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SENATE, No. 677

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JANUARY 24, 2000

Sponsored by:

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

SYNOPSIS

Revises statutes with regard to execution of powers of attorney.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning durable powers of attorney, supplementing Title
2 46 of the Revised Statutes and repealing P.L.1971, c.373.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. This act shall be known and may be cited as the "Revised
8 Durable Power of Attorney Act."

9
10 2. Powers of Attorney; Durable Powers of Attorney; Disability
11 Defined.

12 a. A power of attorney is a written instrument by which an
13 individual known as the principal authorizes another individual or
14 individuals or a qualified bank within the meaning of P.L.1948, c.219,
15 s.28 (C.17:9A-28) known as the attorney-in-fact to perform specified
16 acts on behalf of the principal as the principal's agent.

17 b. A durable power of attorney is a power of attorney which
18 contains the words "this power of attorney shall not be affected by
19 subsequent disability or incapacity of the principal, or lapse of time,"
20 or " this power of attorney shall become effective upon the disability
21 or incapacity of the principal," or similar words showing the intent of
22 the principal that the authority conferred shall be exercisable
23 notwithstanding the principal's subsequent disability or incapacity, and
24 unless it states a time of termination, notwithstanding the lapse of time
25 since the execution of the instrument.

26 c. Unless otherwise defined in the instrument, a principal shall be
27 under a disability if the principal is unable to manage his property and
28 affairs effectively; and an attorney-in-fact shall be under a disability if
29 the attorney-in-fact is unable to exercise the authority conferred by the
30 power of attorney effectively.

31
32 3. Durable Power of Attorney Not Affected By Lapse of Time,
33 Disability or Incapacity.

34 All acts done by an attorney-in-fact pursuant to a durable power of
35 attorney during any period when the power of attorney is effective in
36 accordance with its terms, including any period when the principal is
37 under a disability, have the same effect and inure to the benefit of and
38 bind the principal and the principal's successors in interest as if the
39 principal were competent and not disabled. Unless the instrument
40 states a time of termination, the power is exercisable notwithstanding
41 the lapse of time since the execution of the instrument.

42
43 4. Relation of Attorney-in-Fact to Court-Appointed Fiduciary.

44 a. If, following execution of a durable power of attorney, a court

1 of the principal's domicile appoints a conservator, guardian of the
2 estate, or other fiduciary charged with the management of all of the
3 principal's property or all of the principal's property except specified
4 exclusions, the attorney-in-fact is accountable to the fiduciary as well
5 as to the principal.

6 b. A principal may nominate, by a durable power of attorney, the
7 conservator, guardian of the principal's estate, or guardian of the
8 principal's person for consideration by the court if protective
9 proceedings for the principal's person or estate are thereafter
10 commenced.

11 c. No person, other than the principal, shall revoke a durable
12 power of attorney except upon a court order for good cause.

13

14 5. Power of Attorney Not Revoked Until Notice.

15 a. The death of a principal who has executed a written power of
16 attorney, durable or otherwise, does not revoke or terminate the
17 agency as to the attorney-in-fact or other person who, without actual
18 knowledge of the death of the principal, acts in good faith under the
19 power. Any action so taken, unless otherwise invalid or
20 unenforceable, binds the principal's successors in interest.

21 b. The disability or incapacity of a principal who has previously
22 executed a written power of attorney that is not a durable power does
23 not revoke or terminate the agency as to the attorney-in-fact or other
24 person who, without actual knowledge of the disability or incapacity
25 of the principal, acts in good faith under the power. Any action so
26 taken, unless otherwise invalid or unenforceable, binds the principal
27 and the principal's successors in interest.

28 c. If the attorney-in-fact executes an affidavit stating that the act
29 was done without actual knowledge of the revocation or termination
30 of the power of attorney by death, disability, or incapacity, such act
31 shall be presumed valid, subject to challenge only by a clear showing
32 of fraud or gross neglect.

33

34 6. Good Faith Reliance.

35 a. Any third party may rely upon the authority granted in a durable
36 power of attorney until the third party has received actual notice of the
37 revocation of the power of attorney, the termination or suspension of
38 the authority of the attorney-in-fact, or the death of the principal.

