

1981 Senate Bill 677

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CHAPTER 313 , Laws of 1981

AN ACT to amend 243.06; and to create 243.07 of the statutes, relating to the survival of a power of attorney after the death or incapacity of the principal.

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

SECTION 1. 243.06 of the statutes is amended to read:

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 he 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 the effective date of this act (1981).

SECTION 2. 243.07 of the statutes is created to read:

243.07 Uniform durable power of attorney act. (1) DEFINITION. "Durable power of attorney" means a power of attorney by which a principal designates another his or her 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.

(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 or her successors in interest as if the principal were competent and not disabled.

(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 or her 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 to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

(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 protective proceedings for the principal's person or estate are thereafter commenced. 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 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 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 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 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 attorney-in-fact 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.

(7) APPLICATION. This section applies to powers of attorney created on or after the effective date of this section (1981).
