

CHAPTER 109

AN ACT concerning durable powers of attorney, supplementing Title 46 of the Revised Statutes and repealing P.L.1971, c.373.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.46:2B-8.1 Short title.

1. This act shall be known and may be cited as the "Revised Durable Power of Attorney Act."

C.46:2B-8.2 Powers of attorney; durable powers of attorney; disability defined.

2. Powers of Attorney; Durable Powers of Attorney; Disability Defined.

a. A power of attorney is a written instrument by which an individual known as the principal authorizes another individual or individuals or a qualified bank within the meaning of P.L.1948, c.67, s.28 (C.17:9A-28) known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal's agent.

b. A durable power of attorney is a power of attorney which contains the words "this power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," 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, and unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

c. Unless otherwise defined in the instrument, a principal shall be under a disability if the principal is unable to manage his property and affairs effectively; and an attorney-in-fact shall be under a disability if the attorney-in-fact is unable to exercise the authority conferred by the power of attorney effectively.

C.46:2B-8.3 Durable power of attorney not affected by lapse of time; disability or incapacity.

3. Durable Power of Attorney Not Affected By Lapse of Time; Disability or Incapacity.

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period when the power of attorney is effective in accordance with its terms, including any period when the principal is under a disability, have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

C.46:2B-8.4 Relation of attorney-in-fact to court-appointed fiduciary.

4. 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 the principal's property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal.

b. A principal may nominate, by a durable power of attorney, the conservator, guardian of the principal's estate, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced.

c. No person, other than the principal, shall revoke a durable power of attorney except upon a court order for good cause.

C.46:2B-8.5 Power of attorney not revoked until notice.

5. 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 the principal's successors in interest.

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 the principal's successors in interest.

c. If the attorney-in-fact executes an affidavit stating that the act was done without actual knowledge of the revocation or termination of the power of attorney by death, disability, or incapacity, such act shall be presumed valid, subject to challenge only by a clear showing of fraud or gross neglect.

C.46:2B-8.6 Good faith reliance.

6. Good Faith Reliance.

a. Any third party may rely upon the authority granted in a durable power of attorney until the third party has received actual notice of the revocation of the power of attorney, the termination or suspension of the authority of the attorney-in-fact, or the death of the principal.

b. A third party who has not received such actual notice under paragraph a. of this section may, but need not, require that the attorney-in-fact execute an affidavit stating that the attorney-in-fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, the termination or suspension of the authority of the attorney-in-fact, or the principal's death, disability, or incapacity. Such affidavit 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 section 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.

C.46:2B-8.7 Multiple attorneys-in-fact.

7. Multiple Attorneys-In-Fact.

a. Unless the power of attorney expressly provides otherwise, all authority granted to multiple attorneys-in-fact may be exercised by the one or more who remain after the death, resignation or disability of one or more of the attorneys-in-fact.

b. The power of attorney may provide that the attorneys-in-fact may act severally or separately. If so provided, any one of the appointed attorneys-in-fact may exercise all powers granted.

c. The power of attorney may provide that the attorneys-in-fact shall act jointly. If so provided then, subject to subsection a., the concurrence of all appointed attorneys-in-fact is required to exercise any power.

d. If the power of attorney does not expressly provide whether the attorneys-in-fact are to act severally or separately, or are to act jointly, such attorneys-in-fact must act jointly.

e. The power of attorney may provide that the attorneys-in-fact act successively. Unless the power of attorney otherwise provides for the conditions under which a successor is qualified to act, the successor may act only upon the death, the written resignation, or the disability of the predecessor named attorney-in-fact.

C.46:2B-8.8 Delegation by attorney-in-fact.

8. Delegation by Attorney-in-Fact.

If the power of attorney shall specifically provide, the attorney-in-fact, in the exercise of reasonable care, skill and caution, may delegate to other agents such one, more, or all of the specific powers which have been conferred on the attorney-in-fact by the power of attorney.

C.46:2B-8.9 Formality.

9. Formality.

A power of attorney must be in writing, duly signed and acknowledged in the manner set forth in R.S.46:14-2.1.

C.46:2B-8.10 Revocation.

10. Revocation.

A power of attorney is revoked when the principal has caused all executed originals of the power of attorney to be physically destroyed; or when the principal has signed and caused to be acknowledged in the manner set forth in R.S.46:14-2.1 a written instrument of revocation; or when the principal has delivered to the attorney-in-fact a written revocation. Unless expressly so provided, the subsequent execution of another power of attorney does not revoke a power of attorney.

C.46:2B-8.11 Certified copies and photocopies.

11. Certified Copies and Photocopies.

Any third party to whom the power of attorney is presented may retain and rely upon a photocopy of the original signed document, or may retain and rely upon a certified copy of the original.

C.46:2B-8.12 Compensation of the attorney-in-fact.

12. Compensation of the Attorney-in-Fact.

A principal shall have the power to direct whether an attorney-in-fact is to be compensated in a power of attorney or in a separate written agreement dealing with compensation. A principal may direct that an attorney-in-fact be compensated and may provide for the method by which compensation shall be calculated and when compensation shall be paid. In the absence of any such direction and upon appropriate application, a court of competent jurisdiction may award reasonable compensation to the attorney-in-fact.

C.46:2B-8.13 Fiduciary status and duty to account.

13. Fiduciary Status and Duty to Account.

a. An attorney-in-fact has a fiduciary duty to the principal, and to the guardian of the property of the principal if the principal has been adjudicated an incapacitated person, to act within the powers delegated by the power of attorney and solely for the benefit of the principal.

b. The attorney-in-fact shall maintain accurate books and records of all financial transactions. The principal, a guardian or conservator appointed for the principal, and the personal representative of the principal's estate may require the attorney-in-fact to render an accounting. The Superior Court may, upon application of any heir or other next friend of the principal, require the attorney-in-fact to render an accounting if satisfied that the principal is incapacitated and there is doubt or concern whether the attorney-in-fact is acting within the powers delegated by the power-of-attorney, or is acting solely for the benefit of the principal.

C.46:2B-8.14 Application of act.

14. The provisions of this act shall hereafter apply to any power of attorney made pursuant to the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.) relating to banking transactions under a power of attorney. This act shall complement and not supersede the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.).

Repealer.

15. Sections 1 and 2 of P.L.1971, c.373 (C.46:2B-8 and 46:2B-9) are repealed.

16. This act shall take effect on the 60th day after the date of enactment.

Approved September 8, 2000.