39 b. A third party who has not received such actual notice under
40 paragraph a. of this section may, but need not, require that the
41 attorney-in-fact execute an affidavit stating that the attorney-in-fact
42 did not have at the time of exercise of the power actual knowledge of
43 the termination of the power by revocation, the termination or
44 suspension of the authority of the attorney-in-fact, or the principal's
45 death, disability, or incapacity. Such affidavit is conclusive proof of
46 the nonrevocation or nontermination of the power at that time. If the

1 exercise of the power of attorney requires execution and delivery of
2 any instrument that is recordable, the affidavit when authenticated for
3 record is likewise recordable. This section does not affect any
4 provision in a power of attorney for its termination by expiration of
5 time or occurrence of an event other than express revocation or a
6 change in the principal's capacity.

7
8 7. Multiple Attorneys-In-Fact.

9 a. Unless the power of attorney expressly provides otherwise, all
10 authority granted to multiple attorneys-in-fact may be exercised by the
11 one or more who remain after the death, resignation or disability of
12 one or more of the attorneys-in-fact.

13 b. The power of attorney may provide that the attorneys-in-fact
14 may act severally or separately. If so provided, any one of the
15 appointed attorneys-in-fact may exercise all powers granted.

16 c. The power of attorney may provide that the attorneys-in-fact
17 shall act jointly. If so provided then, subject to subsection a., the
18 concurrence of all appointed attorneys-in-fact is required to exercise
19 any power.

20 d. If the power of attorney does not expressly provide whether the
21 attorneys-in-fact are to act severally or separately, or are to act jointly,
22 such attorneys-in-fact must act jointly.

23 e. The power of attorney may provide that the attorneys-in-fact act
24 successively. Unless the power of attorney otherwise provides for the
25 conditions under which a successor is qualified to act, the successor
26 may act only upon the death, the written resignation, or the disability
27 of the predecessor named attorney-in-fact.

28
29 8. Delegation by Attorney-in-Fact.

30 If the power of attorney shall specifically provide, the attorney-in-
31 fact, in the exercise of reasonable care, skill and caution, may delegate
32 to other agents such one, more, or all of the specific powers which
33 have been conferred on the attorney-in-fact by the power of attorney.
34

35 9. Formality.

36 A power of attorney must be in writing, duly signed and
37 acknowledged in the manner set forth in R.S.46:14-2.1.
38

39 10. Revocation.

40 A power of attorney is revoked when the principal has caused all
41 executed originals of the power of attorney to be physically destroyed;
42 or when the principal has signed and caused to be acknowledged in the
43 manner set forth in R.S.46:14-2.1 a written instrument of revocation;
44 or when the principal has delivered to the attorney-in-fact a written
45 revocation. Unless expressly so provided, the subsequent execution
46 of another power of attorney does not revoke a power of attorney.

1 11. Certified copies and Photocopies.

2 Any third party to whom the power of attorney is presented may
3 retain and rely upon a photocopy of the original signed document, or
4 may retain and rely upon a certified copy of the original.

5

6 12. Compensation of the attorney-in-fact.

7 A principal shall have the power to direct whether an attorney-in-
8 fact is to be compensated in a power of attorney or in a separate
9 written agreement dealing with compensation. A principal may direct
10 that an attorney-in-fact be compensated and may provide for the
11 method by which compensation shall be calculated and when
12 compensation shall be paid. In the absence of any such direction and
13 upon appropriate application, a court of competent jurisdiction may
14 award reasonable compensation to the attorney-in-fact.

15

16 13. Fiduciary Status and Duty to Account.

17 a. An attorney-in-fact has a fiduciary duty to the principal, and to
18 the guardian of the property of the principal if the principal has been
19 adjudicated an incapacitated person, to act within the powers
20 delegated by the power of attorney and solely for the benefit of the
21 principal.

22 b. The attorney-in-fact shall maintain accurate books and records
23 of all financial transactions. The principal, a guardian or conservator
24 appointed for the principal, and the personal representative of the
25 principal's estate may require the attorney-in-fact to render an
26 accounting. The Superior Court may, upon application of any heir or
27 other next friend of the principal, require the attorney-in-fact to render
28 an accounting if satisfied that the principal is incapacitated and there
29 is doubt or concern whether the attorney-in-fact is acting within the
30 powers delegated by the power-of-attorney, or is acting solely for the
31 benefit of the principal.

32

33 14. This act shall complement and not supercede the provisions of
34 P.L.1991, c.95 (C.46:2B-10 et seq.) relating to banking transactions
35 under a power of attorney; provided, however that the provisions of
36 this act shall hereafter apply to any power of attorney made pursuant
37 to the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.)

38

39 15. Sections 1 and 2 of P.L.1971, c.373 (C.46:2B-8 and 46:2B-9)
40 are repealed.

