ABRAHAMS KASLOW & CASSMAN LLP
80 YEARS
LEGAL Perspectives
Summer 2024

Healthcare Power of Attorney vs. a Living Will

By Payton Hostens

When you think about estate planning, you probably think of documents that set forth your wishes after you pass away.

But there are also documents that you can include in your estate plan that express your wishes while you are still alive but unable to make decisions for yourself.

Two such documents are the Health Care Power of Attorney and the Living Will.

What's the difference between a Health Care Power of Attorney and a Living Will?

A Health Care Power of Attorney allows you to appoint someone to make medical decisions on your behalf if you become unable to make those decisions yourself. This can help ensure your wishes regarding medical treatment are carried out. Additionally, choosing one person to be in charge of those decisions can help prevent disputes among family members.

A Living Will expresses your wishes regarding end-of-life medical treatment if you are incapacitated and unable to communicate your wishes. The Living Will states your preferences regarding life-sustaining interventions, resuscitation, organ donation, and other end of life matters. The Living Will instructs your family members (and the person you appoint in your Health Care Power of Attorney) of your desires for end-of-life care and relieves the burden on such persons when making difficult decisions regarding your end-of-life care.

Do you need both a Health Care Power of Attorney and a Living Will?

The decision to execute a Health Care Power of Attorney, a Living Will, or both, is personal, but both documents should be considered when making your estate plan. Keep in mind that both a Health Care Power of Attorney and a Living Will can be revoked or updated if your wishes change over time.

If you have questions regarding a Health Care Power of Attorney, a Living Will, or estate planning in general, reach out to Payton Hostens at (402) 392-1250 or phostens@akclaw.com.

AKC Law Welcomes Ashley Fischer-Foxall

Ashley is a member of AKC Law's litigation team and focuses her practice on civil litigation, including insurance defense, personal injury, and contract disputes.

She graduated from San Francisco State University with a BA in Cultural Anthropology, received her master's degree magna cum laude in English from California State University in Bakersfield, and earned her JD with distinction from the University of Nebraska College of Law.

While in law school, Ashley served as president of the International Law Student Association and participated in multiple moot court competitions.

She also participated in the International Academy of Dispute Resolution's Mediation Tournament, where she and her teammates were recognized with the Spirit of Mediation Award.

She was selected as a member of the Order of the Barristers in recognition of her excellence in legal writing and the art of courtroom advocacy.

Ashley is licensed to practice in the States of Nebraska and Iowa, in the United States District Court for the District of Nebraska and Iowa, and is a Certified Mediator in Nebraska.

Welcome aboard Ashley!

THE CORPORATE TRANSPARENCY ACT'S

Potential Impact on Trusts

By Alex Montoya

The Corporate Transparency Act (CTA), which went into effect January 1, 2024, may have an impact on trusts. Under the CTA, a trust that meets the definition of a "reporting company" must file a beneficial ownership information (BOI) report with the Department of Treasury's Financial Crimes Enforcement Network (FinCEN).

The CTA requires the reporting of personal information about every individual who meets the definition of a "beneficial owner" of a reporting company. That includes not only the beneficial owners of a trust that is a reporting company, but also the beneficial owners of a reporting company that is owned or controlled by a trust. Civil and criminal penalties can be imposed on a reporting company and on individuals for violating the CTA's reporting requirements.

And the deadline for filing is quickly approaching.

The CTA requires owners and operators of companies formed prior to January 1, 2024 to report beneficial ownership information with FinCEN by January 1, 2025.

Businesses subject to the reporting requirements of the CTA have to collect and report certain ownership information for each "beneficial owner" of the company, i.e., individual(s) who own 25% or more of the company or who exercise "substantial control" over the company.

The process of identifying the individuals who must report beneficial ownership information is straightforward for the most part in single or multi-member organizations where all the beneficial owners are individuals.

It can become much more complex where the reporting company is owned by a trust.

Reporting companies wholly or partially owned by a trust, must consider whether that trust triggers an ownership information filing obligation and, if so, which individuals connected with such trust (trustee, beneficiary, or grantor) need to report their information

Generally, where a trust owns more than 25% of a reporting company, information for the following individuals may need to be reported:

(1) a trustee with authority to dispose of trust assets,
(2) a beneficiary who
  (a) is the sole permissible recipient of the income and principal from the trust, or
  (b) has the right to demand a distribution of substantially all of the assets of the trust, or
(3) a grantor or settlor who has the right to revoke the trust or withdraw the assets of the trust.

The attorneys at Abrahams Kaslow & Cassman LLP are prepared to guide you through the requirements of the CTA, provide information on the most recent legal and legislative developments related to the CTA, and file beneficial ownership information reports with FinCEN on behalf of your company. Contact Alex at amontoya@akclaw.com for more information.

