutes, Chapter 257B:

- ◆ is more involved than that identified in Minnesota Statutes, Chapter 524,
 - ◆ requires the approval of a Minnesota court at some point during the process,
- and
- ◆ is more suited towards a longer-term solution - including the appointment of a guardian for the minor child - rather than a short-term temporary arrangement.

Nevertheless, if the parent of a minor child will be unavailable for more than one year, the procedure identified in Minnesota Statutes, Chapter 257B may be the only option.

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