

181 stock indexes.

182 Section 4. Section **75-9-103** is enacted to read:

183 **75-9-103. Applicability.**

184 This chapter applies to all powers of attorney except:

185 (1) a power to the extent it is coupled with an interest in the subject of the power,
186 including a power given to or for the benefit of a creditor in connection with a credit
187 transaction;

188 (2) a power to make health care decisions;

189 (3) a proxy or other delegation to exercise voting rights or management rights with
190 respect to an entity; and

191 (4) a power created on a form prescribed by a government or governmental
192 subdivision, agency, or instrumentality for a governmental purpose.

193 Section 5. Section **75-9-104** is enacted to read:

194 **75-9-104. Power of attorney is durable.**

195 A power of attorney created under this chapter is durable unless it expressly provides
196 that it is terminated by the incapacity of the principal.

197 Section 6. Section **75-9-105** is enacted to read:

198 **75-9-105. Execution of power of attorney.**

199 (1) A power of attorney shall be signed by the principal or in the principal's conscious
200 presence by another individual directed by the principal to sign the principal's name on the
201 power of attorney before a notary public or other individual authorized by the law to take
202 acknowledgments. A signature on a power of attorney is presumed to be genuine if the
203 principal acknowledges the signature before a notary public or other individual authorized by
204 law to take acknowledgments.

205 (2) ~~It~~ **→** [If the principal resides in a hospital, assisted living facility, skilled nursing or
206 **similar residential care facility, at the time of execution of the power of attorney, a certification**
207 **of the principal's competency from a physician, psychologist, or psychiatrist shall be attached**
208 **to the power of attorney.**

209 ———(3) ~~It~~ **←** If the principal resides or is about to reside in a hospital, assisted living, skilled
210 nursing, or similar facility, at the time of execution of the power of attorney, the principal may
211 not name any agent that is the owner, operator, health care provider, or employee of the

212 hospital, assisted living facility, skilled nursing, or similar residential care facility unless the
 213 agent is the spouse, legal guardian, ~~H→~~ or ~~←H~~ next of kin of the principal, or unless the
 213a agent's authority is
 214 strictly limited to the purpose of assisting the principal to establish eligibility for Medicaid.

215 ~~H→~~ ~~[(4) A person who violates the provisions of Subsection 75-9-105(3) is guilty of a third~~
 216 ~~degree felony.] (3) A violation of Subsection (2) is a violation of Subsection 76-5-111(4)(a).~~ ~~←H~~

217 Section 7. Section 75-9-106 is enacted to read:

218 **75-9-106. Validity of power of attorney.**

219 (1) A power of attorney executed in this state on or after May 10, 2016, is valid if its
 220 execution complies with Section 75-9-105.

221 (2) A power of attorney executed in this state before May 10, 2016, is valid if its
 222 execution complied with the law of this state as it existed at the time of execution.

223 (3) A power of attorney executed other than in this state is valid in this state if, when
 224 the power of attorney was executed, the execution complied with:

225 (a) the law of the jurisdiction that determines the meaning and effect of the power of
 226 attorney pursuant to Section 75-9-107; or

227 (b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.

228 (4) Except as otherwise provided by statute other than this chapter, a photocopy or
 229 electronically transmitted copy of an original power of attorney has the same effect as the
 230 original. ~~H→~~ **For transactions involving real property, the copy of the power of attorney**
 230a **may be recorded in the county where the transaction lies when attached to an affidavit of**
 230b **the person accepting the power of attorney.** ~~←H~~

231 Section 8. Section 75-9-107 is enacted to read:

232 **75-9-107. Meaning and effect of power of attorney.**

233 The meaning and effect of a power of attorney is determined by the law of the
 234 jurisdiction indicated in the power of attorney and, in the absence of an indication of
 235 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

236 Section 9. Section 75-9-108 is enacted to read:

237 **75-9-108. Nomination of conservator or guardian -- Relation of agent to court**
 238 **appointed fiduciary.**

239 (1) In a power of attorney, a principal may nominate a conservator of the principal's
 240 estate or guardian of the principal's person for consideration by the court if protective
 241 proceedings for the principal's estate or person are begun after the principal executes the power
 242 of attorney. Except for good cause shown or disqualification, the court shall make its