



Hot Powers and Hot Topics in Powers of Attorneys

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September 3, 2020

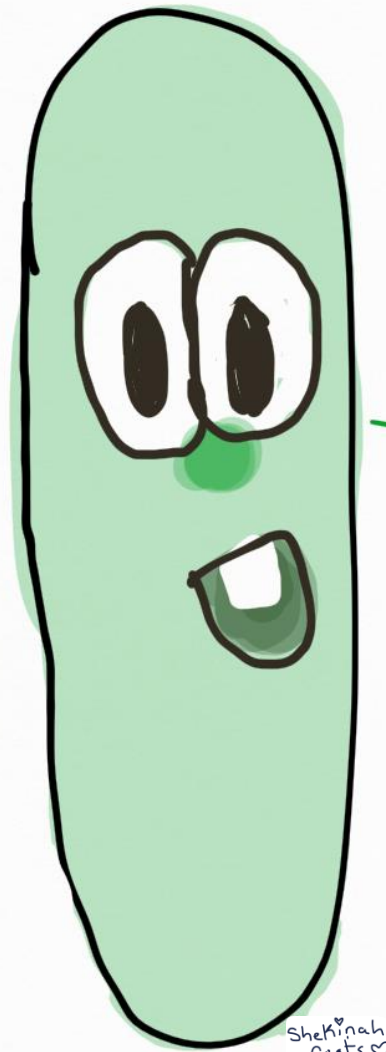
State Bar of Texas

21st Advanced Elder Law Course

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Housekeeping Matters

- Special thanks to Kid Shekinah for art
- This presentation will address only “Durable Powers of Attorney” (Tex. Est. Code 751.001 et. seq.)
- Special Thanks to Lora G. Davis and Donald L. Totusek



Let's Review



Definitions

- Who's the Principal?
*TEC 751.002(5)
- Who's the Agent?
*TEC 751.002(3)



Deadlines: Accept, Reject, etc

1. Unless there are grounds for refusal, must

- accept,

- reject,

- request opinion of counsel, or

- request agent's certificate

within **10 business days** after presentment

*See TEC 751.201(a)(2)(A)

Deadlines: Translation

2. If POA is in any other language other than English, receiver can request an ENGLISH translation of the document within **5 business days** from the date the POA is presented

*TEC 201(a)(2)(B)

*TEC 751.205

Deadlines: Certificate of Agent

3. If agent's certification is requested, then POA must be accepted within **7 business days** from the receipt of the agent's certification

- Recipient can ask for the Agent to certify any factual matter re Principal, Agent, or POA under penalty of perjury

*TEC 751.201(b)(1)

*TEC 751.203

Deadlines: Opinion of Counsel

4. If opinion of counsel is requested, then POA must be accepted within **7 business days** after the receipt of the opinion of counsel
 - Recipient can ask for the Agent to certify any factual matter re Principal, Agent, or POA under penalty of perjury
 - *TEC 751.201(b)(2)
 - *TEC 751.204)

What are hot powers?



Lamp



fire



moon

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- Power to create, amend, revoke, or terminate an inter vivos trust.
- Power to Make a gift
- Power to create or change rights of survivorship

*See Texas Estates Code 751.031

Hot Topics

1. To change or not to change...

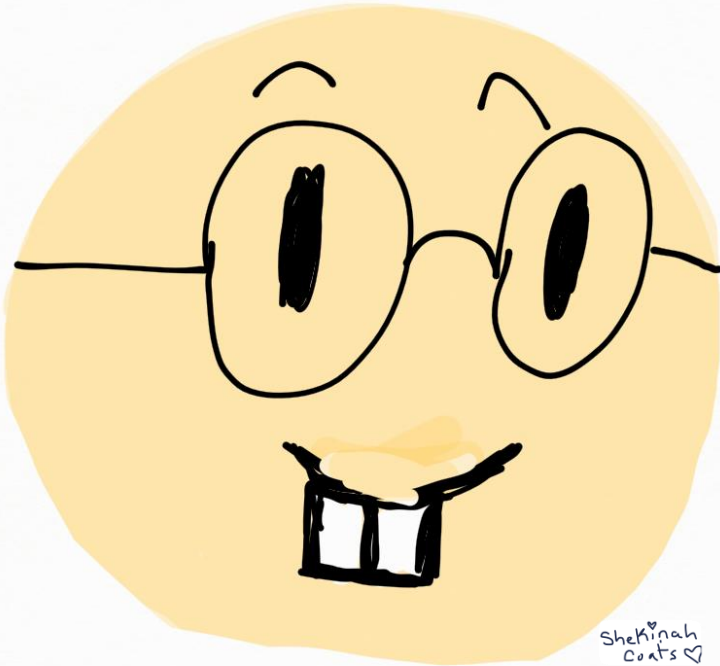
“If it ain’t broke, don’t fix it.”