41

42 16. This act shall take effect on the 60th day after the date of
43 enactment.

1 STATEMENT

2

3 This bill would revise New Jersey's statutory law governing the
4 execution of powers of attorney and durable powers of attorney. A
5 power of attorney is a written instrument executed by a person
6 referred to as the principal which authorizes another person or persons
7 referred to as the attorney-in-fact to perform specified acts as the
8 principal's agent. A durable power of attorney is a power of attorney
9 containing words indicating that the authorization contained in the
10 power of attorney would not be affected by the disability or incapacity
11 of the principal or that the power of attorney would become effective
12 upon the principal's disability or incapacity.

13 The bill also provides that:

14 1. An attorney-in-fact acting under a durable power of attorney
15 may bind a principal who is disabled.

16 2. If after execution of a durable power of attorney, a court
17 appoints a conservator, guardian, or fiduciary charged with
18 management of the principal's property, the attorney-in-fact is
19 accountable to the fiduciary as well as to the principal.

20 3. Only the principal may revoke a durable power of attorney
21 except upon good cause shown by court order.

22 4. The death of a principal does not revoke or terminate the agency
23 relationship with the attorney-in-fact.

24 5. A third party may rely on the authorization granted in a durable
25 power of attorney until the third party has received actual notice of the
26 revocation of the power of attorney, the termination or suspension of
27 authority of the attorney-in-fact, or the death of the principal.

28 6. If the power of attorney provides, the attorney-in-fact may
29 delegate to other agents one or more of the specific powers which
30 have been conferred on him by the power of attorney.

31 In addition, the bill articulates standards of fiduciary duties for
32 attorneys-in-fact.

33 The provisions of the bill are based on the recommendations
34 endorsed by the Board of Trustees and the Real Property, Probate and
35 Trust Law Section of the State Bar Association.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 677

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 17, 2000

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 677.

This bill would revise New Jersey's statutory law governing the execution of powers of attorney and durable powers of attorney. A power of attorney is a written instrument executed by a person referred to as the principal which authorizes another person referred to as the attorney-in-fact to perform specified acts as the principal's agent. A durable power of attorney is a power of attorney containing words indicating that the authorization contained in the power of attorney would not be affected by the disability or incapacity of the principal or that the power of attorney would become effective upon the principal's disability or incapacity.

The bill provides that:

1. An attorney-in-fact acting under a durable power of attorney may bind a principal who is disabled.
2. If after execution of a durable power of attorney, a court appoints a conservator, guardian, or fiduciary charged with management of the principal's property, the attorney-in-fact is accountable to the fiduciary as well as to the principal.
3. Only the principal may revoke a durable power of attorney except upon good cause shown by a court order.
4. The death of a principal does not revoke or terminate the agency relationship with the attorney-in-fact.
5. A third party may rely on the authorization granted in a durable power of attorney until the third party has received actual notice of the revocation of the power of attorney, the termination or suspension of authority of the attorney-in-fact, or the death of the principal.
6. If the power of attorney provides, the attorney-in-fact may delegate to other agents one or more of the specific powers which have been conferred on him by the power of attorney.

In addition, the bill articulates standards of fiduciary duties for attorney-in-fact.

The committee amendment clarified the wording of section 14 of the bill relating to bank transactions under a power of attorney.

The provisions of the bill are based on the recommendations endorsed by the State Bar Association's Board of Trustees and its Real Property, Probate and Trust Law Section.

[First Reprint]

SENATE, No. 677

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED JANUARY 24, 2000

Sponsored by:

Senator JOHN A. LYNCH

District 17 (Middlesex, Somerset and Union)

Co-Sponsored by:

Assemblymen Talarico and Sires

SYNOPSIS

Revises statutes with regard to execution of powers of attorney.

CURRENT VERSION OF TEXT

As reported by the Senate Judiciary Committee on February 17, 2000, with amendments.



(Sponsorship Updated As Of: 5/26/2000)

1 AN ACT concerning durable powers of attorney, supplementing Title
2 46 of the Revised Statutes and repealing P.L.1971, c.373.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. This act shall be known and may be cited as the "Revised
8 Durable Power of Attorney Act."

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10 2. Powers of Attorney; Durable Powers of Attorney; Disability
11 Defined.

12 a. A power of attorney is a written instrument by which an
13 individual known as the principal authorizes another individual or
14 individuals or a qualified bank within the meaning of P.L.1948, c.219,
15 s.28 (C.17:9A-28) known as the attorney-in-fact to perform specified
16 acts on behalf of the principal as the principal's agent.