Protecting Your Information with Significant Technology Investments

In an increasingly digital world, the legal industry depends on technology more than ever. With this dependency comes a heightened risk of cyber threats. Because law firms handle vast amounts of sensitive client data, they are prime targets for cyberattacks. Ensuring robust cybersecurity is a technical necessity and critical to maintaining client trust.

AKC Law has adopted a comprehensive approach involving advanced cloud email and document management systems coupled with multi-factor authentication, security software on devices and local servers, employee training, and cloud backup systems, all essential for protecting digital assets.

Microsoft 365 for email offers robust email security features such as encryption, threat protection, and advanced spam filters for safeguarding sensitive client communications and legal documents from unauthorized access or interception. A cloud document management system enhances cybersecurity by providing secure access controls, version history tracking, and encrypted storage for legal documents.

Integrating multi-factor authentication adds an additional layer of security, requiring users to verify their identity through multiple methods before accessing emails or documents remotely. This prevents unauthorized access even if login credentials are compromised. Cloud-based solutions offer scalability and flexibility, allowing AKC Law to securely adapt to remote work environments and enabling lawyers and staff to access emails and documents from any location while maintaining security.

Security software like antivirus programs, firewalls, intrusion detection systems, and endpoint protection solutions form the first line of defense against cyber threats. These tools work together to detect and mitigate threats before they can cause significant damage and are essential for detecting and eliminating malicious software that can compromise systems and data.

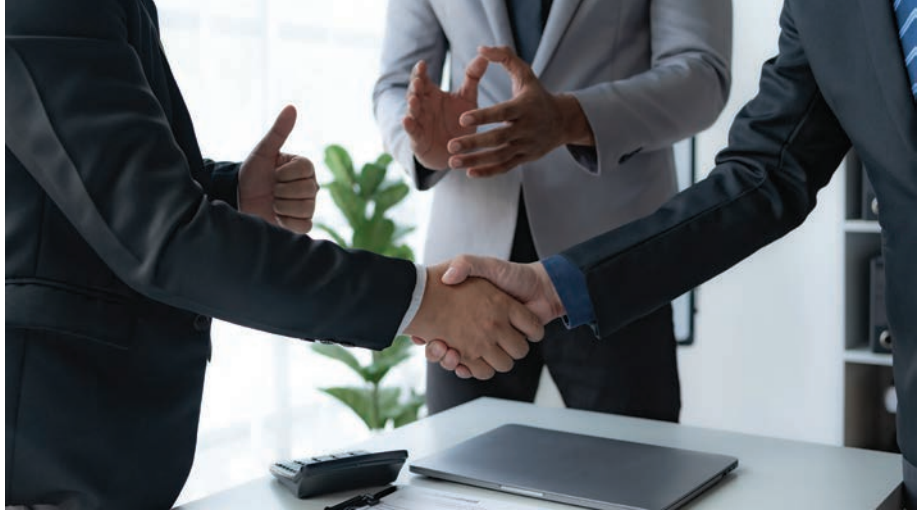
AKC Law believes employee training is crucial for improving cybersecurity. It helps employees recognize and avoid common threats like phishing emails, reducing the chances of security breaches. Training also encourages a culture where everyone takes responsibility for security by following rules on passwords, updates, and how they handle data, cutting down on insider risks. Regular training keeps everyone aware of new cyber threats, strengthening the organization against attacks.

Even the best security measures cannot guarantee 100% protection against cyber threats. However, AKC Law can ensure business continuity and data recovery during a cyber incident by regularly backing up data to a secure, offsite location. Cloud backup solutions provide data redundancy, ensuring that copies of critical data are stored in multiple locations. Automating backup schedules reduces human error risk and ensures data is consistently backed up without manual intervention. A robust cloud backup system is essential for disaster recovery and business operations during and after a data breach or ransomware attack, allowing for quick data restoration and minimizing downtime and disruption to operations.

This integrated approach safeguards the firm's digital assets and builds a resilient, trustworthy, and secure environment for clients and partners. In the face of evolving cyber threats, we find that a proactive and comprehensive cybersecurity strategy is indispensable for maintaining the integrity and reputation of our firm.

TO LITIGATE IS TO NEGOTIATE

Why You Want Your Litigation Attorney to be a Highly Skilled Negotiator



By Hallie Hamilton

If you are sued or need to sue someone else, you want the attorney who represents you to be a highly skilled negotiator. Although most people are aware that settlement negotiations often precede a trial, the entire process is, in fact, filled with small, yet crucial negotiations.

Pre-Lawsuit. Before a claim is filed, attorneys often begin the litigation process by conducting preliminary, informal discovery and sending a "demand letter." Informal discovery efforts help to illuminate the facts and circumstances surrounding the matter. The demand letter summarizes how one party feels his or her rights or interests have been violated, and the relief to which he or she feels entitled. Informal discovery and demand letters open the door for a kind of negotiation process to begin before a claim has officially been filed. Under the right circumstances, a skilled negotiator may help a client achieve a critical win without stepping foot inside a courtroom.

