

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2939

6 By: Russ

7 COMMITTEE SUBSTITUTE

8 An Act relating to probate procedure; amending 58
9 O.S. 2001, Sections 1072, 1073 and 1074, which relate
10 to the Uniform Durable Power of Attorney Act;
11 modifying scope of durable power of attorney; adding
12 condition for which acts of attorney-in-fact are
13 effective; allowing fiduciary power while principal
14 is on extended absence; defining terms; providing
15 length of time for extended absence; requiring
16 commencement of certain proceedings if extended
17 absence exceeds certain time period; providing for
18 codification; and providing an effective date.

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

20 SECTION 1. AMENDATORY 58 O.S. 2001, Section 1072, is
21 amended to read as follows:

22 Section 1072. A durable power of attorney is a power of
23 attorney by which a principal designates another his
24 attorney-in-fact in writing and the writing contains the words "This
power of attorney shall not be affected by subsequent disability ~~or~~,
incapacity, or extended absence of the principal, or lapse of
time," or "This power of attorney shall become effective upon the

1 disability ~~or~~, incapacity, or extended absence of the principal",
2 or similar words showing the intent of the principal that the
3 authority conferred shall be exercisable notwithstanding the
4 principal's subsequent disability ~~or~~, incapacity, or extended
5 absence, and, unless it states a time of termination,
6 notwithstanding the lapse of time since the execution of the
7 instrument.

8 SECTION 2. AMENDATORY 58 O.S. 2001, Section 1073, is
9 amended to read as follows:

10 Section 1073. All acts done by an attorney-in-fact pursuant to
11 a durable power of attorney during any period of disability ~~or~~,
12 incapacity, or extended absence of the principal have the same
13 effect and inure to the benefit of and bind the principal and his
14 successors in interest as if the principal were competent and not
15 disabled, incapacitated, or on an extended absence.

16 SECTION 3. AMENDATORY 58 O.S. 2001, Section 1074, is
17 amended to read as follows:

18 Section 1074. A. If, following execution of a durable power of
19 attorney, a court of the principal's domicile appoints a
20 conservator, guardian of the estate, or other fiduciary charged with
21 the management of all of the principal's property or all of his
22 property except specified exclusions, the attorney-in-fact is
23 accountable to the fiduciary as well as to the principal. The
24 fiduciary has the same power to revoke or amend the power of

1 attorney that the principal would have had if he were not disabled
2 ~~or~~, incapacitated, or on an extended absence.

3 B. A principal may nominate, by a durable power of attorney,
4 the conservator, guardian of his estate, or guardian of his person
5 for consideration by the court if protective proceedings for the
6 principal's person or estate are thereafter commenced. The court
7 shall make its appointment in accordance with the principal's most
8 recent nomination in a durable power of attorney except for good
9 cause or disqualification.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 1072.3 of Title 58, unless there
12 is created a duplication in numbering, reads as follows:

13 A. "Extended absence" as used in the Uniform Durable Power of
14 Attorney Act means that a principal has been missing or loses all
15 contact with the designated attorney-in-fact, family members, and
16 friends for a period of more than forty-five (45) days. "Contact"
17 includes but is not limited to face-to-face contact, a communication
18 that can reasonably be verified as having been produced or made by
19 the principal such as a letter, phone call, text message, electronic
20 mail or other electronic communication. If the principal is a
21 member of the Armed Forces of the United States, an extended absence
22 as defined in this section, shall not exist when the principal is
23 deployed for military service or training or is classified as
24 missing in action or a prisoner of war. A durable power of attorney

1 activated because of an extended absence shall be considered in
2 effect until the principal makes contact with the attorney-in-fact,
3 family members, or friends or until the principal is found.

4 B. Once a principal's extended absence exceeds the period of
5 time prescribed by Section 941 of Title 58 of the Oklahoma Statutes,
6 the attorney-in-fact shall start proceedings under Section 941 of
7 Title 58 of the Oklahoma Statutes to have the principal declared
8 legally dead.

9 SECTION 5. This act shall become effective November 1, 2010.

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