17 b. A durable power of attorney is a power of attorney which
18 contains the words "this power of attorney shall not be affected by
19 subsequent disability or incapacity of the principal, or lapse of time,"
20 or " this power of attorney shall become effective upon the disability
21 or incapacity of the principal," or similar words showing the intent of
22 the principal that the authority conferred shall be exercisable
23 notwithstanding the principal's subsequent disability or incapacity, and
24 unless it states a time of termination, notwithstanding the lapse of time
25 since the execution of the instrument.

26 c. Unless otherwise defined in the instrument, a principal shall be
27 under a disability if the principal is unable to manage his property and
28 affairs effectively; and an attorney-in-fact shall be under a disability if
29 the attorney-in-fact is unable to exercise the authority conferred by the
30 power of attorney effectively.

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32 3. Durable Power of Attorney Not Affected By Lapse of Time;
33 Disability or Incapacity.

34 All acts done by an attorney-in-fact pursuant to a durable power of
35 attorney during any period when the power of attorney is effective in
36 accordance with its terms, including any period when the principal is
37 under a disability, have the same effect and inure to the benefit of and
38 bind the principal and the principal's successors in interest as if the
39 principal were competent and not disabled. Unless the instrument
40 states a time of termination, the power is exercisable notwithstanding
41 the lapse of time since the execution of the instrument.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted February 17, 2000.

1 4. Relation of Attorney-in-Fact to Court-Appointed Fiduciary.

2 a. If, following execution of a durable power of attorney, a court
3 of the principal's domicile appoints a conservator, guardian of the
4 estate, or other fiduciary charged with the management of all of the
5 principal's property or all of the principal's property except specified
6 exclusions, the attorney-in-fact is accountable to the fiduciary as well
7 as to the principal.

8 b. A principal may nominate, by a durable power of attorney, the
9 conservator, guardian of the principal's estate, or guardian of the
10 principal's person for consideration by the court if protective
11 proceedings for the principal's person or estate are thereafter
12 commenced.

13 c. No person, other than the principal, shall revoke a durable
14 power of attorney except upon a court order for good cause.

15

16 5. Power of Attorney Not Revoked Until Notice.

17 a. The death of a principal who has executed a written power of
18 attorney, durable or otherwise, does not revoke or terminate the
19 agency as to the attorney-in-fact or other person who, without actual
20 knowledge of the death of the principal, acts in good faith under the
21 power. Any action so taken, unless otherwise invalid or
22 unenforceable, binds the principal's successors in interest.

23 b. The disability or incapacity of a principal who has previously
24 executed a written power of attorney that is not a durable power does
25 not revoke or terminate the agency as to the attorney-in-fact or other
26 person who, without actual knowledge of the disability or incapacity
27 of the principal, acts in good faith under the power. Any action so
28 taken, unless otherwise invalid or unenforceable, binds the principal
29 and the principal's successors in interest.

30 c. If the attorney-in-fact executes an affidavit stating that the act
31 was done without actual knowledge of the revocation or termination
32 of the power of attorney by death, disability, or incapacity, such act
33 shall be presumed valid, subject to challenge only by a clear showing
34 of fraud or gross neglect.

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36 6. Good Faith Reliance.

37 a. Any third party may rely upon the authority granted in a durable
38 power of attorney until the third party has received actual notice of the
39 revocation of the power of attorney, the termination or suspension of
40 the authority of the attorney-in-fact, or the death of the principal.

41 b. A third party who has not received such actual notice under
42 paragraph a. of this section may, but need not, require that the
43 attorney-in-fact execute an affidavit stating that the attorney-in-fact
44 did not have at the time of exercise of the power actual knowledge of
45 the termination of the power by revocation, the termination or
46 suspension of the authority of the attorney-in-fact, or the principal's

1 death, disability, or incapacity. Such affidavit is conclusive proof of
2 the nonrevocation or nontermination of the power at that time. If the
3 exercise of the power of attorney requires execution and delivery of
4 any instrument that is recordable, the affidavit when authenticated for
5 record is likewise recordable. This section does not affect any
6 provision in a power of attorney for its termination by expiration of
7 time or occurrence of an event other than express revocation or a
8 change in the principal's capacity.

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10 7. Multiple Attorneys-In-Fact.

11 a. Unless the power of attorney expressly provides otherwise, all
12 authority granted to multiple attorneys-in-fact may be exercised by the
13 one or more who remain after the death, resignation or disability of
14 one or more of the attorneys-in-fact.