Hot Topics

2. Educate Your Client

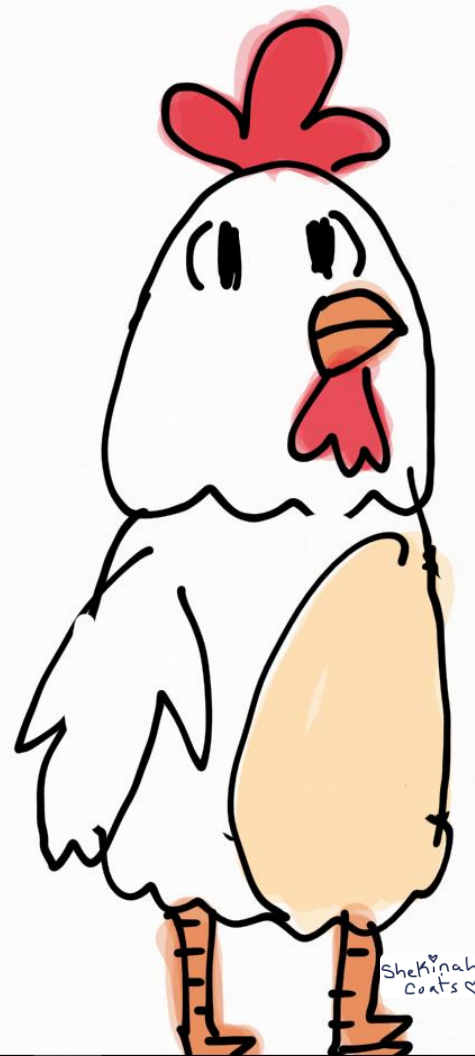
*TEC 752.051 contains instructions for Agent



Hot Topics

3. Who comes next...the
Alternate or the
Successor...

*TEC 751.023



EXAMPLE

1. Mom named **Jessie** as the Primary Agent, **Rachel** as the 1st Alternate, and **John** as the 2nd Alternate.
2. Jessie under proper authority from Mom named **Gregory** as the Successor Agent.
3. Jessie dies while serving as Agent.
4. Who is entitled to serve as Mom's next Agent?

EXAMPLE

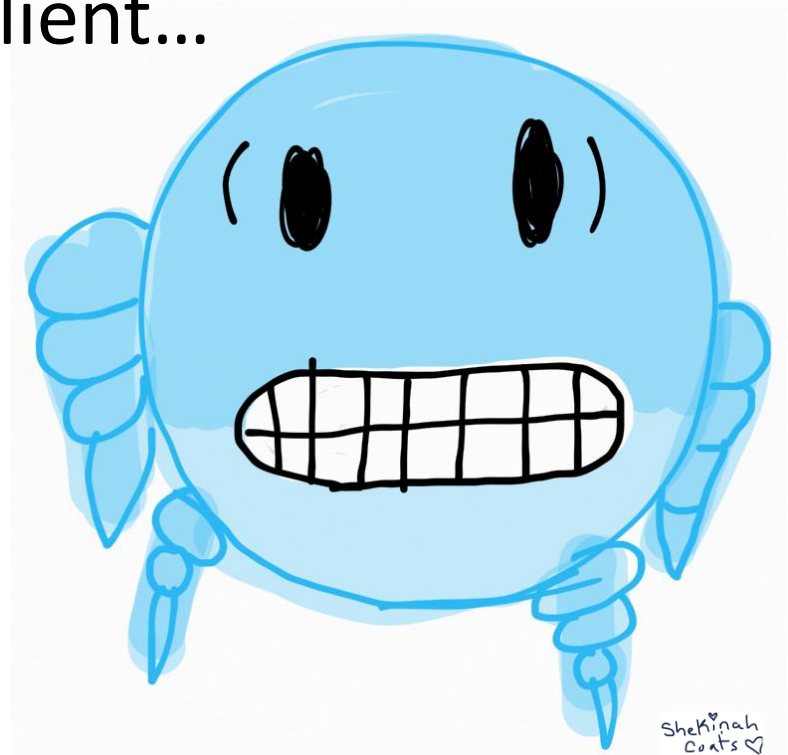
1. If Jessie predeceases Mom, even though Gregory was named as the “Successor Agent,” **Rachel** is next in line to serve as First Alternate Agent.
2. **John** Second Alternate Agent
3. **Gregory** as “Successor Agent”

