

THE HOUSE OF REPRESENTATIVES
Wednesday, February 24, 2010

Committee Substitute for
House Bill No. 2939

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2939 - By: RUSS of the House.

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

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

1 SECTION 1. AMENDATORY 58 O.S. 2001, Section 1072, is amended to read
2 as follows:
3 Section 1072. A durable power of attorney is a power of attorney by which a
4 principal designates another his attorney-in-fact in writing and the writing contains the
5 words "This power of attorney shall not be affected by subsequent disability ~~or~~,
6 incapacity, or extended absence of the principal, or lapse of time;"₁ or "This power of
7 attorney shall become effective upon the disability ~~or~~, incapacity, or extended absence of
8 the principal;"₁ or similar words showing the intent of the principal that the authority
9 conferred shall be exercisable notwithstanding the principal's subsequent disability ~~or~~,
10 incapacity, or extended absence, and, unless it states a time of termination,
11 notwithstanding the lapse of time since the execution of the instrument.

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

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

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

10 Section 1074. A. If, following execution of a durable power of attorney, a court of
11 the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary
12 charged with the management of all of the principal's property or all of his property
13 except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as
14 to the principal. The fiduciary has the same power to revoke or amend the power of
15 attorney that the principal would have had if he were not disabled ~~or~~, incapacitated, or
16 on an extended absence.

17 B. A principal may nominate, by a durable power of attorney, the conservator,
18 guardian of his estate, or guardian of his person for consideration by the court if
19 protective proceedings for the principal's person or estate are thereafter commenced. The
20 court shall make its appointment in accordance with the principal's most recent
21 nomination in a durable power of attorney except for good cause or disqualification.

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

4 A. "Extended absence" as used in the Uniform Durable Power of Attorney Act
5 means that a principal has been missing or loses all contact with the designated
6 attorney-in-fact, family members, and friends for a period of more than forty-five (45)
7 days. "Contact" includes but is not limited to face-to-face contact, a communication that
8 can reasonably be verified as having been produced or made by the principal such as a
9 letter, phone call, text message, electronic mail or other electronic communication. If the
10 principal is a member of the Armed Forces of the United States, an extended absence as
11 defined in this section, shall not exist when the principal is deployed for military service
12 or training or is classified as missing in action or a prisoner of war. A durable power of
13 attorney activated because of an extended absence shall be considered in effect until the
14 principal makes contact with the attorney-in-fact, family members, or friends or until the
15 principal is found.

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02-23-10 - DO PASS,
22 As Amended.