Opposing Counsel. So, it has come to the worst: you've been sued or need to sue someone. A complaint has been filed, and the parties have begun the "formal" discovery process—written interrogatories, requests for production of documents, and depositions. Throughout this process, your attorney will be regularly communicating with opposing counsel to obtain the information you need to win your case. Your attorney will be negotiating with the other party's attorney on many issues big and small, such as extending deadlines, amending pleadings, waiving required but lengthy notices, producing important documents, and even just obtaining responses to emails. Each of these steps may be crucial in your particular case, and a highly skilled negotiator can make all the difference.

The Judge. Sometimes, even the best efforts to negotiate with opposing counsel are unsuccessful. At that point, your attorney will turn to the judge: arguably the most important person with whom your attorney needs to negotiate. For example, say the opposing party has certain documents you need to make your case, but they refuse to produce them in discovery. Your attorney will likely file a motion to compel that will be decided by the judge. Trial judges have significant discretion in how they manage their dockets and cases. This discretion is a good thing when you have an attorney prepared to carefully, and appropriately, negotiate with the judge to achieve an outcome that is advantageous to you.

Settlement. As the case proceeds toward trial, the parties will often engage in formal settlement negotiations. These negotiations can be in the form of exchanged letters, phone calls, emails, mediation, or all of the above. No matter the medium, your attorney will be speaking on your behalf with opposing counsel to get you the deal you want. And you want an attorney that is skilled in negotiation having those conversations.

At AKC Law, our litigation team understands the role negotiation plays, and we are prepared to put those skills to work for you. Contact Hallie at hhamilton@akclaw.com

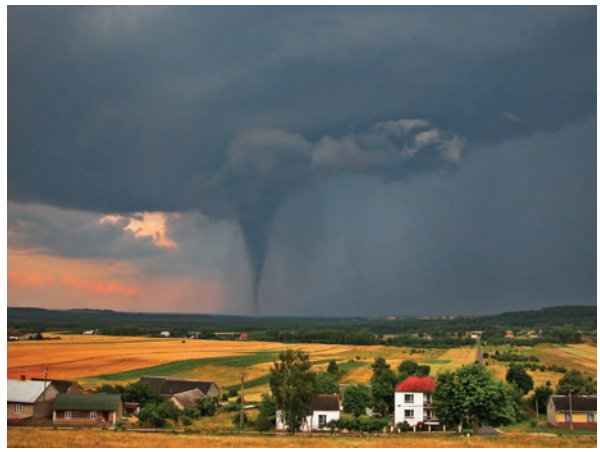
Navigating Property Insurance Claims in Nebraska & Iowa

By Ashley Fischer-Foxall

The recent bouts of inclement weather produced an increase in insurance claims for property damage. In an ideal world, insurance carriers would promptly pay the claims in full to repair the damaged homes. However, that is not always the case, so Nebraska and Iowa have enacted laws and regulations to ensure that insurance claims are resolved in a fair and equitable manner.

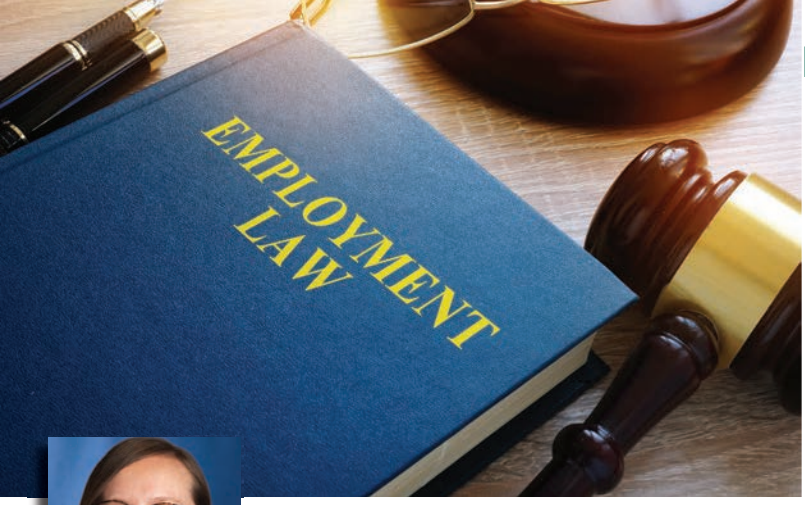
The Nebraska laws set minimum standards for the investigation and resolution of insurance claims, including claims for property damage. Iowa has adopted laws like those adopted in Nebraska.

Some examples of unlawful claims settlement practices include failing to provide prompt notice of whether a claim has been accepted, failing to provide a claimant the basis for the carrier's denial of a claim, or failing to resolve a claim in a reasonable amount of time.



