

CHAPTER 243

GENERAL PROVISIONS RELATING TO FRAUDULENT CONVEYANCES AND CONTRACTS

243.01 Grants, etc., of trust to be in writing.
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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 his agent lawfully authorized, shall be void.

Unenforceability of a contract under this section does not prevent the imposition of a constructive trust in a proper case. *Gorski v. Gorski*, 82 W (2d) 248, 262 NW (2d) 120.

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 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 May 1, 1982.

History: 1981 c. 313.

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 exercis-

able 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.

(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 attorney-in-fact 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.

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

History: 1981 c. 313; 1989 a. 200.

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