Hot Topics

4. Remember who is your client...

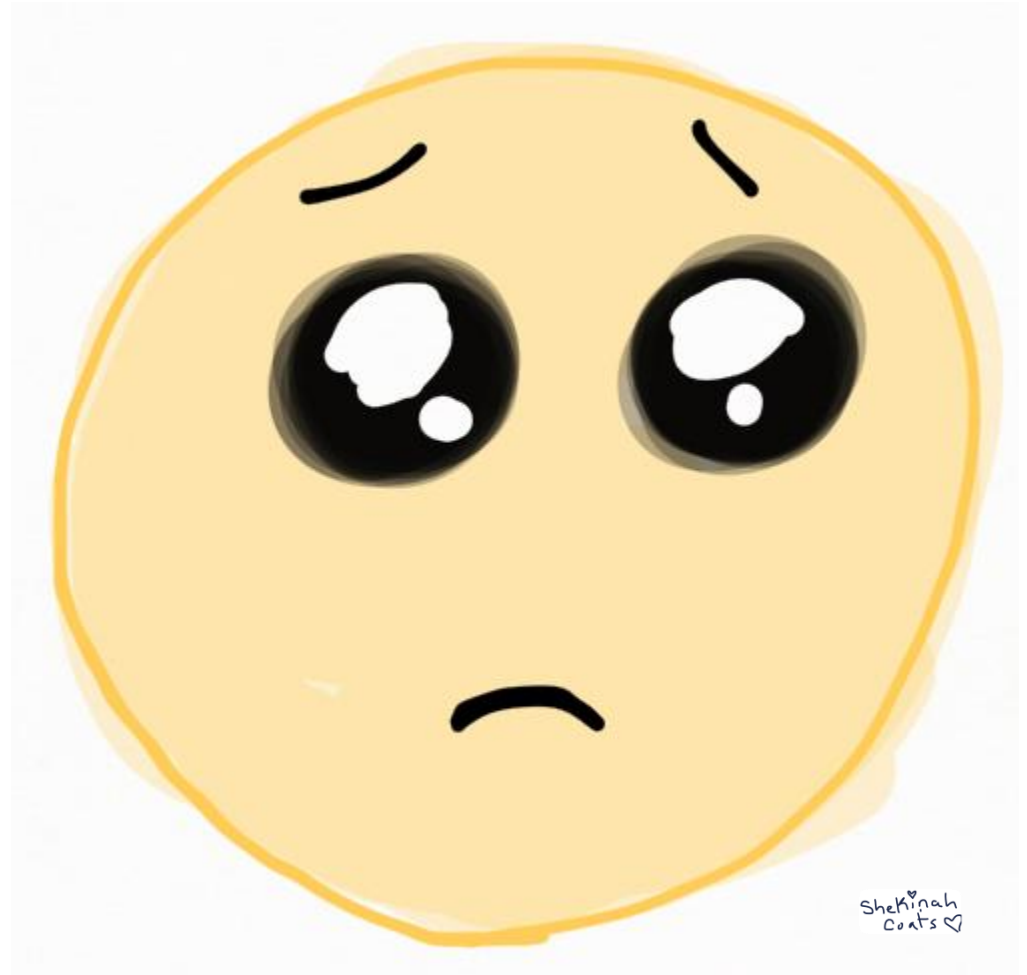
Is it Principal or Agent?

*Tex. R. Prof. Conduct 1.09



Hot Topics

5. What happens when the Agent is incapacitated?



Hot Topics

6. Are your previously drafted documents grandfathered into the new POA Act?



(see Section II(D)(5) in the Appendix)

Hot Topics

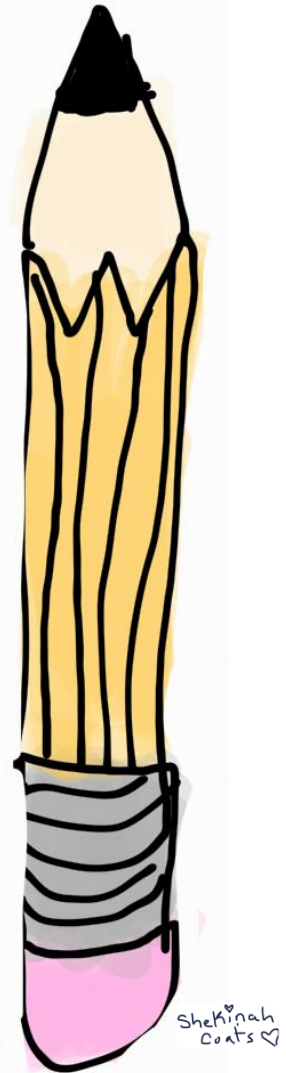
7. Cite the correct law.

