

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

3 2001 FIRST SPECIAL SESSION

4 STATE OF UTAH

5 **Sponsor: John L. Valentine**

6 **This act modifies a section of the Probate Code to provide that a person holding a power of**
7 **attorney for a disabled principal may be held accountable by the principal's heirs. This act**
8 **becomes effective immediately.**

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

10 AMENDS:

11 **75-5-501**, as last amended by Chapter 375, Laws of Utah 2001

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

13 Section 1. Section **75-5-501** is amended to read:

14 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
15 **responsibilities.**

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

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

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

26 (2) If an attorney-in-fact or agent determines that the principal has become incapacitated
27 or disabled and the power of attorney by its terms remains in effect or becomes effective as a result



28 of a principal's incapacity or disability, the attorney-in-fact or agent shall:

29 (a) notify all interested persons of his status as the power of attorney holder within 30 days
30 of the principal's incapacitation, and provide them with his name and address;

31 (b) provide to any interested persons upon written request, a copy of the power of attorney
32 and a statement of the assets to which the power of attorney applies;

33 (c) provide to any interested persons upon written request, an annual accounting of the
34 assets to which the power of attorney applies; and

35 (d) notify all interested persons upon the death of the principal.

36 (3) All interested persons shall be notified within ten days if the attorney-in-fact or agent
37 changes. The notification shall be made by the new attorney-in-fact or agent who shall then be
38 accountable to the interested persons in accordance with Subsection (2).

39 ~~[(2)]~~ (4) All acts done by the attorney-in-fact or agent pursuant to the power during any
40 period of disability or incompetence or uncertainty as to whether the principal is dead or alive have
41 the same effect and inure to the benefit of and bind the principal or his heirs, devisees, and
42 personal representative as if the principal were alive, competent, and not disabled. If a conservator
43 thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the
44 appointment, shall account to the conservator rather than the principal. The conservator has the
45 same power the principal would have had if he were not disabled or incompetent to revoke,
46 suspend, or terminate all or any part of the power of attorney or agency.

47 ~~[(3) If a power of attorney remains in effect or becomes effective as a result of a principal's~~
48 ~~incapacity or disability, the attorney-in-fact or agent holding the power of attorney shall be bound~~
49 ~~by the duties, liabilities, and standard of care in Title 75, Chapter 7, Part 3, Duties and Liabilities~~
50 ~~of Trustees.]~~

51 ~~[(4) In applying the duties, liabilities, and standard of care of Part 3, Duties and Liabilities~~
52 ~~of Trustees, to this section: (a) "beneficiary"]~~

53 (5) For the purposes of this section, "interested person" means any person entitled to a part
54 of the principal's estate from the principal's will or through the intestacy laws, whichever is
55 applicable[; and].

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

58 Section 2. **Effective date.**

59 If approved by two-thirds of all the members elected to each house, this act takes effect
60 upon approval by the governor, or the day following the constitutional time limit of Utah
61 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the
62 date of veto override.

Legislative Review Note
as of 6-8-01 12:20 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.