

/* Here's the full text of the Uniform Durable Power of Attorney Act. This act defines what a "Durable" power of attorney is. */

Section 1. Definition. A durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words "This power of attorney shall not be affected by subsequent disability or incapacity of the principal," or "This power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

/* It is very important for everyone to see that there are TWO different types of durable powers of attorneys. The first is a power of attorney that goes into effect at the same time that it is signed. The other is a power of attorney that "springs into effect" when a person becomes disabled. In other words, the principal does not give up any control of their affairs until and unless they become disabled. In other words, you never give up control to the person designated as the attorney until you are unable to handle your own affairs. */

Section 2. Durable Power of Attorney Not Affected by Disability. All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled.

/* In a standard power of attorney, the law provides that the power is automatically revoked upon the disability of the principal. Most people do not need an "attorney" to handles their business for them, EXCEPT when they are disabled. Therefore, this act. */

Section 3. Relation of Attorney in Fact to Court-appointed Fiduciary. (a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power or revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated.

/* This section provides that if a court takes over a persons affairs that the court appointed person can affirm or revoke the power of attorney. This gives the Court the ultimate authority. */

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person, for consideration by the court if protective proceedings for the p73 principal's person or estate are thereafter commenced. The court

shall make its appointment with the principal's most recent nomination in a durable power of attorney except for good cause shown.

/* This section provides that you may specify who a court will appoint if you become a ward of the court. */

Section 4. (a) The death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest to the principal.

(b) The disability or incapacity of a principal who has previously executed a written power of attorney that is not a durable power of attorney that is not a durable power does not revoke or terminate the agency as to the attorney in fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

Section 5. Proof of Continuance of Durable and Other Powers of Attorney by Affidavit. As to acts undertaken in good faith reliance thereon, an affidavit executed by the attorney in fact under a power of attorney, durable or otherwise, stating that he did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation or of the principal's death, disability, or incapacity is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of that power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

/* We have previously stated the common law rule that Powers of Attorney are revoked by the death or incapacity of the principal. That makes it difficult for person to engage in business transactions with persons holding powers of attorney. This portion of the Act says that if you get an affidavit, you are okay. The document generator contains a form for this purpose. Of course, if a power of attorney says that it is revoked after 30 days, no affidavit can extend its life beyond that time. */

Section 6. Uniformity of Application and Construction. This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among the states enacting it.

Section 7. Short title. This Act may be cited as the Uniform Durable Power of Attorney Act.

* The remainder of the act is housekeeping. */