SENATE FLOOR VERSION
February 17, 2015

SENATE BILL NO. 109 By: Anderson of the Senate

and

Rousselot of the House

An Act relating to durable powers of attorney; amending 58 O.S. 2011, Sections 1074 and 1075, which relate to relationship of court-appointed fiduciary and attorney-in-fact and incapacity of principal; modifying authority of certain fiduciary; modifying certain termination procedures; requiring filing of certain notice; allowing reliance on certain authority prior to filing of certain notice; and providing an effective date.

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

SECTION 1. AMENDATORY 58 O.S. 2011, Section 1074, is amended to read as follows:

Section 1074. A. If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of the principal's property except specified exclusions, the ~~durable power of attorney, upon notice of such appointment, shall terminate~~ attorney-in-fact is accountable to the fiduciary as well as to the

principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if the principal were not disabled or incapacitated.

B. A principal may nominate, by a durable power of attorney, the conservator, guardian of his or her estate, or guardian of his or her person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification. ~~In the event such appointment is made by the court, upon notice, the durable power of attorney shall terminate.~~

SECTION 2. AMENDATORY 58 O.S. 2011, Section 1075, is amended to read as follows:

Section 1075. A. Death of the principal revokes and terminates the power of attorney, provided however, the death of a principal who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the death of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.

B. The disability or incapacity of a principal who has previously executed a written power of attorney that is not a

durable power does not revoke or terminate the agency as to the attorney-in-fact or other person, who, without actual knowledge of the disability or incapacity of the principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his successors in interest.

C. If a durable power of attorney is recorded with the clerk in any county of this state, in the event of revocation of such durable power of attorney, notice of the revocation shall be filed in each county or counties where the durable power of attorney was recorded. Until such notice is recorded, any person or entity may rely on the recorded authority of the attorney-in-fact with respect to matters covered by the records of the county clerk, and the acts of the attorney-in-fact shall be binding on the principal or the principal's successors in interest.

SECTION 3. This act shall become effective November 1, 2015.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
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