

CHAPTER 243**GENERAL PROVISIONS RELATING TO FRAUDULENT CONVEYANCES AND CONTRACTS**

<p>243.01 Grants, etc., of trust to be in writing. 243.02 Conveyances void as to creditors void as to their heirs, etc. 243.03 “Lands” defined. 243.04 “Conveyance” defined.</p>	<p>243.05 Instruments signed by agents. 243.06 Death of principal, effect on agency. 243.07 Uniform durable power of attorney act. 243.10 Wisconsin basic power of attorney for finances and property.</p>
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243.01 Grants, etc., of trust to be in writing. Every grant or assignment of any existing trust in lands, goods or things in action, unless the same shall be in writing subscribed by the party making the same or by the party’s agent lawfully authorized, shall be void.

History: 1991 a. 316.

That a contract is unenforceable under this section does not prevent the imposition of a constructive trust in a proper case. *Gorski v. Gorski*, 82 Wis. 2d 248, 262 N.W.2d 120 (1978).

243.02 Conveyances void as to creditors void as to their heirs, etc. Every conveyance, charge, instrument or proceeding declared to be void by chs. 240 to 243 as against creditors or purchasers shall be equally void against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

History: 1979 c. 89.

243.03 “Lands” defined. The term “lands”, as used in chs. 240 to 243, shall be construed as coextensive in meaning with “lands, tenements and hereditaments”; and the term “estate and interest in lands” shall be construed to embrace every estate and interest, freehold and chattel, legal and equitable, present and future, vested and contingent, in lands as above defined.

History: 1979 c. 89.

243.04 “Conveyance” defined. The term “conveyance,” as used in chs. 240, 241 and 243, shall be construed to embrace every instrument in writing except a last will and testament, whatever may be its form, and by whatever name it may be known in law, by which any estate or interest in lands is created, aliened, assigned or surrendered.

243.05 Instruments signed by agents. Every instrument required under chs. 240 to 243 to be subscribed by any party may be subscribed by the agent of such party lawfully authorized thereto.

History: 1979 c. 89.

243.06 Death of principal, effect on agency. The death of the principal shall not operate as a revocation of an agency as to the attorney or agent until the attorney or agent shall have notice of the death, or as to one who, without notice of such death, in good faith deals with the attorney or agent; and this shall apply whether the agency was created by writing or not. This section does not apply to powers of attorney created on or after May 1, 1982.

History: 1981 c. 313; 1991 a. 316.

243.07 Uniform durable power of attorney act. (1) DEFINITIONS. In this chapter:

(a) “Durable power of attorney” means a power of attorney by which a principal designates another as his or her agent 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.

(b) “Incapacity” means the inability to receive and evaluate information effectively or to communicate decisions to such an extent that the individual lacks the capacity to manage his or her decisions.

(2) DURABLE POWER OF ATTORNEY NOT AFFECTED BY DISABILITY. All acts done by an agent 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 or her successors in interest as if the principal were not disabled.

(2m) DURABLE POWER OF ATTORNEY NOT AFFECTED BY PASSAGE OF TIME. The passage of time does not revoke a durable power of attorney unless the durable power of attorney states a time of revocation.

(3) RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY. (a) If, following execution of a durable power of attorney, the individual who is the principal is adjudicated incompetent and a guardian is appointed for him or her, a conservator is appointed for him or her under s. 54.76, or another fiduciary is charged by a court with the management of all or some of the principal’s property, the durable power of attorney executed under this chapter by the principal remains in effect, except that the court may under s. 54.46 (2) (c) or s. 54.76 (3g) or, for a fiduciary, after a hearing upon a petition, as applicable, for good cause shown, revoke the durable power of attorney and invalidate the basic power of attorney for finances and property or limit the authority of the agent under the terms of the basic power of attorney for finances and property. Unless the court makes this revocation or limitation, the guardian, conservator, or other fiduciary, as applicable, may not make decisions for the principal that may be made by the agent, unless the guardian, conservator, or fiduciary is the agent.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his or her estate, or guardian of his or her person for consideration by the court if guardianship or conservatorship proceedings for the principal’s person or estate are commenced after execution of the durable power of attorney. The court shall make its appointment in accordance with the principal’s most recent nomination in a durable power of attorney except for good cause or disqualification.

(4) POWER OF ATTORNEY NOT REVOKED UNTIL NOTICE. (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 agent 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 of 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 does not revoke or terminate the agency as to the agent 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 or her successors in interest.

(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 agent under a power of attorney, durable or otherwise, stating that he or she 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 the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This subsection 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.

(6) UNIFORMITY OF APPLICATION AND CONSTRUCTION. This section shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this section among states enacting it.

