

**POWER OF ATTORNEY FOR TRUST**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Merlynn T. Newbold**

**This act modifies and enacts provisions of the Probate Code relating to powers of attorney. It prohibits powers of attorney holders from creating, modifying, or revoking trusts without specific authorization, changing interests in the principal's property, or making loans to the holder of the power of attorney.**

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

AMENDS:

**75-5-501**, as last amended by Chapter 14, Laws of Utah 2001, First Special Session

ENACTS:

**75-5-503**, Utah Code Annotated 1953

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

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

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

(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.



28 (2) If an attorney-in-fact or agent determines that the principal has become incapacitated  
29 or disabled and the power of attorney by its terms remains in effect or becomes effective as a result  
30 of a principal's incapacity or disability, the attorney-in-fact or agent shall:

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

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

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

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

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

41 (4) All acts done by the attorney-in-fact or agent pursuant to the power during any period  
42 of disability or incompetence or uncertainty as to whether the principal is dead or alive have the  
43 same effect and inure to the benefit of and bind the principal or his heirs, devisees, and personal  
44 representative as if the principal were alive, competent, and not disabled, except as provided in  
45 Section 75-5-503.

46 (5) If a conservator thereafter is appointed for the principal, the attorney-in-fact or agent,  
47 during the continuance of the appointment, shall account to the conservator rather than the  
48 principal. The conservator has the same power the principal would have had if he were not  
49 disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney  
50 or agency.

51 [~~5~~] (6) For the purposes of this section, "interested person" means any person entitled to  
52 a part of the principal's estate from the principal's will or through the intestacy laws, whichever is  
53 applicable.

54 Section 2. Section **75-5-503** is enacted to read:

55 **75-5-503. Power of attorney -- Prohibitions and restrictions.**

56 A power of attorney may not be construed to grant authority to an attorney-in-fact or agent  
57 to perform any of the following, unless expressly authorized in the power of attorney:

58 (1) create, modify, or revoke a trust unless the trust contains language also granting the

- 59 same authority to the holder of a power of attorney;  
60 (2) fund, with the principal's property, a trust not created by the principal or a person  
61 authorized to create a trust on behalf of the principal;  
62 (3) make or revoke a gift of the principal's property, in trust or otherwise;  
63 (4) create or change survivorship interests in the principal's property or in property in  
64 which the principal may have an interest;  
65 (5) designate or change the designation of beneficiaries to receive any property, benefit,  
66 or contract right on the principal's death; or  
67 (6) make a loan to the attorney-in-fact.
- 
- 

**Legislative Review Note**  
**as of 1-30-02 11:24 AM**

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

**Office of Legislative Research and General Counsel**