

**UNIFORM PROBATE CODE - POWER OF
ATTORNEY AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Patricia W. Jones

This act modifies sections of the Probate Code to allow for the appointment of a conservator for a person who is disabled even though there may be a valid power of attorney in force.

This act also provides that the person holding the power of attorney should be bound by the same standards for trustees.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

75-5-401, as last amended by Chapter 142, Laws of Utah 1999

75-5-501, as last amended by Chapter 179, Laws of Utah 1992

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **75-5-401** is amended to read:

75-5-401. Protective proceedings.

(1) Upon petition and after notice and hearing in accordance with the provisions of this part, the court may appoint a conservator or make other protective order for cause as follows:

(a) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a minor if the court determines that a minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by minority, or that funds are needed for the minor's support and education and protection is necessary or desirable to obtain or provide funds.

(b) The provisions of Subsection (1)(a) may be applied to a person beyond minority up to age 21 under special circumstances as determined by the court.

(2) Appointment of a conservator or other protective order may be made in relation to the estate and affairs of a person if the court determines that the person:

(a) is unable to manage the person's property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic

intoxication, confinement, detention by a foreign power, or disappearance; and

(b) has property which will be wasted or dissipated unless proper management is provided or that funds are needed for the support, care, and welfare of the person or those entitled to be supported by the person and protection is necessary or desirable to obtain or provide funds.

(3) Appointment of a conservator or other protective order may not be denied solely on the basis that the person for whom the conservatorship or other protective order is sought has a valid power of attorney in effect.

Section 2. Section **75-5-501** is amended to read:

75-5-501. When power of attorney not affected by disability or lapse of time.

(1) Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding:

(a) later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive; or

(b) the lapse of time since the execution of the instrument, unless the instrument states a time of termination.

(2) All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal representative as if the principal were alive, competent, and not disabled. If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal. The conservator has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

(3) If a power of attorney remains in effect or becomes effective as a result of a principal's

incapacity or disability, the attorney-in-fact or agent holding the power of attorney shall be bound by the duties, liabilities, and standard of care in Title 75, Chapter 7, Part 3, Duties and Liabilities of Trustees.

(4) In applying the duties, liabilities, and standard of care of Part 3, Duties and Liabilities of Trustees, to this section:

(a) "beneficiary" means any person entitled to a part of the principal's estate from the principal's will or through the intestacy laws, whichever is applicable; and

(b) "trust" means that part of the principal's estate which is covered or controlled by the power of attorney.