15 b. The power of attorney may provide that the attorneys-in-fact
16 may act severally or separately. If so provided, any one of the
17 appointed attorneys-in-fact may exercise all powers granted.

18 c. The power of attorney may provide that the attorneys-in-fact
19 shall act jointly. If so provided then, subject to subsection a., the
20 concurrence of all appointed attorneys-in-fact is required to exercise
21 any power.

22 d. If the power of attorney does not expressly provide whether the
23 attorneys-in-fact are to act severally or separately, or are to act jointly,
24 such attorneys-in-fact must act jointly.

25 e. The power of attorney may provide that the attorneys-in-fact act
26 successively. Unless the power of attorney otherwise provides for the
27 conditions under which a successor is qualified to act, the successor
28 may act only upon the death, the written resignation, or the disability
29 of the predecessor named attorney-in-fact.

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31 8. Delegation by Attorney-in-Fact.

32 If the power of attorney shall specifically provide, the attorney-in-
33 fact, in the exercise of reasonable care, skill and caution, may delegate
34 to other agents such one, more, or all of the specific powers which
35 have been conferred on the attorney-in-fact by the power of attorney.

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37 9. Formality.

38 A power of attorney must be in writing, duly signed and
39 acknowledged in the manner set forth in R.S.46:14-2.1.

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41 10. Revocation.

42 A power of attorney is revoked when the principal has caused all
43 executed originals of the power of attorney to be physically destroyed;
44 or when the principal has signed and caused to be acknowledged in the
45 manner set forth in R.S.46:14-2.1 a written instrument of revocation;
46 or when the principal has delivered to the attorney-in-fact a written

1 revocation. Unless expressly so provided, the subsequent execution
2 of another power of attorney does not revoke a power of attorney.

3
4 11. Certified Copies and Photocopies.

5 Any third party to whom the power of attorney is presented may
6 retain and rely upon a photocopy of the original signed document, or
7 may retain and rely upon a certified copy of the original.

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9 12. Compensation of the Attorney-in-Fact.

10 A principal shall have the power to direct whether an attorney-in-
11 fact is to be compensated in a power of attorney or in a separate
12 written agreement dealing with compensation. A principal may direct
13 that an attorney-in-fact be compensated and may provide for the
14 method by which compensation shall be calculated and when
15 compensation shall be paid. In the absence of any such direction and
16 upon appropriate application, a court of competent jurisdiction may
17 award reasonable compensation to the attorney-in-fact.

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19 13. Fiduciary Status and Duty to Account.

20 a. An attorney-in-fact has a fiduciary duty to the principal, and to
21 the guardian of the property of the principal if the principal has been
22 adjudicated an incapacitated person, to act within the powers
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24 principal.

25 b. The attorney-in-fact shall maintain accurate books and records
26 of all financial transactions. The principal, a guardian or conservator
27 appointed for the principal, and the personal representative of the
28 principal's estate may require the attorney-in-fact to render an
29 accounting. The Superior Court may, upon application of any heir or
30 other next friend of the principal, require the attorney-in-fact to render
31 an accounting if satisfied that the principal is incapacitated and there
32 is doubt or concern whether the attorney-in-fact is acting within the
33 powers delegated by the power-of-attorney, or is acting solely for the
34 benefit of the principal.

35
36 14. ¹[This act shall complement and not supercede the provisions
37 of P.L.1991, c.95 (C.46:2B-10 et seq.) relating to banking transactions
38 under a power of attorney; provided, however that the provisions of
39 this act shall hereafter apply to any power of attorney made pursuant
40 to the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.)]

41 The provisions of this act shall hereafter apply to any power of
42 attorney made pursuant to the provisions of P.L. 1991, c.95 (C.46:2B-
43 10 et seq.) relating to banking transactions under a power of attorney.
44 This act shall complement and not supersede the provisions of P.L.
45 1991, c.95 (C.46:2B-10 et seq.).¹

S677 [1R] LYNCH

6

1 15. Sections 1 and 2 of P.L. 1971, c. 373 (C. 46:2B-8 and 46:2B-
2 9) are repealed.

3

4 16. This act shall take effect on the 60th day after the date of
5 enactment.

§§1-14 -
C.46:2B-8.1 to
46:2B-8.14
§15 - Repealer
§16 - Note to §§1-15

P.L. 2000, CHAPTER 109, *approved September 8, 2000*
Senate, No. 677 (*First Reprint*)

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2 46 of the Revised Statutes and repealing P.L.1971, c.373.

