



State of Wisconsin  
1997 - 1998 LEGISLATURE

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**SENATE SUBSTITUTE AMENDMENT 1,  
TO 1997 SENATE BILL 254**

February 3, 1998 – Offered by COMMITTEE ON JUDICIARY, CAMPAIGN FINANCE REFORM  
AND CONSUMER AFFAIRS.

1 **AN ACT to amend** 243.07 (1) (a), (2), (3) (a), (4) (b) and (5); **to repeal and recreate**  
2 243.10; and **to create** 243.07 (6r) of the statutes; **relating to:** powers of  
3 attorney.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

4 **SECTION 1.** 243.07 (1) (a), (2), (3) (a), (4) (b) and (5) of the statutes are amended  
5 to read:  
6 243.07 (1) (a) “Durable power of attorney” means a power of attorney by which  
7 a principal designates another as his or her agent in writing and the writing contains  
8 the words “this power of attorney shall not be affected by subsequent disability, or  
9 incapacity ~~or incompetency~~ of the principal”, or “this power of attorney shall become  
10 effective upon the disability, or incapacity ~~or incompetency~~ of the principal”, or  
11 similar words showing the intent of the principal that the authority conferred shall

1 be exercisable notwithstanding the principal's subsequent disability, or incapacity  
2 ~~or incompetency~~.

3 (2) DURABLE POWER OF ATTORNEY NOT AFFECTED BY DISABILITY. All acts done by  
4 an agent pursuant to a durable power of attorney during any period of disability, or  
5 incapacity ~~or incompetency~~ of the principal have the same effect and inure to the  
6 benefit of and bind the principal and his or her successors in interest as if the  
7 principal were ~~competent~~ and not disabled.

8 (3) (a) If, following execution of a durable power of attorney, a court of the  
9 principal's domicile appoints a conservator, guardian of the estate, or other fiduciary  
10 charged with the management of all of the principal's property or all of his or her  
11 property except specified exclusions, the agent is accountable to the fiduciary as well  
12 as to the principal. The Unless the court finds that the durable power of attorney  
13 should remain in effect, the fiduciary has the same power to revoke or amend the  
14 power of attorney that the principal would have had if the principal were not  
15 disabled, or incapacitated ~~or incompetent~~.

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

22 (5) PROOF OF CONTINUANCE OF DURABLE AND OTHER POWERS OF ATTORNEY BY  
23 AFFIDAVIT. As to acts undertaken in good faith reliance thereon, an affidavit executed  
24 by the agent under a power of attorney, durable or otherwise, stating that he or she  
25 did not have at the time of exercise of the power actual knowledge of the termination

1 of the power by revocation or of the principal's death, disability, or incapacity ~~or~~  
2 ~~incompetency~~ is conclusive proof of the nonrevocation or nontermination of the  
3 power at that time. If the exercise of the power of attorney requires execution and  
4 delivery of any instrument that is recordable, the affidavit when authenticated for  
5 record is likewise recordable. This subsection does not affect any provision in a power  
6 of attorney for its termination by expiration of time or occurrence of an event other  
7 than express revocation or a change in the principal's capacity.

8 **SECTION 2.** 243.07 (6r) of the statutes is created to read:

9 243.07 **(6r)** PETITION TO REVIEW AGENT'S PERFORMANCE. (a) An interested party  
10 may petition the court assigned to exercise probate jurisdiction for the county where  
11 a principal is present or the county of the principal's legal residence to review  
12 whether the agent is performing his or her duties in accordance with the terms of the  
13 durable power of attorney executed by the principal. If the court finds after a hearing  
14 that the agent has not been performing in accordance with the terms of the durable  
15 power of attorney, the court may do any of the following:

16 1. Direct the agent to act in accordance with the terms of the principal's durable  
17 power of attorney.

18 2. Require the agent to report to the court concerning performance of the  
19 agent's duties at periods of time established by the court.

20 3. Rescind all powers of the agent to act under the durable power of attorney.

