



1997 SENATE BILL 254

July 3, 1997 - Introduced by Senator BURKE, cosponsored by Representative GREEN. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

1 **AN ACT to amend** 155.60 (2) and 243.07 (1) (a), (2), (3) (a), (4) (b) and (5); **to repeal**
2 **and recreate** 243.10; and **to create** 243.07 (6r) of the statutes; **relating to:**
3 powers of attorney.

Analysis by the Legislative Reference Bureau

Current law provides a statutory power of attorney form that a person may use to grant broad powers to an agent to handle the person's financial affairs. This bill replaces that statutory power of attorney form with a Wisconsin basic power of attorney for finances and property form. In the current form, the person initials lines that give the agent power in certain areas, such as real estate transactions and banking transactions and lists all of the powers that the agent has related to all of the areas initialed. Under this bill, the person initials lines that give the agent power to generally engage in actions related to specific areas and does not include the list of all the specific powers the agent has, as in current law.

The bill adds language allowing an interested party to petition the court having probate jurisdiction to review an agent's performance and to rescind the agent's power to act under the power of attorney.

Under current law, when a guardian is appointed for a person who has executed a power of attorney for health care, that power of attorney for health care is revoked unless the court finds that the power of attorney for health care should remain in effect. This bill allows the power of attorney for health care to be continued when a guardian is appointed for a person who has executed a power of attorney for health

SENATE BILL 254

care and gives the guardian the power to revoke or amend the power of attorney for health care.

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

1 **SECTION 1.** 155.60 (2) of the statutes is amended to read:

2 155.60 (2) If a court under s. 880.33 determines that an individual who is a
3 principal is incompetent or makes a finding of limited incompetency under s. 880.33
4 (3) and appoints a guardian for the individual, the guardian has the same power to
5 revoke or amend the power of attorney for health care executed under this chapter
6 by that the principal is revoked and the power of attorney for health care instrument
7 is invalid would have had if the principal were not determined to be incompetent,
8 unless the court finds that the power of attorney for health care ~~and power of attorney~~
9 ~~for health care instrument~~ should remain in effect. If the court makes this finding,
10 the guardian for the individual may not make health care decisions for the ward that
11 may be made by the health care agent, unless the guardian is the health care agent.

12 **SECTION 2.** 243.07 (1) (a), (2), (3) (a), (4) (b) and (5) of the statutes are amended
13 to read:

14 243.07 (1) (a) “Durable power of attorney” means a power of attorney by which
15 a principal designates another as his or her agent in writing and the writing contains
16 the words “this power of attorney shall not be affected by subsequent disability, or
17 ~~incapacity or incompetency~~ of the principal”, or “this power of attorney shall become
18 effective upon the disability, or ~~incapacity or incompetency~~ of the principal”, or
19 similar words showing the intent of the principal that the authority conferred shall
20 be exercisable notwithstanding the principal’s subsequent disability, or incapacity
21 ~~or incompetency~~.

SENATE BILL 254

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

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

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

20 **(5) PROOF OF CONTINUANCE OF DURABLE AND OTHER POWERS OF ATTORNEY BY**
21 **AFFIDAVIT.** As to acts undertaken in good faith reliance thereon, an affidavit executed
22 by the agent under a power of attorney, durable or otherwise, stating that he or she
23 did not have at the time of exercise of the power actual knowledge of the termination
24 of the power by revocation or of the principal's death, disability, or incapacity ~~or~~
25 ~~incompetency~~ is conclusive proof of the nonrevocation or nontermination of the

SENATE BILL 254**SECTION 2**

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

6 **SECTION 3.** 243.07 (6r) of the statutes is created to read:

7 **243.07 (6r) PETITION TO REVIEW AGENT'S PERFORMANCE.** (a) An interested party
8 may petition the court assigned to exercise probate jurisdiction for the county where
9 a principal is present or the county of the principal's legal residence to review
10 whether the agent is performing his or her duties in accordance with the terms of the
11 durable power of attorney executed by the principal. If the court finds after a hearing
12 that the agent has not been performing in accordance with the terms of the durable
13 power of attorney, the court may do any of the following:

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

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

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

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

22 **SECTION 4.** 243.10 of the statutes is repealed and recreated to read:

23 **243.10 Wisconsin basic power of attorney for finances and property.**

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

SENATE BILL 254**SECTION 4**

1 YOU ARE DIVORCED AFTER SIGNING THIS DOCUMENT, THIS DOCUMENT
2 IS INVALID.

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

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

9
10 I (insert your name and address) appoint (insert the name and address
11 of the person appointed) as my agent to act for me in any lawful way with respect to
12 the powers initialed below. If the person appointed is unable or unwilling to act as
13 my agent, I appoint (insert name and address of alternate person appointed) to
14 act for me in any lawful way with respect to the powers initialed below.

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

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

19 **HANDLING MY MONEY AND PROPERTY**

20 *Initials*

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

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

SENATE BILL 254

1 my benefit; withdrawing funds from accounts in my name; opening accounts in my
2 name; and entering into and removing articles from my safe deposit box.

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

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

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

13 ____ 6. BORROWING: My agent may borrow money and encumber my assets for
14 loans as considered necessary.

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

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

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

GIFTS

25

SENATE BILL 254

1 ____ 13. GENERAL: My agent may do any act or thing that I could do in my own
2 proper person if personally present. The specifically enumerated powers of the basic
3 power of attorney for finances and property are not a limitation of this intended
4 broad general power except that my agent under this document may not:

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

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

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

COMPENSATION

11 *Initials*

12 ____ 14. COMPENSATION. My agent may receive compensation only in an
13 amount not greater than that usual for the services to be performed if expressly
14 authorized in the special instructions portion of this document.

ACCOUNTING

16 *Initials*

17 ____ 15. ACCOUNTING. My agent may render an accounting (monthly)
18 (quarterly) (annually) (CIRCLE ONE) to me or to ... (insert name and address)
19 during my lifetime and a final accounting to the personal representative of my estate,
20 if any is appointed, after my death.

NOMINATION OF GUARDIAN

22 *Initials*

23 ____ 16. GUARDIAN: If necessary, I nominate (name) of (address) as
24 guardian of my person and I nominate (name) of (address) as guardian of my
25 estate.

SENATE BILL 254

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SPECIAL INSTRUCTIONS

Initials

____ 17. 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:

SENATE BILL 254

1 a. I have signed it; and

2 b. I become disabled or incapacitated.

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

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

11 Signed this day of, (year)

12

13 (Your Signature)

14

15 (Your Social Security Number)

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:]

SENATE BILL 254

SECTION 4

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

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

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

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

SENATE BILL 254

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) REVOCATION AND INVALIDATION OF BASIC POWER OF ATTORNEY FOR FINANCES AND**
8 **PROPERTY.** A principal may revoke a Wisconsin basic power of attorney for finances
9 and property and invalidate it at any time by destroying it, by directing another
10 person to destroy it in the principal's presence or by signing a written and dated
11 statement expressing the principal's intent to revoke. If the agent under the
12 Wisconsin basic power of attorney for finances and property is the principal's spouse
13 and the marriage is annulled, or the agent and principal are divorced, after signing
14 the document, the Wisconsin basic power of attorney for finances and property is
15 invalid.

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

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