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27 under a disability if the principal is unable to manage his property and
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29 the attorney-in-fact is unable to exercise the authority conferred by the
30 power of attorney effectively.

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33 Disability or Incapacity.

34 All acts done by an attorney-in-fact pursuant to a durable power of
35 attorney during any period when the power of attorney is effective in
36 accordance with its terms, including any period when the principal is
37 under a disability, have the same effect and inure to the benefit of and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted February 17, 2000.

1 bind the principal and the principal's successors in interest as if the
2 principal were competent and not disabled. Unless the instrument
3 states a time of termination, the power is exercisable notwithstanding
4 the lapse of time since the execution of the instrument.

5
6 4. Relation of Attorney-in-Fact to Court-Appointed Fiduciary.

7 a. If, following execution of a durable power of attorney, a court
8 of the principal's domicile appoints a conservator, guardian of the
9 estate, or other fiduciary charged with the management of all of the
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19 power of attorney except upon a court order for good cause.

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45 the authority of the attorney-in-fact, or the death of the principal.

46 b. A third party who has not received such actual notice under

1 paragraph a. of this section may, but need not, require that the
2 attorney-in-fact execute an affidavit stating that the attorney-in-fact
3 did not have at the time of exercise of the power actual knowledge of
4 the termination of the power by revocation, the termination or
5 suspension of the authority of the attorney-in-fact, or the principal's
6 death, disability, or incapacity. Such affidavit is conclusive proof of
7 the nonrevocation or nontermination of the power at that time. If the
8 exercise of the power of attorney requires execution and delivery of
9 any instrument that is recordable, the affidavit when authenticated for
10 record is likewise recordable. This section does not affect any
11 provision in a power of attorney for its termination by expiration of
12 time or occurrence of an event other than express revocation or a
13 change in the principal's capacity.

14

15 7. Multiple Attorneys-In-Fact.

16 a. Unless the power of attorney expressly provides otherwise, all
17 authority granted to multiple attorneys-in-fact may be exercised by the
18 one or more who remain after the death, resignation or disability of
19 one or more of the attorneys-in-fact.

20 b. The power of attorney may provide that the attorneys-in-fact
21 may act severally or separately. If so provided, any one of the
22 appointed attorneys-in-fact may exercise all powers granted.

23 c. The power of attorney may provide that the attorneys-in-fact
24 shall act jointly. If so provided then, subject to subsection a., the
25 concurrence of all appointed attorneys-in-fact is required to exercise
26 any power.

27 d. If the power of attorney does not expressly provide whether the
28 attorneys-in-fact are to act severally or separately, or are to act jointly,
29 such attorneys-in-fact must act jointly.

30 e. The power of attorney may provide that the attorneys-in-fact act
31 successively. Unless the power of attorney otherwise provides for the
32 conditions under which a successor is qualified to act, the successor
33 may act only upon the death, the written resignation, or the disability
34 of the predecessor named attorney-in-fact.

35

36 8. Delegation by Attorney-in-Fact.

37 If the power of attorney shall specifically provide, the attorney-in-
38 fact, in the exercise of reasonable care, skill and caution, may delegate
39 to other agents such one, more, or all of the specific powers which
40 have been conferred on the attorney-in-fact by the power of attorney.

41

42 9. Formality.

43 A power of attorney must be in writing, duly signed and
44 acknowledged in the manner set forth in R.S.46:14-2.1.

1 10. Revocation.

2 A power of attorney is revoked when the principal has caused all
3 executed originals of the power of attorney to be physically destroyed;
4 or when the principal has signed and caused to be acknowledged in the
5 manner set forth in R.S.46:14-2.1 a written instrument of revocation;
6 or when the principal has delivered to the attorney-in-fact a written
7 revocation. Unless expressly so provided, the subsequent execution
8 of another power of attorney does not revoke a power of attorney.

9

10 11. Certified Copies and Photocopies.

11 Any third party to whom the power of attorney is presented may
12 retain and rely upon a photocopy of the original signed document, or
13 may retain and rely upon a certified copy of the original.

14

15 12. Compensation of the Attorney-in-Fact.

16 A principal shall have the power to direct whether an attorney-in-
17 fact is to be compensated in a power of attorney or in a separate
18 written agreement dealing with compensation. A principal may direct
19 that an attorney-in-fact be compensated and may provide for the
20 method by which compensation shall be calculated and when
21 compensation shall be paid. In the absence of any such direction and
22 upon appropriate application, a court of competent jurisdiction may
23 award reasonable compensation to the attorney-in-fact.

