



THE UNIFORM RECOGNITION OF SUBSTITUTE DECISION-MAKING DOCUMENTS ACT

- A Summary -

Substitute decision-making documents are widely used in every U.S. State and Canadian Province for both financial transactions and health care decisions. These documents are called powers of attorney, proxies, or representation agreements, depending on the jurisdiction, and the law governing their use also varies from place to place. Consequently, a person's authority under a decision-making document may not be recognized if the document is presented in a place outside of the state where it was signed. In our modern mobile society, this can create serious problem problems for the people who rely on their agents to make decisions when they cannot do so for themselves.

A person asked to accept a decision-making document from out of state faces problems as well. Because the law varies by jurisdiction, significant legal research may be required to determine whether a foreign document actually complies with the law where it was executed.

The Uniform Recognition of Substitute Decision-making Documents Act (URSDDA) is the result of a joint project between the Uniform Law Commission and the Uniform Law Conference of Canada to resolve these problems. The act employs a three-part approach to portability modeled after the Uniform Power of Attorney Act:

1. First, the act recognizes the validity of a substitute decision-making document for use in the enacting state if the document is valid as determined by the law under which it was created.
2. Second, the act preserves the meaning and effect of a substitute decision-making document as defined by the law under which it was created regardless of where the document is actually used.
3. Third, the act protects the persons asked to accept a foreign document from liability for either acceptance or rejection, if they comply with the law in good faith.

URSDDA's effect is best illustrated with an example.

John and Jane are longtime friends living in Ottawa, Canada. John is unmarried, and owns a hardware store that he manages with the help of his adult son Robert. With the assistance of his attorney, John executes a substitute decision making document giving Jane the power to make health care decisions on his behalf if he ever becomes incapacitated and cannot make decisions for himself. John also executes a separate document giving Robert the power to make financial transactions on his behalf, effective immediately.

John and Robert are meeting with a hardware supplier in Minneapolis, Minnesota when they are involved in a traffic accident and John is seriously injured. He is transported to the closest hospital where doctors perform emergency surgery. When Jane is informed, she immediately flies to Minneapolis to be at his side.

After surgery, John's doctors keep him under heavy sedation while he heals. His surgeon recommends a second procedure that might restore more of John's ability to use his damaged arm, but John is unable to evaluate the risks of the procedure for himself. Jane presents a copy of John's health care decision-making document to the hospital administrator, who must determine whether she has the authority to authorize John's additional procedure.

Assume the state of Minnesota has enacted URSDDA. The hospital administrator, being unfamiliar with Ottawa's law, asks Jane to (i) provide an opinion of counsel that the document is valid under Ottawa law, and (ii) verify that she is the person to whom John granted the authority to make health care decisions, and that John never revoked her authority. (The administrator could also ask for an English translation of the document if applicable.) Jane verifies her identity and her authority, and asks John's attorney to send an opinion of counsel to the administrator via email. Once received, the administrator can allow Jane to direct John's health care and the hospital will incur no liability for recognizing her authority.

Meanwhile, using his authority to make financial transactions for John, Robert wants to complete the planned order with their hardware supplier. When presented with John's substitute decision-making document, the supplier may ask for the same assurances as the hospital administrator, and receive the same protections from liability for good faith compliance with John's grant of authority to Robert.

If there was any question as to the extent of Jane's or Robert's authority because the documents were vague or contradictory, the meaning and effect of the documents would be determined under Ottawa's law. In other words, the meaning and effect of any particular document does not change simply because the document is used in another state or province.

Finally, if either the supplier or the hospital administrator had reason to believe the substitute-decision making document presented was invalid, or that Jane or Robert were exceeding their authority under the document, the supplier or the hospital administrator could reject the document, again without fear of incurring liability

The preceding example uses Canadian residents, but the legal effect is exactly the same for residents of the United States who present substitute decision-making documents in another state or Canadian province.

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