21 (b) If the principal has designated an alternate agent and if the powers of the  
22 first-designated agent are rescinded under par. (a) 3., the alternate agent is the  
23 agent and is subject to par. (a).

24 **SECTION 3.** 243.10 of the statutes, as affected by 1997 Wisconsin Act 35, is  
25 repealed and recreated to read:

1           **243.10 Wisconsin basic power of attorney for finances and property.**

2           **(1) FORM.** The following is the form for the Wisconsin basic power of attorney for  
3 finances and property:

4                           WISCONSIN BASIC POWER OF ATTORNEY

5                           FOR FINANCES AND PROPERTY

6           NOTICE: THIS IS AN IMPORTANT DOCUMENT. BEFORE SIGNING THIS  
7 DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. BY SIGNING  
8 THIS DOCUMENT, YOU ARE NOT GIVING UP ANY POWERS OR RIGHTS TO  
9 CONTROL YOUR FINANCES AND PROPERTY YOURSELF. IN ADDITION TO  
10 YOUR OWN POWERS AND RIGHTS, YOU ARE GIVING ANOTHER PERSON,  
11 YOUR AGENT, BROAD POWERS TO HANDLE YOUR FINANCES AND  
12 PROPERTY. THIS BASIC POWER OF ATTORNEY FOR FINANCES AND  
13 PROPERTY MAY GIVE THE PERSON WHOM YOU DESIGNATE (YOUR  
14 "AGENT") BROAD POWERS TO HANDLE YOUR FINANCES AND PROPERTY,  
15 WHICH MAY INCLUDE POWERS TO ENCUMBER, SELL OR OTHERWISE  
16 DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE  
17 NOTICE TO YOU OR APPROVAL BY YOU. THE POWERS WILL EXIST AFTER  
18 YOU BECOME DISABLED, OR INCAPACITATED, IF YOU CHOOSE THAT  
19 PROVISION. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE  
20 MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. IF YOU OWN  
21 COMPLEX OR SPECIAL ASSETS SUCH AS A BUSINESS, OR IF THERE IS  
22 ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU  
23 SHOULD ASK A LAWYER TO EXPLAIN THIS FORM TO YOU BEFORE YOU  
24 SIGN IT.

1 IF YOU WISH TO CHANGE YOUR BASIC POWER OF ATTORNEY FOR  
2 FINANCES AND PROPERTY, YOU MUST COMPLETE A NEW DOCUMENT  
3 AND REVOKE THIS ONE. YOU MAY REVOKE THIS DOCUMENT AT ANY TIME  
4 BY DESTROYING IT, BY DIRECTING ANOTHER PERSON TO DESTROY IT IN  
5 YOUR PRESENCE OR BY SIGNING A WRITTEN AND DATED STATEMENT  
6 EXPRESSING YOUR INTENT TO REVOKE THIS DOCUMENT. IF YOU  
7 REVOKE THIS DOCUMENT, YOU SHOULD NOTIFY YOUR AGENT AND ANY  
8 OTHER PERSON TO WHOM YOU HAVE GIVEN A COPY OF THE FORM. YOU  
9 ALSO SHOULD NOTIFY ALL PARTIES HAVING CUSTODY OF YOUR ASSETS.  
10 THESE PARTIES HAVE NO RESPONSIBILITY TO YOU UNLESS YOU  
11 ACTUALLY NOTIFY THEM OF THE REVOCATION. IF YOUR AGENT IS YOUR  
12 SPOUSE AND YOUR MARRIAGE IS ANNULLED, OR YOU ARE DIVORCED  
13 AFTER SIGNING THIS DOCUMENT, THIS DOCUMENT IS INVALID.

14 SINCE SOME 3RD PARTIES OR SOME TRANSACTIONS MAY NOT  
15 PERMIT USE OF THIS DOCUMENT, IT IS ADVISABLE TO CHECK IN  
16 ADVANCE, IF POSSIBLE, FOR ANY SPECIAL REQUIREMENTS THAT MAY BE  
17 IMPOSED.

