

ENGROSSED HOUSE  
BILL NO. 2402

BY: BENSON of the HOUSE

and

RUBOTTOM of the SENATE

AN ACT RELATING TO PROBATE PROCEDURE; AMENDING 58 O.S. 1991, SECTION 1071, WHICH RELATES TO THE UNIFORM DURABLE POWER OF ATTORNEY ACT; MODIFYING SHORT TITLE; SPECIFYING CONTENTS OF DURABLE POWER OF ATTORNEY; IDENTIFYING SCOPE OF THE POWER OF ATTORNEY; PROVIDING PROCEDURES GOVERNING EXECUTION; PROVIDING FORM; ESTABLISHING PRESUMPTION UPON EXECUTION; AVOIDING THE NECESSITY OF MAKING CERTAIN INQUIRIES; VALIDATING CERTAIN POWERS OF ATTORNEY; SPECIFYING METHOD OF EXECUTION AFTER A CERTAIN DATE; REPEALING 58 O.S. 1991, SECTIONS 1051, 1052, 1053, 1055, 1056, 1058, 1059, 1060, 1061, 1062 AND 1063, WHICH RELATE TO POWERS OF ATTORNEY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 58 O.S. 1991, Section 1071, is amended to read as follows:

Section 1071. Sections ~~1 through 7~~ 1071 through 1077 of this title, and Sections 2 and 3 of this act shall be known and may be cited as the "Uniform Durable Power of Attorney Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072.1 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. The durable power of attorney shall show or state:

1. The fact of execution under the provisions of the Uniform Durable Power of Attorney Act;

2. The time and conditions under which the power is to become effective;

3. The extent and scope of the powers conferred; and

4. Who is to exercise the power, including any successor attorney-in-fact if the prior appointed attorney-in-fact dies, ceases to act, refuses or is unable to serve, or resigns.

B. The power may be restricted, or it may grant complete authority with respect to the principal's:

1. Person, including, without limitation, health and medical care decisions on the principal's behalf, but excluding the execution of Directives to Physicians on behalf of the principal; and

2. Property, whether real, personal, intangible or mixed.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072.2 of Title 58, unless there is created a duplication in numbering, reads as follows:

A. The principal must sign the power of attorney at its end, or, if the principal is unable, some other person must subscribe his name thereto in his presence and by his direction. The principal, or such other person, must sign in the presence of two witnesses, each of whom must sign his name in the presence of the principal and each other.

B. The witnesses shall not be:

1. Under eighteen (18) years of age;

2. Related to the principal by blood or marriage; or

3. The attorney-in-fact or anyone related to the attorney-in-fact by blood or marriage.

C. The execution of the power of attorney shall be in the following form:

Signed: \_\_\_\_\_

(Principal's signature)

City, County, and State of Residence

\_\_\_\_\_

\_\_\_\_\_

The principal is personally known to me and I believe the principal to be of sound mind. I am eighteen (18) years of age or older. I am not related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage. The principal has declared to me that this instrument is his power of attorney granting to the named attorney-in-fact the power and authority specified herein, and that he has willingly made and executed it as his free and voluntary act for the purposes herein expressed.

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

STATE OF OKLAHOMA )

) SS.

COUNTY OF \_\_\_\_\_)

Before me, the undersigned authority, on this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, personally appeared

\_\_\_\_\_ (principal), \_\_\_\_\_

(witness), and \_\_\_\_\_ (witness), whose names are

subscribed to the foregoing instrument in their respective

capacities, and all of said persons being by me duly sworn,

the principal declared to me and to the said witnesses in

my presence that the instrument is his or her power of

attorney, and that the principal has willingly and voluntarily made and executed it as the free act and deed of the principal for the purposes therein expressed, and the witnesses declared to me that they were each eighteen (18) years of age or over, and that neither of them is related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage.

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Notary Public

My Commission Expires:

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D. Execution of a durable power of attorney in the form prescribed by this section shall create a presumption that the principal understands the nature and purpose of the power of attorney and has executed the same while being of sound mind, and of his free will. A person dealing with the attorney-in-fact shall not be required to inquire into the validity or adequacy of the execution of the power of attorney, nor shall any such person be required to inquire into the validity or propriety of any act of an attorney-in-fact apparently authorized by a power of attorney executed pursuant to this section.

E. County clerks shall record any durable power of attorney executed in substantially the form prescribed in subsection C of this section.

F. All powers of attorney executed prior to September 1, 1992, pursuant the provisions of Sections 1051 through 1063 of Title 58 of the Oklahoma Statutes or the Uniform Durable Power of Attorney Act shall be valid. All powers of attorney established on or after September 1, 1992, shall be executed pursuant to the provisions of the Uniform Durable Power of Attorney Act.

SECTION 4. REPEALER 58 O.S. 1991, Sections 1051, 1052, 1053, 1055, 1056, 1058, 1059, 1060, 1061, 1062 and 1063, are hereby repealed.

SECTION 5. This act shall become effective September 1, 1992.

Passed the House of Representatives the 24th day of February, 1992.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1992.

President of the Senate