24

25 13. Fiduciary Status and Duty to Account.

26 a. An attorney-in-fact has a fiduciary duty to the principal, and to
27 the guardian of the property of the principal if the principal has been
28 adjudicated an incapacitated person, to act within the powers
29 delegated by the power of attorney and solely for the benefit of the
30 principal.

31 b. The attorney-in-fact shall maintain accurate books and records
32 of all financial transactions. The principal, a guardian or conservator
33 appointed for the principal, and the personal representative of the
34 principal's estate may require the attorney-in-fact to render an
35 accounting. The Superior Court may, upon application of any heir or
36 other next friend of the principal, require the attorney-in-fact to render
37 an accounting if satisfied that the principal is incapacitated and there
38 is doubt or concern whether the attorney-in-fact is acting within the
39 powers delegated by the power-of-attorney, or is acting solely for the
40 benefit of the principal.

41

42 14. ¹[This act shall complement and not supercede the provisions
43 of P.L.1991, c.95 (C.46:2B-10 et seq.) relating to banking transactions
44 under a power of attorney; provided, however that the provisions of
45 this act shall hereafter apply to any power of attorney made pursuant
46 to the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.)]

1 The provisions of this act shall hereafter apply to any power of
2 attorney made pursuant to the provisions of P.L. 1991, c.95 (C.46:2B-
3 10 et seq.) relating to banking transactions under a power of attorney.
4 This act shall complement and not supersede the provisions of P.L.
5 1991, c.95 (C.46:2B-10 et seq.).¹

6

7 15. Sections 1 and 2 of P.L. 1971, c. 373 (C. 46:2B-8 and 46:2B-
8 9) are repealed.

9

10 16. This act shall take effect on the 60th day after the date of
11 enactment.

12

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15

16 Revises statutes with regard to execution of powers of attorney.

CHAPTER 109

AN ACT concerning durable powers of attorney, supplementing Title 46 of the Revised Statutes and repealing P.L.1971, c.373.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

C.46:2B-8.1 Short title.

1. This act shall be known and may be cited as the "Revised Durable Power of Attorney Act."

C.46:2B-8.2 Powers of attorney; durable powers of attorney; disability defined.

2. Powers of Attorney; Durable Powers of Attorney; Disability Defined.

a. A power of attorney is a written instrument by which an individual known as the principal authorizes another individual or individuals or a qualified bank within the meaning of P.L.1948, c.67, s.28 (C.17:9A-28) known as the attorney-in-fact to perform specified acts on behalf of the principal as the principal's agent.

b. A durable power of attorney is a power of attorney which contains the words "this power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time," or " this power of attorney shall become effective upon the disability or incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity, and unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

c. Unless otherwise defined in the instrument, a principal shall be under a disability if the principal is unable to manage his property and affairs effectively; and an attorney-in-fact shall be under a disability if the attorney-in-fact is unable to exercise the authority conferred by the power of attorney effectively.

C.46:2B-8.3 Durable power of attorney not affected by lapse of time; disability or incapacity.

3. Durable Power of Attorney Not Affected By Lapse of Time; Disability or Incapacity.

All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period when the power of attorney is effective in accordance with its terms, including any period when the principal is under a disability, have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were competent and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.

C.46:2B-8.4 Relation of attorney-in-fact to court-appointed fiduciary.

4. Relation of Attorney-in-Fact to Court-Appointed Fiduciary.

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 attorney-in-fact is accountable to the fiduciary as well as to the principal.

b. A principal may nominate, by a durable power of attorney, the conservator, guardian of the principal's estate, or guardian of the principal's person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced.

c. No person, other than the principal, shall revoke a durable power of attorney except upon a court order for good cause.

C.46:2B-8.5 Power of attorney not revoked until notice.

5. Power of Attorney Not Revoked Until Notice.

a. 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 the principal's successors in interest.

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 the principal's successors in interest.

c. If the attorney-in-fact executes an affidavit stating that the act was done without actual knowledge of the revocation or termination of the power of attorney by death, disability, or incapacity, such act shall be presumed valid, subject to challenge only by a clear showing of fraud or gross neglect.

C.46:2B-8.6 Good faith reliance.

6. Good Faith Reliance.

a. Any third party may rely upon the authority granted in a durable power of attorney until the third party has received actual notice of the revocation of the power of attorney, the termination or suspension of the authority of the attorney-in-fact, or the death of the principal.

b. A third party who has not received such actual notice under paragraph a. of this section may, but need not, require that the attorney-in-fact execute an affidavit stating that the attorney-in-fact did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, the termination or suspension of the authority of the attorney-in-fact, or the principal's death, disability, or incapacity. Such affidavit is conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power of attorney requires execution and delivery of any instrument that is recordable, the affidavit when authenticated for record is likewise recordable. This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity.

C.46:2B-8.7 Multiple attorneys-in-fact.

7. Multiple Attorneys-In-Fact.

a. Unless the power of attorney expressly provides otherwise, all authority granted to multiple attorneys-in-fact may be exercised by the one or more who remain after the death, resignation or disability of one or more of the attorneys-in-fact.

b. The power of attorney may provide that the attorneys-in-fact may act severally or separately. If so provided, any one of the appointed attorneys-in-fact may exercise all powers granted.

c. The power of attorney may provide that the attorneys-in-fact shall act jointly. If so provided then, subject to subsection a., the concurrence of all appointed attorneys-in-fact is required to exercise any power.

d. If the power of attorney does not expressly provide whether the attorneys-in-fact are to act severally or separately, or are to act jointly, such attorneys-in-fact must act jointly.

e. The power of attorney may provide that the attorneys-in-fact act successively. Unless the power of attorney otherwise provides for the conditions under which a successor is qualified to act, the successor may act only upon the death, the written resignation, or the disability of the predecessor named attorney-in-fact.

C.46:2B-8.8 Delegation by attorney-in-fact.

8. Delegation by Attorney-in-Fact.

If the power of attorney shall specifically provide, the attorney-in-fact, in the exercise of reasonable care, skill and caution, may delegate to other agents such one, more, or all of the specific powers which have been conferred on the attorney-in-fact by the power of attorney.

C.46:2B-8.9 Formality.

9. Formality.

A power of attorney must be in writing, duly signed and acknowledged in the manner set forth in R.S.46:14-2.1.

C.46:2B-8.10 Revocation.

10. Revocation.

A power of attorney is revoked when the principal has caused all executed originals of the power of attorney to be physically destroyed; or when the principal has signed and caused to be acknowledged in the manner set forth in R.S.46:14-2.1 a written instrument of revocation; or when the principal has delivered to the attorney-in-fact a written revocation. Unless expressly so provided, the subsequent execution of another power of attorney does not revoke a power of attorney.

C.46:2B-8.11 Certified copies and photocopies.

11. Certified Copies and Photocopies.

Any third party to whom the power of attorney is presented may retain and rely upon a photocopy of the original signed document, or may retain and rely upon a certified copy of the original.

C.46:2B-8.12 Compensation of the attorney-in-fact.

12. Compensation of the Attorney-in-Fact.

A principal shall have the power to direct whether an attorney-in-fact is to be compensated in a power of attorney or in a separate written agreement dealing with compensation. A principal may direct that an attorney-in-fact be compensated and may provide for the method by which compensation shall be calculated and when compensation shall be paid. In the absence of any such direction and upon appropriate application, a court of competent jurisdiction may award reasonable compensation to the attorney-in-fact.

C.46:2B-8.13 Fiduciary status and duty to account.

13. Fiduciary Status and Duty to Account.

a. An attorney-in-fact has a fiduciary duty to the principal, and to the guardian of the property of the principal if the principal has been adjudicated an incapacitated person, to act within the powers delegated by the power of attorney and solely for the benefit of the principal.

b. The attorney-in-fact shall maintain accurate books and records of all financial transactions. The principal, a guardian or conservator appointed for the principal, and the personal representative of the principal's estate may require the attorney-in-fact to render an accounting. The Superior Court may, upon application of any heir or other next friend of the principal, require the attorney-in-fact to render an accounting if satisfied that the principal is incapacitated and there is doubt or concern whether the attorney-in-fact is acting within the powers delegated by the power-of-attorney, or is acting solely for the benefit of the principal.

C.46:2B-8.14 Application of act.

14. The provisions of this act shall hereafter apply to any power of attorney made pursuant to the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.) relating to banking transactions under a power of attorney. This act shall complement and not supersede the provisions of P.L.1991, c.95 (C.46:2B-10 et seq.).

Repealer.

15. Sections 1 and 2 of P.L.1971, c.373 (C.46:2B-8 and 46:2B-9) are repealed.

16. This act shall take effect on the 60th day after the date of enactment.

Approved September 8, 2000.