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HOUSE BILL NO. 622

Offered January 19, 1996

A BILL to amend and reenact § 11-9.1 of the Code of Virginia, relating to durable powers of attorney.

Patrons—Howell, Clement, Forbes and McClure

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 11-9.1 of the Code of Virginia is amended and reenacted as follows:**

§ 11-9.1. When power of attorney, etc., not terminated by principal's disability; exception; statement of responsibilities.

A. Whenever any power of attorney or other writing, in which any principal shall vest any power or authority in an attorney-in-fact or other agent, shall contain the words "This power of attorney (or his authority) shall not terminate on disability of the principal" or other words showing the intent of the principal that such power or authority shall not terminate upon his disability, then all power and authority vested in the attorney-in-fact or agent by the power of attorney or other writing shall continue and be exercisable by the attorney-in-fact or agent on behalf of the principal notwithstanding any subsequent disability, incompetence, or incapacity of the principal at law, *and such power of attorney shall be known as a "durable" power of attorney.* All acts done by the attorney-in-fact or agent, pursuant to such power or authority, during the period of any such disability, incompetence or incapacity, shall have in all respects the same effect and shall inure to the benefit of, and bind the principal as fully as if the principal were not subject to such disability, incompetence or incapacity. If any guardian or committee shall thereafter be appointed for the principal, the attorney-in-fact or agent shall, during the continuance of such appointment, account to such guardian or committee as he would otherwise be obligated to account to the principal.

The appointment of a guardian or committee pursuant to Title 37.1 shall not of itself revoke or limit the authority of the attorney-in-fact or other agent. However, in a proceeding in which the attorney-in-fact or other agent is made a party, the court which appointed the guardian or committee may revoke, suspend, or otherwise limit such authority. Furthermore, where no guardian or committee has been appointed, the circuit court of the city or county where the principal resides or is located, in a proceeding brought by a person interested in the welfare of the principal as defined in § 37.1-132.1, and in which the attorney-in-fact or other agent and the principal are made parties, may terminate, suspend, or otherwise limit the authority of the attorney-in-fact or other agent upon a finding that such termination, suspension or limitation is in the best interests of the principal or his estate.

B. *No action taken under any durable power of attorney executed on or after January 1, 1997, whether executed within or without this Commonwealth, shall be effective unless the statement set forth in subsection C is quoted either (i) in the power of attorney that is signed by the principal or (ii) in a writing attached to the power of attorney that is signed by the agent taking the action in question. The agent's writing may be signed and attached to the power after the principal becomes disabled, incompetent, or incapacitated.*

Any action taken by an agent that is ineffective under this subsection solely because of a failure to comply with clause (i) or (ii) of this subsection, may be ratified by the agent after complying with clause (ii) if the ratification does not adversely affect the intervening rights of any third party. This subsection shall not apply to a power of attorney limited to one or more specific purposes.

C. *The statement required by subsection B shall be as follows: "Statement of Agent's Duties and Responsibilities under Virginia Law."*

An agent who acts under a durable power of attorney (1) shall use due care to act in the best interests of the principal in accordance with the terms of the power of attorney; (2) is liable for any breach of legal duty owed to the principal as a fiduciary under Virginia law, (3) shall not allow any of the principal's property to become commingled with the agent's property, (4) shall keep a record of all receipts, disbursements, and significant actions taken as agent under the power of attorney, and (5) upon proper demand, shall make an accounting of all receipts, disbursements, and significant actions under the power of attorney (i) to the principal, (ii) to a person interested in the welfare of a principal who is unable to properly attend to his affairs unless specifically prohibited by the terms of the power of attorney, (iii) to the guardian or committee of an incapacitated or incompetent principal, and (iv) upon the principal's death, to the principal's executor or administrator. An agent is entitled to obtain the advice of a lawyer concerning these and any other of the agent's duties and responsibilities under a durable power of attorney and to be reimbursed for such expense from the principal's assets.

INTRODUCED

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