

CHAPTER 369
FORMERLY
SENATE BILL NO. 247

AN ACT TO AMEND TITLE 12, CHAPTER 49A OF THE DELAWARE CODE RELATING TO DURABLE PERSONAL POWERS OF ATTORNEY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 12, Chapter 49A, Section 49A-105(a)(5) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (5) Signed in the presence of one adult witness who is ~~not~~ neither:
- a. Related to the principal by blood, marriage, or adoption; ~~or~~ nor
 - b. Entitled to any portion of the estate of the principal under the principal's then existing will or codicil or amendment thereto or trust instrument.

Section 2. Amend Title 12, Chapter 49, Section 49A-105(c) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~The (c) Regardless of the method by which a person accepts appointment as an agent under a personal power of attorney (pursuant to § 49A-113 of this title), such agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:~~

~~Agent's Certification~~ AGENT'S CERTIFICATION

I, (Name of Agent), have read the attached durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, ~~in the absence of a specific provision to the contrary in the durable power of attorney, when I act as Agent:~~ when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the durable personal power of attorney, when I act as Agent, I shall:

~~I shall exercise the powers for the benefit of the Principal.~~

~~I shall keep~~ Keep the assets of the Principal separate from my assets;

~~I shall exercise~~ Exercise reasonable caution and prudence; and

~~I shall keep~~ Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

~~I shall, to the extent reasonably practicable under the circumstances, keep in regular contact with the Principal and communicate with the Principal.~~

Agent Date

Section 3. Amend Title 12, Chapter 49A, Section 49A-110(a) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) A personal power of attorney terminates when:
- (1) The principal dies;
 - (2) The principal revokes the personal power of attorney;
 - (3) A terminating event set forth in the personal power of attorney occurs;
 - (4) The purpose of the personal power of attorney is accomplished; ~~or~~
 - (5) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the personal power of attorney does not provide for another agent to act; or
 - (6) The personal power of attorney is revoked by Order of the Court of Chancery pursuant to § 49-116 or otherwise.

Section 4. Amend Title 12, Chapter 49A, Section 49A-116(a) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) A person designated in subsection (b) may petition the Court of Chancery requesting that the court:
- (1) Determine whether the personal power of attorney or the authority of an agent is in effect or has terminated pursuant to Section 49A-110 or otherwise;

- (2) Compel the agent to exercise or refrain from exercising authority in a particular manner or for a particular purpose;
- (3) Compel the agent to account for transactions conducted on the principal's behalf pursuant to Section 49A-114(g);
- (4) Modify, suspend, or ~~repeal~~ revoke the powers of the agent to act under a personal power of attorney, and, if the principal has not designated another agent or successor agent in the personal power of attorney, appoint ~~such other designated~~ another agent to act in place of the agent whose powers are modified, suspended, or ~~repeal~~ revoked; ~~or~~
- (5) Determine an agent's liability for violation of ~~this Chapter~~ his or her duties pursuant to Section 49A-114; or
- (6) Compel a person to accept a personal power of attorney if required ~~by~~ to by Section 49A-120.

Section 5. Amend Title 12, Chapter 49A, Section 49A-118(2)a. of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (2) If there is no person described in paragraph (1), to:
 - a. the principal's primary caregiver

Section 6. Amend Title 12, Chapter 49A, Section 49A-119(b) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(b) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the signature is not genuine may rely upon ~~the~~ a presumption ~~under Section 49A-105~~ that the signature is genuine.

Section 7. Amend Title 12, Chapter 49A, Section 49A-119(d) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(d) A person that is asked to accept an acknowledged personal power of attorney may request, and rely upon, without further investigation, an English translation-, under oath of the translator, of the personal power of attorney if it contains, in whole or in part, language other than English.

Section 8. Amend Title 12, Chapter 49A, Section 49A-120 of the Delaware code by making insertions as shown by underlining and deletions as shown by strike through as follows:

- (a) Except as otherwise provided in subsection (b):
 - (1) A person shall accept an acknowledged personal power of attorney that is originally written in English or is translated into English, under oath of the translator; and
 - (2) A person may not require an additional or different form of personal power of attorney for authority granted in the personal power of attorney presented.
- (b) A person is not required to accept an acknowledged personal power of attorney if:
 - (1) The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
 - (2) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;
 - (3) The person has actual knowledge of the termination of the agent's authority or of the personal power of attorney before exercise of the power;
 - (4) The person has actual knowledge that the personal power of attorney ~~is not valid~~ has been terminated or revoked, or is void or invalid, or that the agent does not have the authority to perform the act requested; or
 - (5) The person promptly makes, has made, or has actual knowledge that another person has made, a report to the appropriate law enforcement or social service agency stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.
- (c) A person that refuses in violation of this section to accept an acknowledged personal power of attorney is subject to:
 - (1) A court order ~~mandating~~ compelling acceptance of the personal power of attorney; and
 - (2) Liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity of the personal power of attorney or ~~mandates~~ authority of the agent to act, or compels acceptance of the personal power of attorney.

Section 9. Amend Title 12, Chapter 49A, Section 49A-202(a) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) A reference in a personal power of attorney to ~~general authority with respect to~~ the short descriptive term used for a subject in ~~Sections §§~~ 49A-204 through 49A-217 of this title or a citation to a section of ~~Sections §§~~ 49A-204 through 49A-217 of this title granting general authority over that subject incorporates the entire section as if it were set out in full in the personal power of attorney.

Section 10. Amend Title 12, Chapter 49A, Section 49A-203(4) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal, or intervene in litigation relating to the claim;

Section 11. Amend Title 12, Chapter 49A, Section 49A-213(a) of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) Unless the personal power of attorney otherwise provides, and after taking into consideration the principal's resources, language in a personal power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1) Perform the acts necessary to maintain the usual and customary standard of living of the principal, the principal's spouse, minor children, disabled adult children, children who are full time students under the age of 25, and dependents as defined under Internal Revenue Code § 152;

(2) Provide living quarters for the individuals described in paragraph (1) by:

a. Purchase, lease, or other contract; or

b. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(3) Provide ~~normal domestic help, usual vacations and travel expenses,~~ and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (1);

(4) Pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (1);

(5) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act [P.L. 104-191], Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable regulations, to obtain information to make decisions relating to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

(6) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (1);

(7) Maintain credit and debit accounts for the convenience of the individuals described in paragraph (a)(1) and open new accounts; ~~and~~

(8) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations; and

(9) Continue usual and existing payments for domestic help, usual vacations and travel expenses.

Section 12. Amend Title 12, Chapter 49A, Section 49A-214(a) of the Delaware Code by making insertions as shown by underlining as follows:

(a) In this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation of the United States or any state or territory thereof (including the District of Columbia)(hereinafter collectively referred to as a "statute or regulation") including, but not limited to, Social Security, Medicare, and Medicaid.

Section 13. Amend Title 12, Chapter 49A, Section 49A-301 of the Delaware Code relating to "Agent Certification", by making insertions as shown by underlining and deletions as shown by strike through as follows:

Agent's Certification

I, (Name of Agent), have read the attached durable personal power of attorney and I am the person identified as the Agent or identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, ~~in the absence of a specific provision to the contrary in the durable power of attorney, when I act as Agent:~~ when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of attorney; and

To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the durable personal power of attorney, when I act as Agent, I shall:

~~I shall exercise the powers for the benefit of the Principal.~~

~~I shall keep~~ Keep the assets of the Principal separate from my assets.;

~~I shall exercise~~ Exercise reasonable caution and prudence; and

~~I shall keep~~ Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

~~I shall, to the extent reasonably practicable under the circumstances, keep in regular contact with the Principal and communicate with the Principal.~~

Agent

Date

Section 14. The effective date of the amendments set forth herein shall be January 1, 2013. Durable personal powers of attorney and Agent Certifications signed in accordance with this Chapter prior to such effective date shall be presumed to be valid.

Approved July 27, 2012