

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 695

BY: RUBOTTOM

AS INTRODUCED

AN ACT RELATING TO POWERS OF ATTORNEY; ADDING REQUIREMENTS TO DURABLE POWERS OF ATTORNEY; PROVIDING FOR RESTRICTIONS; REQUIRING CERTAIN SIGNATURES FOR EXECUTION; STATING QUALIFICATIONS OF WITNESSES; PRESCRIBING FORM; DECLARING PRESUMPTIONS; REPEALING 58 O.S. 1991, SECTIONS 1051, 1052, 1053, 1055, 1056, 1058, 1059, 1060, 1061, 1062 AND 1063, WHICH RELATE TO PROBATE PROCEDURE; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. 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 this 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 in the event 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 2. 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 (unless executed in accordance with subsection D of this section):

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 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, neither of them is related to the principal by blood or marriage, or related to the attorney-in-fact by blood or marriage.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

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 or her 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 hereunder.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1072.3 of Title 58, unless there is created a duplication in numbering, reads as follows:

All powers of attorney previously established in compliance with Section 1051 et seq. of Title 58 of the Oklahoma Statutes, Section 1062 et seq. of Title 58 of the Oklahoma Statutes and Section 1071 et seq. of Title 58 of the Oklahoma Statutes shall be validated. Durable powers of attorney executed after the effective date of this section may be created only by compliance with the provisions of Section 1071 et seq. of Title 58 of the Oklahoma Statutes.

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.

43-2-1496 KS