18 YOU SHOULD SIGN THIS FORM ONLY IF THE AGENT YOU NAME IS  
19 RELIABLE, TRUSTWORTHY AND COMPETENT TO MANAGE YOUR AFFAIRS.

20 I .... (insert your name and address) appoint .... (insert the name and address  
21 of the person appointed) as my agent to act for me in any lawful way with respect to  
22 the powers initialed below. If the person appointed is unable or unwilling to act as  
23 my agent, I appoint .... (insert name and address of alternate person appointed) to  
24 act for me in any lawful way with respect to the powers initialed below.

1 TO GRANT ONE OR MORE OF THE FOLLOWING POWERS, INITIAL THE  
2 LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

3 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT.  
4 YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

### 5 **HANDLING MY MONEY AND PROPERTY**

#### 6 *Initials*

7 \_\_\_\_ 1. *PAYMENTS OF BILLS*: My agent may make payments that are necessary  
8 or appropriate in connection with the administration of my affairs.

9 \_\_\_\_ 2. *BANKING*: My agent may conduct business with financial institutions,  
10 including endorsing all checks and drafts made payable to my order and collecting  
11 the proceeds; signing in my name checks or orders on all accounts in my name or for  
12 my benefit; withdrawing funds from accounts in my name; opening accounts in my  
13 name; and entering into and removing articles from my safe deposit box.

14 \_\_\_\_ 3. *INSURANCE*: My agent may obtain insurance of all types, as considered  
15 necessary or appropriate, settle and adjust insurance claims and borrow from  
16 insurers and 3rd parties using insurance policies as collateral.

17 \_\_\_\_ 4. *ACCOUNTS*: My agent may ask for, collect and receive money, dividends,  
18 interest, legacies and property due or that may become due and owing to me and give  
19 receipt for those payments.

20 \_\_\_\_ 5. *REAL ESTATE*: My agent may manage real property; sell, convey and  
21 mortgage realty for prices and on terms as considered advisable; foreclose mortgages  
22 and take title to property in my name; and execute deeds, mortgages, releases,  
23 satisfactions and other instruments relating to realty.

24 \_\_\_\_ 6. *BORROWING*: My agent may borrow money and encumber my assets for  
25 loans as considered necessary.

1       \_\_\_ 7. *SECURITIES*: My agent may buy, sell, pledge and exchange securities of  
2 all kinds in my name; sign and deliver in my name transfers and assignments of  
3 securities; and consent in my name to reorganizations, mergers or exchange of  
4 securities for new securities.

5       \_\_\_ 8. *INCOME TAXES*: My agent may make and sign tax returns; represent me  
6 in all income tax matters before any federal, state, or local tax collecting agency; and  
7 receive confidential information and perform any acts that I may perform, including  
8 receiving refund checks and the signing of returns.

9       \_\_\_ 9. *TRUSTS*: My agent may transfer at any time any of my property to a living  
10 trust that has been established by me before the execution of this document.

### 11                                   **PROFESSIONAL AND TECHNICAL ASSISTANCE**

12       *Initials*

13       \_\_\_ 10. *LEGAL ACTIONS*: My agent may retain attorneys on my behalf; appear  
14 for me in all actions and proceedings to which I may be a party; commence actions  
15 and proceedings in my name; and sign in my name all documents or pleadings of  
16 every description.

17       \_\_\_ 11. *PROFESSIONAL ASSISTANCE*: My agent may hire accountants,  
18 attorneys, clerks, workers and others for the management, preservation and  
19 protection of my property and estate.

### 20                                   **GENERAL AUTHORITY**

21       *Initials*

22       \_\_\_ 12. *GENERAL*: My agent may do any act or thing that I could do in my own  
23 proper person if personally present. The specifically enumerated powers of the basic  
24 power of attorney for finances and property are not a limitation of this intended

1 broad general power except that my agent may not take any action prohibited by law  
2 and my agent under this document may not:

3 a. Make medical or health care decisions for me.