In both states, if your insurance carrier violates the law and fails to compensate you for a covered loss you may pursue legal action and, if you prevail at trial, you also may be entitled to recover attorneys' fees. If you feel your property insurance claim has not been handled fairly, you should consult with an experienced insurance litigation attorney to determine your rights and remedies pursuant to your policy and the rules of your state.

If you have questions, contact Ashley at afischer@akclaw.com.



2024 Year in Review

By Julie M. Ryan

Business owners and managers need to keep track of the ever-changing landscape of employment laws that may impact their business. This year is not unlike others in that there are changes to, and newly added state and federal employment laws. Although this article does not cover each revised or added law, here is an overview of some of the more important changes.

Sexual Orientation and Gender Identity

Two bills were introduced to the Nebraska legislature that sought to prohibit discrimination based on sexual orientation and gender identity in employment. Neither advanced through the legislative process to become Nebraska law. However, employers should assess whether they are subject to a local or federal law that prohibits such discrimination.

For example, the U.S. Supreme Court held that the prohibition against sex discrimination under Title VII of the Civil Rights Act includes a prohibition against sexual orientation or gender identity discrimination.

Generally an employer must comply with Title VII if it has fifteen or more employees on its payroll. The Omaha municipal code also bans employers from discriminating on the grounds of sexual orientation or gender identity in connection with employment decisions. Generally, an employer must follow that local law if it has six or more employees.

Nebraska Child Labor Laws

This year, the Nebraska legislature passed a law that increases penalties for state child labor law violations and broadened the Nebraska Department of Labor's ability to investigate and subpoena employers suspected of violating state child labor laws. Among other things, state child labor laws require an employment certificate for workers under age 16 and restrict the hours that workers aged 14 or 15 may work (the federal child labor laws impose stricter hours restrictions). The penalty for a violation is now a Class I misdemeanor, which is punishable by up to 1 year of prison, a $1,000 fine, or both. In some instances, the penalty may apply to each day the violation continues after the employer is given notice of the violation.

In addition to auditing your compliance with Nebraska child labor laws, this is a good reminder to review your compliance with federal child labor laws and regulations as well. Unlike Nebraska law, the federal child labor laws also include restrictions on the type of work some children workers can perform, referred to as hazardous work orders. Keep in mind that the federal child labor laws may allow for much higher penalties than state law.

Religious Accommodation Requests Subject to Heightened Standard

Title VII prohibits discrimination based on religion, unless an employer can prove that it is unable to reasonably provide a religious accommodation to an employee without "undue hardship" on the conduct of the business. In the past, courts allowed an employer to reject a religious accommodation request if imposing the accommodation meant the employer would have to bear more than a "de minimis cost". However, this year, the U.S. Supreme Court issued a decision in Groff v. DeJoy that rejected the "de minimis cost" test. Now, employers cannot refuse to accommodate an employee's request for religious accommodation unless they can show that it would result in a "substantial increase" in the cost of performing its particular business. This decision does not change the fact that an employer may provide an alternative accommodation other than the one preferred by the employee, so long as it is reasonable.

Pregnant Workers Fairness Act (PWFA)

Generally, the PWFA applies to employers who have fifteen or more employees. It is a new federal law that went into effect on June 27, 2023, and its corresponding regulations went into effect on June 18, 2024. The PWFA requires employers to provide a reasonable accommodation to a qualified employee's or applicant's known physical or mental limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. The final rule identified a number of examples of accommodations that will almost always be found to be reasonable and not pose an undue hardship on the employer, such as: allowing an employee to keep water near and drink, as needed; allowing an employee additional restroom breaks; and allowing an employee whose work requires standing to sit and vice versa, as needed. Other possible reasonable accommodations may include schedule changes, remote work, parking modifications, light duty, or temporarily suspending one or more essential functions.

Form I-9

The U.S. Department of Homeland Security's Citizenship and Immigration Services issued a new Employment Eligibility Verification form, commonly referred to as Form I-9, that employers had to start using as of November 1, 2023. This is a good opportunity to perform an internal audit of your Form I-9 procedure. An employee must complete Section 1 of the form no later than the first day of employment and must provide the required documentation within three business days after the employee's first day of employment.

FTC Ban on Non-Competes, and New Federal DOL Overtime Rule

Reminder to review our recent article that covered updates to both of these federal laws. Both laws are currently being challenged in various lawsuits, some of which seek a preliminary injunction from the court to delay the effective date of the law. However, no court has issued an injunction. Therefore, until a court rules otherwise, employers must comply with the first wave of salary threshold increases under the DOL Overtime Rule beginning July 1, 2024.

If you have questions about employment Law, please contact AKC Employment Law Attorneys, Julie Ryan or Harvey Cooper at 402.392.1250.