- incapacity – Texas Estates Code 751.00201

OR

- incapacity – Texas Estates Code 22.016

- 751.00201 should be used with POA interpretations (requires medical)



8. Make the Closing Company happy!



If you are using a Power of Attorney to close a real estate transaction, understand that these issues unresolved can delay closing or terminate your contract

A. Make sure acknowledgment is correct on POA

*See TEC 752.051

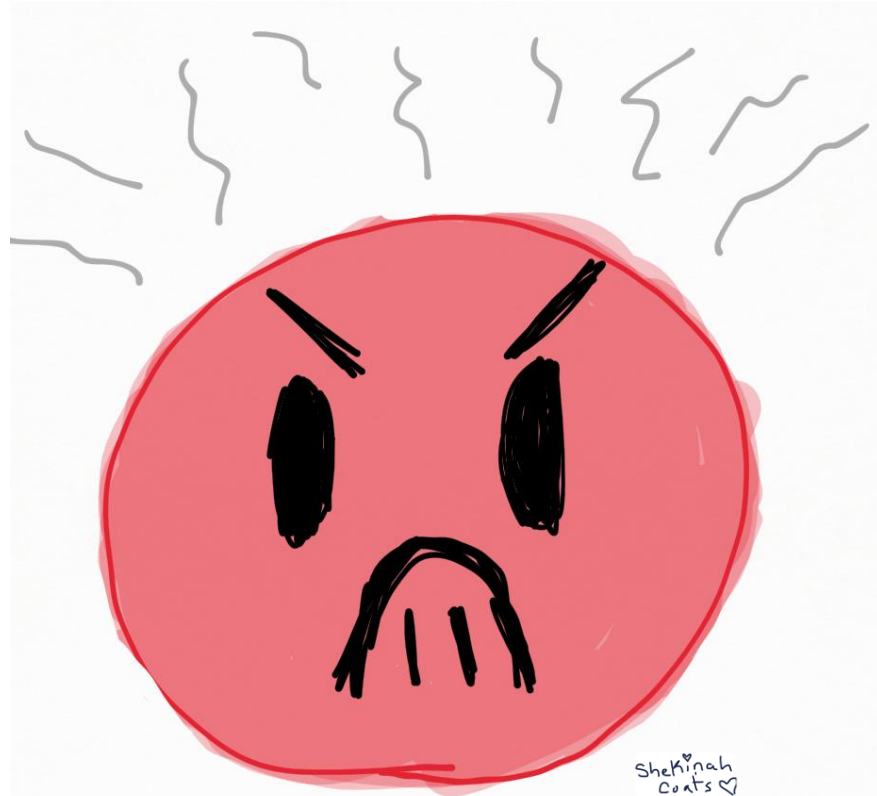




B. You Will Need the Original POA

*See TEC 751.151

C. Watch out for perceived “Conflict of Interest”



HOT TOPICS

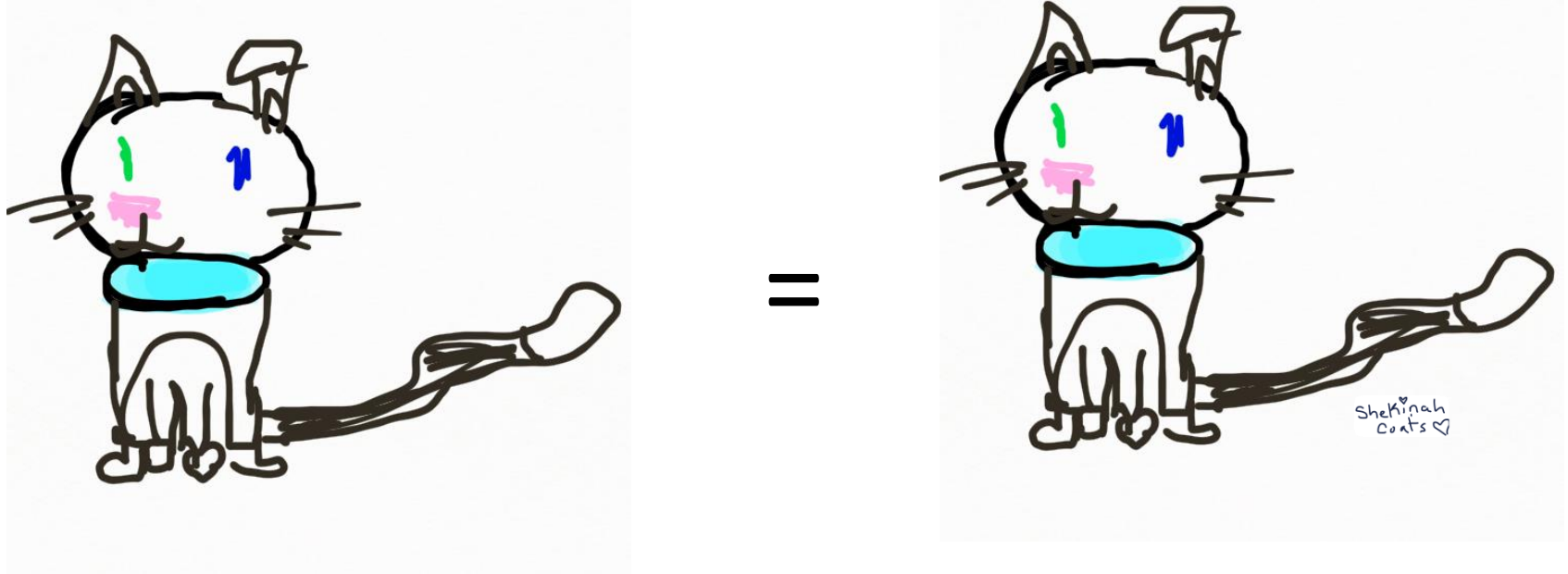
9. Be careful with Co-Agents...