4 b. Make, modify or revoke a will for me.

5 c. Other than a burial trust agreement under section 445.125, Wisconsin  
6 Statutes, enter into a trust agreement on my behalf or amend or revoke a trust  
7 agreement, entered into by me.

8 d. Change any beneficiary designation of any life insurance policy, qualified  
9 retirement plan, individual retirement account or payable on death account or the  
10 like whether directly or by canceling and replacing the policy or rollover to another  
11 plan or account.

12 e. Forgive debts owed to me or disclaim or waive benefits payable to me.

13 f. Appoint a substitute or successor agent for me.

14 g. Make gifts.

15 **COMPENSATION TO AGENT**  
16 **FROM PRINCIPAL'S FUNDS**

17 *Initials*

18 \_\_\_\_ 13. *COMPENSATION*. My agent may receive compensation only in an  
19 amount not greater than that usual for the services to be performed if expressly  
20 authorized in the special instructions portion of this document.

21 **ACCOUNTING**

22 *Initials*

23 \_\_\_\_ 14. *ACCOUNTING*. My agent shall render an accounting (monthly)  
24 (quarterly) (annually) (CIRCLE ONE) to me or to ... (insert name and address)



1 during my lifetime and a final accounting to the personal representative of my estate,  
2 if any is appointed, after my death.

3 **NOMINATION OF GUARDIAN**

4 *Initials*

5 \_\_\_\_\_ 15. *GUARDIAN:* If necessary, I nominate .... (name) of .... (address) as  
6 guardian of my person and I nominate .... (name) of .... (address) as guardian of my  
7 estate.

8 **SPECIAL INSTRUCTIONS**

9 *Initials*

10 \_\_\_\_\_ 16. *SPECIAL INSTRUCTIONS:*

11 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS  
12 REGARDING THE POWERS GRANTED TO YOUR AGENT.

13 .....  
14 .....  
15 .....  
16 .....  
17 .....  
18 .....  
19 .....  
20 .....  
21 .....

22 TO ESTABLISH WHEN, AND FOR HOW LONG, THE BASIC POWER OF  
23 ATTORNEY FOR FINANCES AND PROPERTY IS IN EFFECT, YOU MUST  
24 INITIAL ONLY ONE OF THE FOLLOWING 3 OPTIONS. IF YOU DO NOT

1 INITIAL ONE, OR IF YOU INITIAL MORE THAN ONE, THIS BASIC POWER OF  
2 ATTORNEY FOR FINANCES AND PROPERTY WILL NOT TAKE EFFECT.

3 *Initials*

4 \_\_\_\_\_ This basic power of attorney for finances and property becomes effective when  
5 I sign it and will continue in effect as a durable power of attorney under section  
6 243.07, Wisconsin Statutes, if I become disabled or incapacitated.

7 \_\_\_\_\_ This basic power of attorney for finances and property becomes effective only  
8 when both of the following apply:

- 9 a. I have signed it; and
- 10 b. I become disabled or incapacitated.

11 \_\_\_\_\_ This basic power of attorney for finances and property becomes effective when  
12 I sign it BUT WILL CEASE TO BE EFFECTIVE IF I BECOME DISABLED OR  
13 INCAPACITATED.

14 I agree that any 3rd party who receives a copy of this document may act under  
15 it. Revocation of this basic power of attorney is not effective as to a 3rd party until  
16 the 3rd party learns of the revocation. I agree to reimburse the 3rd party for any loss  
17 resulting from claims that arise against the 3rd party because of reliance on this  
18 basic power of attorney.

19 Signed this .... day of ...., (year)

20 .....

21 (Your Signature)

22 .....