(6m) RELATIONSHIP TO POWER OF ATTORNEY FOR HEALTH CARE. If a portion of a durable power of attorney that is executed under this section after April 28, 1990, specifically authorizes the agent to make health care decisions on behalf of the principal, that portion of the durable power of attorney has no force or effect and that portion of the durable power of attorney instrument that is so executed and makes these authorizations is invalid, unless that portion of the durable power of attorney instrument conforms to the requirements of ch. 155.

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

1. Direct the agent to act in accordance with the terms of the principal's durable power of attorney.
2. Require the agent to report to the court concerning performance of the agent's duties at periods of time established by the court.
3. Rescind all powers of the agent to act under the durable power of attorney.

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

(7) APPLICATION. This section applies to powers of attorney created on or after May 1, 1982.

History: 1981 c. 313; 1989 a. 200; 1991 a. 297; 1993 a. 213, 490; 1997 a. 233; 2005 a. 387.

An attorney-in-fact may not make gratuitous transfers of a principal's assets unless the power of attorney expressly and unambiguously grants the authority to do so. A principal need not prove any injury to avoid a transaction in which the agent has acted as an adverse party without the principal's knowledge and consent. The principle is one of prevention, not remedial justice, that operates however fair the transaction may have been – however free from every taint of moral wrong. *Losee v. Marine Bank*, 2005 WI App 184, 286 Wis. 2d 438, 703 N.W.2d 751, 04–1938.

A joint checking account established under s. 705.03 prior to the execution of a power of attorney creates a presumption of donative intent. When an agent acting under a power of attorney transfers funds deposited by the principal from a joint account for the agent's own use, a presumption of fraud is created. When these two conflicting and inconsistent presumptions coexist, the circuit court is free to make a determination based upon the facts and the credibility of the witnesses. Extrinsic evidence may be admissible to determine the intent of the parties. *Russ v. Russ*, 2007 WI 83, 302 Wis. 2d 264, 734 N.W.2d 874, 05–2492.

This section permits an attorney-in-fact to make medical decisions, but it cannot be used to place someone in a nursing home or to avoid other requirements of chs. 55 and 880. 77 Atty. Gen. 156.

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

**WISCONSIN BASIC POWER OF ATTORNEY
FOR FINANCES AND PROPERTY**

NOTICE: THIS IS AN IMPORTANT DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS. BY SIGNING THIS DOCUMENT, YOU ARE NOT GIVING UP ANY POWERS OR

RIGHTS TO CONTROL YOUR FINANCES AND PROPERTY YOURSELF. IN ADDITION TO YOUR OWN POWERS AND RIGHTS, YOU ARE GIVING ANOTHER PERSON, YOUR AGENT, BROAD POWERS TO HANDLE YOUR FINANCES AND PROPERTY. THIS BASIC POWER OF ATTORNEY FOR FINANCES AND PROPERTY MAY GIVE THE PERSON WHOM YOU DESIGNATE (YOUR "AGENT") BROAD POWERS TO HANDLE YOUR FINANCES AND PROPERTY, WHICH MAY INCLUDE POWERS TO ENCUMBER, SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. THE POWERS WILL EXIST AFTER YOU BECOME DISABLED, OR INCAPACITATED, IF YOU CHOOSE THAT PROVISION. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL OR OTHER HEALTH CARE DECISIONS FOR YOU. IF YOU OWN COMPLEX OR SPECIAL ASSETS SUCH AS A BUSINESS, OR IF THERE IS ANYTHING ABOUT THIS FORM THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN THIS FORM TO YOU BEFORE YOU SIGN IT.

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

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

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

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

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

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

HANDLING MY MONEY AND PROPERTY

Initials

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

_____ 2. *BANKING:* My agent may conduct business with financial institutions, including endorsing all checks and drafts made payable to my order and collecting the proceeds; signing in my name checks or orders on all accounts in my name or for my benefit; withdrawing funds from accounts in my name; opening

accounts in my name; and entering into and removing articles from my safe deposit box.

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

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

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

_____ 6. *BORROWING*: My agent may borrow money and encumber my assets for loans as considered necessary.

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

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

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

PROFESSIONAL AND TECHNICAL ASSISTANCE

Initials

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

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

GENERAL AUTHORITY

Initials

_____ 12. *GENERAL*: My agent may do any act or thing that I could do in my own proper person if personally present, including managing or selling tangible assets, disclaiming a probate or nonprobate inheritance and providing support for a minor child or dependent adult. The specifically enumerated powers of the basic power of attorney for finances and property are not a limitation of this intended broad general power except that my agent may not take any action prohibited by law and my agent under this document may not:

- a. Make medical or health care decisions for me.
- b. Make, modify or revoke a will for me.
- c. Other than a burial trust agreement under section 445.125, Wisconsin Statutes, enter into a trust agreement on my behalf or amend or revoke a trust agreement, entered into by me.
- d. Change any beneficiary designation of any life insurance policy, qualified retirement plan, individual retirement account or payable on death account or the like whether directly or by canceling and replacing the policy or rollover to another plan or account.
- e. Forgive debts owed to me or disclaim or waive benefits payable to me, except a probate or nonprobate inheritance.
- f. Appoint a substitute or successor agent for me.
- g. Make gifts.

