

1 **POWER OF ATTORNEY IN RELATION TO A**
2 **TRUST**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Merlynn T. Newbold**

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

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

11 AMENDS:

12 **75-5-501**, as last amended by Chapter 14, Laws of Utah 2001, First Special Session

13 ENACTS:

14 **75-5-503**, Utah Code Annotated 1953

15 **75-5-504**, Utah Code Annotated 1953

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

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

18 **75-5-501. Power of attorney not affected by disability or lapse of time -- Agent**
19 **responsibilities.**

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

27 (a) later disability or incapacity of the principal at law or later uncertainty as to whether



28 the principal is dead or alive; or

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

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

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

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

38 (c) provide to any interested persons upon written request, an annual accounting of the
39 assets to which the power of attorney applies, if the power of attorney specifically directs the
40 attorney-in-fact or agent to do so; and

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

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

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

50 (5) A conservator may be appointed for a principal even though the principal has a
51 valid power of attorney in place. If a conservator thereafter is appointed for the principal, the
52 attorney-in-fact or agent, during the continuance of the appointment, shall account to the
53 conservator rather than the principal. [~~The conservator has the same power the principal would~~
54 ~~have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part~~
55 ~~of the power of attorney or agency.~~]

56 [(5)] (6) For the purposes of this section, "interested person" means any person entitled
57 to a part of the principal's estate from the principal's will or through the intestacy laws,
58 whichever is applicable.

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

60 **75-5-503. Power of attorney -- Prohibitions and restrictions.**

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

63 (1) create, modify, or revoke an inter vivos revocable trust created by the principal;

64 (2) fund, with the principal's property, a trust not created by the principal or by a person
65 authorized to create a trust on behalf of the principal;

66 (3) make or revoke a gift of the principal's property, in trust or otherwise; or

67 (4) designate or change the designation of beneficiaries to receive any property,
68 benefit, or contract right on the principal's death.

69 Section 3. Section **75-5-504** is enacted to read:

70 **75-5-504. Voidable transactions.**

71 Any loan, sale, or encumbrance on behalf of a principal with his attorney-in-fact, or
72 with the attorney-in-fact's spouse, agent, or attorney, or any entity or trust in which the
73 attorney-in-fact has a substantial beneficial interest, or any transaction involving the
74 attorney-in-fact which is affected by a substantial conflict of interest, is voidable unless the
75 transaction is approved by the court after notice to interested persons and others as directed by
76 the court.

Legislative Review Note

as of 1-27-03 10:53 AM

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

Office of Legislative Research and General Counsel

Fiscal Note**Power of Attorney Relation to a Trust***10-Feb-03***Bill Number HB0247***3:03 PM*

State Impact

No fiscal impact.

Individual and Business Impact

The provisions of this bill could have a fiscal impact on individuals that appoint a power of attorney and on those affected by the subsequent actions. The actual impact will vary with the situation and the circumstances involved.

Office of the Legislative Fiscal Analyst