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HOT TOPICS

10. Be careful when Agent = Beneficiary

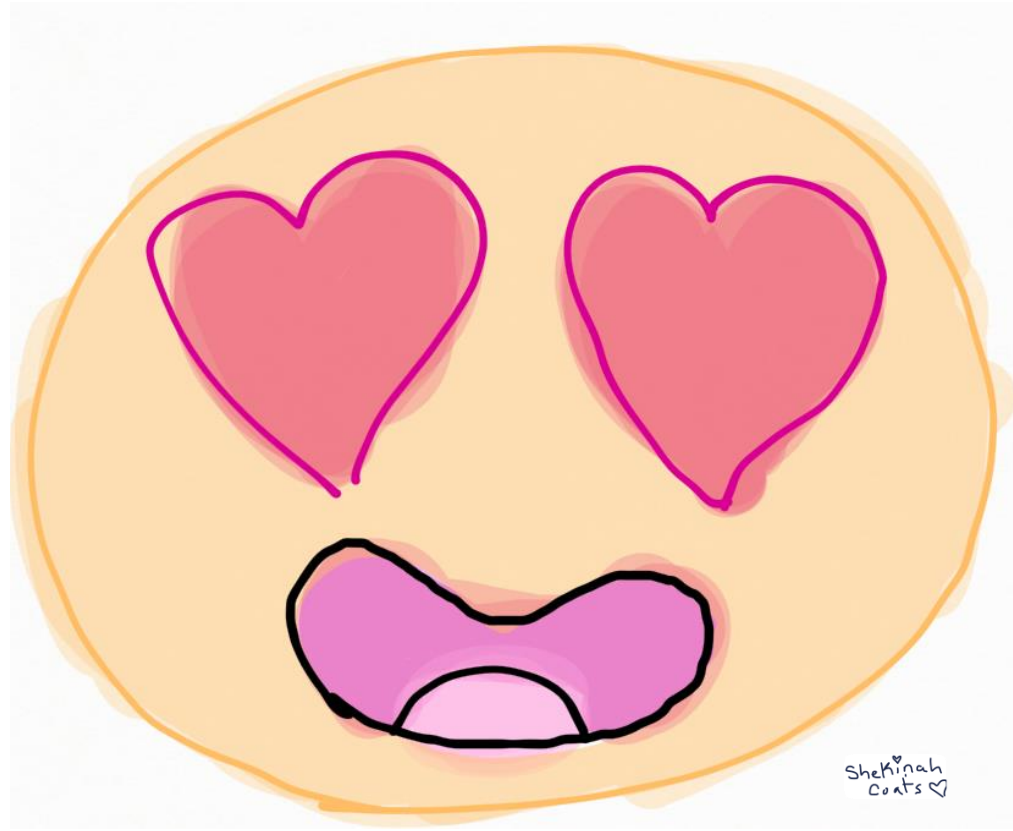


HOT TOPICS

11. There will likely be trouble when Agent paints with broad strokes...

Conclusion

- Stick to the statutory form when possible
- Educate your clients
- Review, review, review your POAs



The End...



Be safe!