23 (Your Social Security Number)

24 By signing as a witness, I am acknowledging the signature of the principal who  
25 signed in my presence and the presence of the other witness, and the fact that he

1 or she has stated that this power of attorney reflects his or her wishes and is being  
2 executed voluntarily. I believe him or her to be of sound mind and capable of creating  
3 this power of attorney. I am not related to him or her by blood or marriage, and, to  
4 the best of my knowledge, I am not entitled to any portion of his or her estate under  
5 his or her will.

6 Witness: ....

7 Dated: ....

8 By: ....

9 Print Name: ....

10 Address: ....

11 Witness: ....

12 Dated: ....

13 By: ....

14 Print Name: ....

15 Address: ....

16 State of ....

17 County of ....

18 This document was acknowledged before me on .... (date) by .... (name of  
19 principal).

20 .....

21 (Signature of Notarial Officer)

22 (Seal, if any)

23 (Title)

24 [My commission is permanent or expires: ....]

1 BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT  
2 ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES AND  
3 LIABILITIES OF AN AGENT.

4 .....

5 (Name of Agent)

6 .....

7 (Signature of Agent)

8 This document was drafted by .... (signature of person preparing the document).

9 **(2) REQUIREMENTS.** A Wisconsin basic power of attorney for finances and  
10 property is legally sufficient under this section if the wording of the form complies  
11 substantially with sub. (1), the form is properly completed, the signature of the  
12 principal is acknowledged and the signature of the agent is obtained.

13 **(3) COPIES.** A copy of a completed Wisconsin basic power of attorney for finances  
14 and property form has the same force and effect as the original.

15 **(4) DURABLE POWER OF ATTORNEY.** A Wisconsin basic power of attorney for  
16 finances and property that is legally sufficient under this section is durable to the  
17 extent that durable powers are permitted under s. 243.07 and the basic power of  
18 attorney for finances and property contains language provided under s. 243.07 (1) (a)  
19 showing the intent of the principal that the power granted may be exercised  
20 notwithstanding later disability or incapacity.

21 **(5) DISTRIBUTION OF FORMS.** The department of health and family services shall  
22 prepare and provide copies of the Wisconsin basic power of attorney for finances and  
23 property form under sub. (1) for distribution in quantities to financial institutions,  
24 health care professionals, hospitals, nursing homes, multipurpose senior centers,  
25 county clerks and local bar associations and individually to private persons. The

1 department of health and family services may charge a reasonable fee for the cost  
2 of preparation and distribution of the forms.

3 **(6) RELATION TO POWER OF ATTORNEY FOR HEALTH CARE.** The execution of a  
4 Wisconsin basic power of attorney for finances and property under this section does  
5 not confer on the agent any of the powers or duties conferred on a health care agent  
6 by the power of attorney for health care under ch. 155.

7 **(7) AMENDMENT, REVOCATION AND INVALIDATION OF BASIC POWER OF ATTORNEY FOR**  
8 **FINANCES AND PROPERTY.** (a) A principal may amend a Wisconsin basic power of  
9 attorney for finances and property only by revoking that power of attorney and  
10 completing a new basic power of attorney for finances and property.

11 (b) A principal may revoke a Wisconsin basic power of attorney for finances and  
12 property and invalidate it at any time by destroying it, by directing another person  
13 to destroy it in the principal's presence or by signing a written and dated statement  
14 expressing the principal's intent to revoke. If the agent under the Wisconsin basic  
15 power of attorney for finances and property is the principal's spouse and the  
16 marriage is annulled, or the agent and principal are divorced, after signing the  
17 document, the Wisconsin basic power of attorney for finances and property is invalid.

18 **(8) REVIEW OF AGENT'S PERFORMANCE.** (a) An interested party may petition the  
19 court assigned to exercise probate jurisdiction for the county where a principal is  
20 present or the county of the principal's legal residence to review whether the agent  
21 is performing his or her duties in accordance with the terms of the Wisconsin basic  
22 power of attorney for finances and property executed by the principal. If the court  
23 finds after a hearing that the agent has not been performing in accordance with the  
24 terms of the Wisconsin basic power of attorney for finances and property, the court  
25 may do any of the following:

