

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

2001 FIRST SPECIAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

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

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

AMENDS:

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

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.

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

(a) notify all interested persons of his status as the power of attorney holder within 30 days

of the principal's incapacitation, and provide them with his name and address;

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

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

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

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

~~[(2)]~~ (4) 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"]~~

(5) For the purposes of this section, "interested person" 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.]~~

Section 2. **Effective date.**

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