

Act No. 141
Public Acts of 2012
Approved by the Governor
May 22, 2012
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May 22, 2012
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**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senator Bieda

ENROLLED SENATE BILL No. 92

AN ACT to amend 1998 PA 386, entitled “An act to codify, revise, consolidate, and classify aspects of the law relating to wills and intestacy, relating to the administration and distribution of estates of certain individuals, relating to trusts, and relating to the affairs of certain individuals under legal incapacity; to provide for the powers and procedures of the court that has jurisdiction over these matters; to provide for the validity and effect of certain transfers, contracts, and deposits that relate to death; to provide procedures to facilitate enforcement of certain trusts; and to repeal acts and parts of acts,” by amending section 5501 (MCL 700.5501).

The People of the State of Michigan enact:

Sec. 5501. (1) A durable power of attorney is a power of attorney by which a principal designates another as the principal’s attorney in fact in a writing that contains the words “This power of attorney is not affected by the principal’s subsequent disability or incapacity, or by the lapse of time”, or “This power of attorney is effective upon the disability or incapacity of the principal”, or similar words showing the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent disability or incapacity and, unless the power states a termination time, notwithstanding the lapse of time since the execution of the instrument.

(2) A durable power of attorney under this section shall be dated and signed voluntarily by the principal or signed by a notary public on the principal’s behalf pursuant to section 33 of the Michigan notary public act, 2003 PA 238, MCL 55.293. The durable power of attorney shall be 1 or both of the following:

(a) Signed in the presence of 2 witnesses, neither of whom is the attorney-in-fact, and both of whom also sign the durable power of attorney.

(b) Acknowledged by the principal before a notary public, who endorses on the durable power of attorney a certificate of that acknowledgment and the true date of taking the acknowledgment.

(3) An attorney-in-fact designated and acting under a durable power of attorney has the authority, rights, responsibilities, and limitations as provided by law with respect to a durable power of attorney, including, but not limited to, all of the following:

(a) Except as provided in the durable power of attorney, the attorney-in-fact shall act in accordance with the standards of care applicable to fiduciaries exercising powers under a durable power of attorney.

(b) The attorney-in-fact shall take reasonable steps to follow the instructions of the principal.

(c) Upon request of the principal, the attorney-in-fact shall keep the principal informed of the attorney-in-fact’s actions. The attorney-in-fact shall provide an accounting to the principal upon request of the principal, to a conservator or guardian appointed on behalf of the principal upon request of the guardian or conservator, or pursuant to judicial order.

(d) The attorney-in-fact shall not make a gift of all or any part of the principal's assets, unless provided for in the durable power of attorney or by judicial order.

(e) Unless provided in the durable power of attorney or by judicial order, the attorney-in-fact, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and the attorney-in-fact.

(f) The attorney-in-fact shall maintain records of the attorney-in-fact's actions on behalf of the principal, including transactions, receipts, disbursements, and investments.

(g) The attorney-in-fact may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate the attorney-in-fact of any liability to the principal for breach of fiduciary duty except for actions committed by the attorney-in-fact in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of an abuse by the attorney-in-fact of a fiduciary or confidential relationship to the principal.

(h) The attorney-in-fact may receive reasonable compensation for the attorney-in-fact's services if provided for in the durable power of attorney.

(4) Before exercising authority under a durable power of attorney, an attorney-in-fact shall execute an acknowledgment of the attorney-in-fact's responsibilities that contains all of the substantive statements in substantially the following form:

I, _____, have been appointed as attorney-in-fact for _____, the principal, under a durable power of attorney dated _____. By signing this document, I acknowledge that if and when I act as attorney-in-fact, all of the following apply:

(a) Except as provided in the durable power of attorney, I must act in accordance with the standards of care applicable to fiduciaries acting under durable powers of attorney.

(b) I must take reasonable steps to follow the instructions of the principal.

(c) Upon request of the principal, I must keep the principal informed of my actions. I must provide an accounting to the principal upon request of the principal, to a guardian or conservator appointed on behalf of the principal upon the request of that guardian or conservator, or pursuant to judicial order.

(d) I cannot make a gift from the principal's property, unless provided for in the durable power of attorney or by judicial order.

(e) Unless provided in the durable power of attorney or by judicial order, I, while acting as attorney-in-fact, shall not create an account or other asset in joint tenancy between the principal and me.

(f) I must maintain records of my transactions as attorney-in-fact, including receipts, disbursements, and investments.

(g) I may be liable for any damage or loss to the principal, and may be subject to any other available remedy, for breach of fiduciary duty owed to the principal. In the durable power of attorney, the principal may exonerate me of any liability to the principal for breach of fiduciary duty except for actions committed by me in bad faith or with reckless indifference. An exoneration clause is not enforceable if inserted as the result of my abuse of a fiduciary or confidential relationship to the principal.

(h) I may be subject to civil or criminal penalties if I violate my duties to the principal.

Signature: _____ Date: _____

(5) A third party is not liable to the principal or any other person because the third party has complied in good faith with instructions from an attorney-in-fact named in a durable power of attorney whether or not the attorney-in-fact has executed an acknowledgment that complies with subsection (4). A third party is not liable to the principal or any other person if the third party requires an attorney-in-fact named in a durable power of attorney to execute an acknowledgment that complies with subsection (4) before recognizing the durable power of attorney.

(6) An attorney-in-fact's failure to comply with subsection (4) does not affect the attorney-in-fact's authority to act for the principal as provided for in the durable power of attorney and does not affect the attorney-in-fact's responsibilities or potential liability to the principal.

(7) Subsections (2) to (6) do not apply to any of the following:

(a) A durable power of attorney executed before October 1, 2012.

(b) A delegation under section 5103 or a similar power of attorney created by a parent or guardian regarding the care, custody, or property of a minor child or ward.

(c) A patient advocate designation or a similar power of attorney relating to the principal's health care.

(d) A durable power of attorney that is coupled with an interest in the subject matter of the power.

(e) A durable power of attorney that is contained in or is part of a loan agreement, security agreement, pledge agreement, escrow agreement, or other similar transaction.

(f) A durable power of attorney in connection with a transaction with a joint venture, limited liability company, partnership, limited partnership, limited liability partnership, corporation, condominium, condominium association, condominium trust, or similar entity, including, without limitation, a voting agreement, voting trust, joint venture agreement, royalty agreement, license agreement, proxy, shareholder's agreement, operating agreement, partnership agreement, management agreement, subscription agreement, certification of incorporation, bylaws, or other agreement that primarily relates to such an entity.

(g) A power of attorney given primarily for a business or a commercial purpose.

(h) A power of attorney created on a form prescribed by a government or a governmental subdivision, agency, or instrumentality for a governmental purpose.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor