

CHAPTER 50
HOUSE BILL No. 2554

AN ACT concerning powers of attorney; amending K.S.A. 2003 Supp. 58-654, 58-655, 58-657 and 58-662 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2003 Supp. 58-654 is hereby amended to read as follows: 58-654. (a) A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or nondurable.

(b) If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is ~~nondisabled~~ *not disabled* may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g). When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney. *An attorney in fact vested with general powers shall be authorized to execute a power of attorney required by any governmental agency or other legal entity on behalf of the principal, naming such attorney in fact as the attorney in fact authorized to enter into any transaction with such agency or legal entity.*

(c) If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is ~~nondisabled~~ *not disabled* may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsection (f) and (g).

(d) Except as provided in subsections (f) and (g), an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to the principal's own person or property, including property owned jointly or by the entirety with another or others, as a ~~nondisabled adult~~ *an adult who is not disabled*. Without limiting the foregoing an attorney in fact with general powers has, with respect to the subject or purposes of the power, complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact. Such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement

shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

(e) An attorney in fact, who is granted general powers for all subjects and purposes or with respect to any express subjects or purposes, shall exercise the powers conferred according to the principal's instructions, in the principal's best interest, in good faith, prudently and in accordance with K.S.A. 2003 Supp. 58-655 and 58-656, and amendments thereto.

(f) Any power of attorney, whether or not it grants general powers for all subjects and purposes or with respect to express subjects or purposes, shall be construed to grant power or authority to an attorney in fact to carry out any of the actions described in this subsection only if the actions are expressly enumerated and authorized in the power of attorney. Any power of attorney may grant power or authority to an attorney in fact to carry out any of the following actions if the actions are expressly authorized in the power of attorney:

(1) To execute, amend or revoke any trust agreement;

(2) to fund with the principal's assets any trust not created by the principal;

(3) to make or revoke a gift of the principal's property in trust or otherwise;

(4) to disclaim a gift or devise of property to or for the benefit of the principal;

(5) to create or change survivorship interests in the principal's property or in property in which the principal may have an interest. The inclusion of the authority set out in this paragraph shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled and seeking to act in the principal's own behalf;

(6) to designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;

(7) to give or withhold consent to an autopsy or postmortem examination;

(8) to make a gift of, or decline to make a gift of, the principal's body parts under the uniform anatomical gift act, K.S.A. 65-3209 through 65-3217, and amendments thereto;

(9) to nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney in fact may nominate such attorney in fact's self as such;

(10) ~~to alienate the homestead without the joint consent of husband and wife when that relationship exists, if the power of attorney specifically. Gives the attorney in fact the power to sell, transfer and convey the homestead in question; gives the legal description and street address of the property; and states that by the execution of the power of attorney it is the intention of the parties that the act shall constitute the joint consent required by Article 15, Section 9 of the Kansas Constitution and the power of attorney is executed by both the husband and wife in the same instrument give consent on behalf of the principal to the sale, gift, transfer, mortgage or other alienation of the principal's homestead or interest therein if:~~

(A) *The principal's spouse, personally or through such spouse's attorney in fact, has also consented to such alienation;*

(B) *the power of attorney specifically describes the homestead by reference to a legal description and the street address of the property; and*

(C) *the principal's spouse, in a written document duly acknowledged by the spouse, has stated such spouse's consent that the attorney in fact may alienate the interests, in whole or in part, of the principal in the described homestead and, further, the spouse agrees that the consent of the attorney in fact will constitute the consent of the principal required by Article 15, Section 9 of the Kansas Constitution. Nothing herein shall be construed as a limitation or abridgement of the right of the spouse of the principal to consent or withhold such spouse's consent to the alienation of the spouse's homestead, or any rights therein, under Article 15, section 9 of the Kansas Constitution;*

(11) to designate one or more substitute or successor or additional attorneys in fact; ~~or~~

(12) to delegate any or all powers granted in a power of attorney pursuant to subsection (a) of K.S.A. 2003 Supp. 58-660, and amendments thereto; or

(13) *to pay reasonable expenses incurred for the funeral and burial or other disposition of the body of the principal.*

(g) No power of attorney, whether or not it delegates general powers, may delegate or grant power or authority to an attorney in fact to do or carry out any of the following actions for the principal:

(1) To make, publish, declare, amend or revoke a will for the principal;

(2) to make, execute, modify or revoke a declaration under K.S.A. 65-28,101 *et seq.*, and amendments thereto, for the principal or to make, execute, modify or revoke a do not resuscitate directive under K.S.A. 65-4941, and amendments thereto, for the principal or to make, execute, modify or revoke a durable power of attorney for health care decisions pursuant to K.S.A. 58-625, *et seq.*, and amendments thereto, for the principal;

(3) to require the principal, against the principal's will, to take any action or to refrain from taking any action; or

(4) to carry out any actions specifically forbidden by the principal while not under any disability or incapacity.

(h) A third person may freely rely on, contract and deal with an attorney in fact delegated general powers with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly identifies the specific property, account, security, storage facility or matter as being within the scope of a subject or purpose contained in the power of attorney, and without regard to whether the power of attorney expressly authorizes the specific act, transaction or decision by the attorney in fact.

(i) It is the policy of this state that an attorney in fact acting pursuant to the provisions of a power of attorney granting general powers shall be accorded the same rights and privileges with respect to the personal welfare, property and business interests of the principal, and if the power of attorney enumerate some express subjects or purposes, with respect to those subjects or purposes, as if the principal was personally present and acting or seeking to act; and any provision of law and any purported waiver, consent or agreement executed or granted by the principal to the contrary shall be void and unenforceable.

(j) K.S.A. 2003 Supp. 58-650 through 58-665, and amendments thereto, shall not be construed to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal. Any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.

Sec. 2. K.S.A. 2003 Supp. 58-655 is hereby amended to read as follows: 58-655. (a) An attorney in fact acting for the principal under a power of attorney shall clearly indicate the attorney in fact's capacity and shall keep the principal's property and accounts separate and distinct from all other property and accounts in a manner to identify the property and accounts clearly as belonging to the principal.

(b) An attorney in fact holding property for a principal complies with subsection (a) if the property is held in the name of the principal, in the

name of the attorney in fact as attorney in fact for the principal or ~~in the name of the attorney in fact as personal custodian for the principal under the uniform custodial trust law or similar law of any state~~ if the attorney in fact is a state or national bank or trust company, in a nominee name as provided under K.S.A. 9-1607, and amendments thereto.

Sec. 3. K.S.A. 2003 Supp. 58-657 is hereby amended to read as follows: 58-657. (a) As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

(1) On the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;

(2) when the principal, orally or in writing, or the principal's legal representative in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated; or

(3) when a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record in the office of the register of deeds in the county of the principal's residence or, if the principal is a nonresident of the state, in the county of the residence of the attorney in fact last known to the principal, or in the county in which is located any property specifically referred to in the power of attorney.

(b) As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be terminated as follows:

(1) On the death of the principal, except that if the power of attorney grants authority under subsection (f)(7) ~~or~~, (f)(8) or (f)(13) of K.S.A. 2003 Supp. 58-654, and amendments thereto, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of such subsections for a reasonable length of time after the death of the principal;

(2) when the attorney in fact under a power of attorney is not qualified to act for the principal; or

(3) on the filing of any action for annulment, separate maintenance or divorce of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

(c) The authority of an attorney in fact, under a power of attorney that is nondurable, is suspended during any period that the principal is disabled to the extent that the principal is unable to receive or evaluate information or to communicate decisions with respect to the subject of the power of attorney. An attorney in fact exercising authority under a power of attorney that is nondurable shall not act in the principal's behalf during any period that the attorney in fact knows the principal is so disabled.

(d) Whenever any of the events described in subsection (a) operate merely to terminate the authority of the particular person designated as the attorney in fact, rather than terminating the power of attorney, if the power of attorney designates a successor or contingent attorney in fact or prescribes a procedure whereby a successor or contingent attorney in fact may be designated, then the authority provided in the power of attorney shall extend to and vest in the successor or contingent attorney in fact in lieu of the attorney in fact whose power and authority was terminated under any of the circumstances referred to in subsection (a).

(e) As between the principal and attorney in fact or successor, acts and transactions of the attorney in fact or successor undertaken in good faith, in accordance with K.S.A. 2003 Supp. 58-656, and amendments thereto, and without actual knowledge of the death of the principal or without actual knowledge, or constructive knowledge pursuant to subsection (a)(3), that the authority granted in the power of attorney has been suspended, modified or terminated, relieves the attorney in fact or successor from liability to the principal and the principal's successors in interest.

(f) This section does not prohibit the principal, acting individually, and the person designated as the attorney in fact from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the appli-

cation of this act, with the exception of those acts enumerated in subsection (g) of K.S.A. 2003 Supp. 58-654, and amendments thereto.

(g) As between the principal and any attorney in fact or successor, if the attorney in fact or successor undertakes to act, and if in respect to such act, the attorney in fact or successor acts in bad faith, fraudulently or otherwise dishonestly, or if the attorney in fact or successor intentionally acts after receiving actual notice that the power of attorney has been revoked or terminated, and thereby causes damage or loss to the principal or to the principal's successors in interest, such attorney in fact or successor shall be liable to the principal or to the principal's successors in interest, or both, for such damages, together with reasonable attorney fees, and punitive damages as allowed by law.

Sec. 4. K.S.A. 2003 Supp. 58-662 is hereby amended to read as follows: 58-662. (a) The principal may petition the court for an accounting by the principal's attorney in fact or the legal representative of the attorney in fact. If the principal is disabled or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

(b) Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a principal who is not disabled, or by a principal whose legal capacity has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions theretofore have not been satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

(c) For the purposes of subsection (b), a legal representative or a person providing services to the principal's estate shall not be considered a creditor of the principal's estate. No express approval or waiver shall be required from the legal representative of a disabled principal if the principal's legal capacity has been restored, or from the personal representative of a deceased principal's estate, or from any other person entitled to compensation or expense for services rendered to a disabled or deceased principal's estate, unless the principal or the principal's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

(d) The principal, the principal's attorney in fact, an adult member of the principal's family or any person interested in the welfare of the principal may petition the district court in the county where the principal is then residing to determine and declare whether a principal, who has executed a power of attorney, is a disabled person.

(e) If the principal is a disabled person, on petition of the principal's legal representative, an adult member of the principal's family or any interested person, including a person interested in the welfare of the principal, for good cause shown, the court may:

(1) Order the attorney in fact to exercise or refrain from exercising authority in a durable power of attorney in a particular manner or for a particular purpose;

(2) modify the authority of an attorney in fact under a durable power of attorney;

(3) declare suspended a power of attorney that is nondurable;

(4) terminate a durable power of attorney;

(5) remove the attorney in fact under a durable power of attorney;

(6) confirm the authority of an attorney in fact or a successor attorney in fact to act under a durable power of attorney; and

(7) issue such other orders as the court finds will be in the best interest of the disabled principal, including appointment of a conservator for the principal pursuant to K.S.A. 59-3050, *et seq.*, and amendments thereto.

(f) In addition to any other remedies available under law, if after notice and hearing, the court determines that there has been a showing that the principal is a disabled person and that the attorney in fact has breached such attorney in fact's fiduciary duty to the principal or that there is a reasonable likelihood that such attorney in fact may do so in the immediate future, the court, in its discretion, may issue an order that some or all of the authority granted by the durable power of attorney be suspended or modified, and that a different attorney in fact be authorized to exercise some or all of the powers granted by the durable power of attorney. Such attorney in fact may be designated by the court. The court

may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the attorney in fact who has been acting on behalf of the principal or the principal and the principal's successors in interest for the expenses, including attorney fees, incurred by any such persons with respect to such proceeding. The court, after hearing, may allow payment or enter judgment for any such amount in the manner as provided by subsection (f) of K.S.A. 2003 Supp. 58-664, and amendments thereto. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal. Except that in the event of an emergency as determined by the court, the court, without notice, may enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than 30 days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

(g) If a power of attorney is suspended or terminated by the court or the attorney in fact is removed by the court, the court may require an accounting from the attorney in fact and order delivery of any property belonging to the principal and copies of any necessary records of the attorney in fact concerning the principal's property and affairs to a successor attorney in fact or the principal's legal representative.

(h) In a proceeding under this act or in any other proceeding, or upon petition of an attorney in fact or successor, the court may:

(1) Require or permit an attorney in fact under a power of attorney to account;

(2) authorize the attorney in fact under a power of attorney to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the attorney in fact that the court finds is, was or will be beneficial to the principal and which the court has power to authorize for a conservator pursuant to K.S.A. 59-3050 *et seq.*, and amendments thereto; and

(3) relieve the attorney in fact of any obligation to exercise authority for a disabled principal under a durable power of attorney.

(i) Unless previously barred by adjudication, consent or limitation, any cause of action against an attorney in fact or successor for breach of duty to the principal shall be barred as to any principal who has received an account or other statement fully disclosing the matter unless a proceeding to assert the cause of action is commenced within two years after receipt of the account or statement by the ~~attorney in fact~~ *principal* or, if the principal is a disabled person, by a guardian or conservator of the disabled person's estate. If a disabled person has no guardian or conservator of the disabled person's estate at the time an account or statement is presented, then the cause of action shall not be barred until one year after the removal of the principal's disability or incapacity, one year after the appointment of a conservator for the principal or one year after the death of the principal. The cause of action thus barred does not include any action to recover from an attorney in fact or successor for fraud, misrepresentation or concealment related to the settlement of any transaction involving the agency relationship of the attorney in fact with the principal.

Sec. 5. K.S.A. 2003 Supp. 58-654, 58-655, 58-657 and 58-662 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

Approved April 12, 2004.