COMPENSATION TO AGENT FROM PRINCIPAL'S FUNDS

Initials

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

ACCOUNTING

Initials

_____ 14. *ACCOUNTING*. My agent shall render an accounting (monthly) (quarterly) (annually) (CIRCLE ONE) to me or to (insert name and address) during my lifetime and a final accounting to the personal representative of my estate, if any is appointed, after my death.

NOMINATION OF GUARDIAN

Initials

_____ 15. *GUARDIAN*: If necessary, I nominate (name) of (address) as guardian of my person and I nominate (name) of (address) as guardian of my estate.

SPECIAL INSTRUCTIONS

Initials

_____ 16. *SPECIAL INSTRUCTIONS*:

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

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TO ESTABLISH WHEN, AND FOR HOW LONG, THE BASIC POWER OF ATTORNEY FOR FINANCES AND PROPERTY IS IN EFFECT, YOU MUST INITIAL ONLY ONE OF THE FOLLOWING 3 OPTIONS. IF YOU DO NOT INITIAL ONE, OR IF YOU INITIAL MORE THAN ONE, THIS BASIC POWER OF ATTORNEY FOR FINANCES AND PROPERTY WILL NOT TAKE EFFECT.

Initials

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

_____ This basic power of attorney for finances and property becomes effective only when both of the following apply:

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

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

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

Signed this day of, (year)

.....
(Your Signature)

....
(Your Social Security Number)

By signing as a witness, I am acknowledging the signature of the principal who signed in my presence and the presence of the other witness, and the fact that he or she has stated that this power of attorney reflects his or her wishes and is being executed voluntarily. I believe him or her to be of sound mind and capable of creating this power of attorney. I am not related to him or her by blood, marriage or adoption, and, to the best of my knowledge, I am not entitled to any portion of his or her estate under his or her will.

Witness

Dated:
Signature:
Print Name:
Address:

State of
County of

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

Witness

Dated:
Signature:
Print Name:
Address:

....
(Signature of Notarial Officer)

(Seal, if any)

(Title)

[My commission is permanent or expires:]

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

....
(Name of Agent)

....
(Signature of Agent)

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

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

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

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

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

reasonable fee for the cost of preparation and distribution of the forms.

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

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

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

(c) If a principal, after executing a durable power of attorney, is adjudicated incompetent in this state, has a conservator appointed for him or her, or a court charges another fiduciary with the management of all or some of his or her property, a court may under s. 54.46 (2) (c) or 54.76 (3g) or, for a fiduciary, after a hearing upon a petition, as applicable, for good cause shown, revoke the durable power of attorney or limit the authority of the agent under the terms of the durable power of attorney.

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

1. Direct the agent to act in accordance with the terms of the principal's Wisconsin basic power of attorney for finances and property.

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

3. Rescind all powers of the agent to act under the power of attorney for finances and property.

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

History: 1991 a. 297; 1993 a. 148, 213, 299, 484; 1995 a. 27 s. 9126 (19); 1997 a. 35, 233; 1999 a. 162, 185; 2001 a. 38; 2005 a. 387; 2007 a. 20 s. 9121 (6) (a).

An attorney-in-fact may not make gratuitous transfers of a principal's assets unless the power of attorney expressly and unambiguously grants the authority to do so. A principal need not prove any injury to avoid a transaction in which the agent has acted as an adverse party without the principal's knowledge and consent. The principle is one of prevention, not remedial justice, that operates however fair the transaction may have been – however free from every taint of moral wrong. *Losee v. Marine Bank*, 2005 WI App 184, 286 Wis. 2d 438, 703 N.W.2d 751, 04–1938.

A joint checking account established under s. 705.03 prior to the execution of a power of attorney creates a presumption of donative intent. When an agent acting under a power of attorney transfers funds deposited by the principal from a joint account for the agent's own use, a presumption of fraud is created. When these two conflicting and inconsistent presumptions coexist, the circuit court is free to make a determination based upon the facts and the credibility of the witnesses. Extrinsic evidence may be admissible to determine the intent of the parties. *Russ v. Russ*, 2007 WI 83, 302 Wis. 2d 264, 734 N.W.2d 874, 05–2492.

Wisconsin's New Statutory Power of Attorney. Thedinga. Wis. Law. Sept. 1992.