

LEGISLATIVE HISTORY CHECKLIST
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(Banking--power of attorney)

RUSA: 46:2B-10

LAWS OF: 1994

CHAPTER: 142

BILL NO: A713

SPONSOR(S): Kramer

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Financial Institutions

SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: February 17, 1994

SENATE: October 3, 1994

DATE OF APPROVAL: November 14, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1994, CHAPTER 142, approved November 16, 1994

1994 Assembly No. 713

1 AN ACT concerning the use and acceptance by banking
2 institutions of certain forms of power of attorney and
3 amending P.L.1991, c.95.

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

7 1. Section 1 of P.L.1991, c.95 (C.46:2B-10) is amended to read
8 as follows:

9 1. As used in this act:

10 "Account" means an agreement between a banking institution
11 and its customer pursuant to which the banking institution
12 accepts funds or property of the customer and agrees to repay or
13 return the funds or property upon the terms and conditions
14 specified in the agreement. The term "account" includes, but is
15 not limited to, checking accounts, savings accounts, certificates
16 of deposit and other types of time and demand accounts as
17 banking institutions are authorized to enter into pursuant to
18 applicable federal or State law. The term "account" does not
19 include an agreement pursuant to which a banking institution
20 agrees to act as a fiduciary within the meaning of the "Uniform
21 Fiduciaries Law," N.J.S.3B:14-52 et seq.

22 "Agent" means the person authorized to act for another person
23 pursuant to a power of attorney. An agent may be referred to as
24 an "attorney," "attorney-in-fact" or "deputy" in the power of
25 attorney.

26 "Banking institution" includes banks, savings banks, savings and
27 loan associations and credit unions, whether chartered by the
28 United States, this State or any other state or territory of the
29 United States or a foreign country.

30 A thing is done "in good faith" when it is in fact done honestly,
31 regardless of whether it is done negligently.

32 "Power of attorney" means a duly signed and acknowledged
33 written document in which a principal authorizes an agent to act
34 on his behalf.

35 "Principal" means a person executing a power of attorney.

36 "Safe deposit company" means a company operating pursuant
37 to P.L.1983, c.566 (C.17:14A-1 et seq.).

38 (cf: P.L.1991, c.95, s.1)

39 2. Section 4 of P.L.1991, c.95 (C.46:2B-13) is amended to read
40 as follows:

41 4. With respect to banking transactions, banking institutions
42 shall accept and rely on a power of attorney which conforms to
43 this act and shall permit the agent to act and exercise the

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

Matter underlined thus is new matter.

1 authority set forth in this act, provided that:

2 a. The banking institution shall refuse to rely on or act
3 pursuant to a power of attorney if (1) the signature of the
4 principal is not genuine, or (2) the employee of the banking
5 institution who receives, or is required to act on, the power of
6 attorney has received actual notice of the death of the principal,
7 of the revocation of the power of attorney or of the disability of
8 the principal at the time of the execution of the power of
9 attorney;

10 b. The banking institution is not obligated to rely on or act
11 pursuant to the power of attorney if it believes in good faith that
12 the power of attorney does not appear to be genuine, that the
13 principal is dead, that the power of attorney has been revoked or
14 that the principal was under a disability at the time of the
15 execution of the power of attorney. The banking institution shall
16 have a reasonable time under the circumstances within which to
17 decide whether it will rely on or act pursuant to a power of
18 attorney presented to it, but it may refuse to act or rely upon a
19 power of attorney first presented to it more than 10 years after
20 its date or on which it has not acted for a 10-year period unless
21 the agent is either the spouse, parent or a descendant of a parent
22 of the principal;

23 c. If the power of attorney provides that it "shall become
24 effective upon the disability of the principal" or similar words,
25 the banking institution is not obligated to rely on or act pursuant
26 to the power of attorney unless the banking institution is provided
27 by the agent with proof to its satisfaction that the principal is
28 then under a disability as provided in the power of attorney;

29 d. If the agent seeks to withdraw or pay funds from an account
30 of the principal, the agent shall provide evidence satisfactory to
31 the banking institution of his identity and shall execute a
32 signature card in a form as required by the banking institution;

33 e. If the banking institution refuses to rely on or act pursuant
34 to a power of attorney and the agent or principal has, in writing,
35 provided the banking institution with an address of the agent, the
36 institution shall notify the agent by a writing addressed to the
37 address provided to it that the power of attorney has been
38 rejected and the reason for the rejection;

39 f. The banking institution has viewed a form of power of
40 attorney which contains an actual original signature of the
41 principal. Alternatively, if the banking institution receives an
42 affidavit of the agent that such an original is not available to be
43 presented, the banking institution may accept a photocopy of the
44 power of attorney certified to be a true copy of the original by
45 either (1) another banking institution or (2) the county recording
46 office of the county in which the original was recorded.

47 (cf: P.L.1991, c.95, s.4)

48 3. This act shall take effect immediately.

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53 Clarifies powers of attorney used for banking transactions.

- 1 authority set forth in this act, provided that:
- 2 a. The banking institution shall refuse to rely on or act
3 pursuant to a power of attorney if (1) the signature of the
4 principal is not genuine, or (2) the employee of the banking
5 institution who receives, or is required to act on, the power of
6 attorney has received actual notice of the death of the principal,
7 of the revocation of the power of attorney or of the disability of
8 the principal at the time of the execution of the power of
9 attorney;
- 10 b. The banking institution is not obligated to rely on or act
11 pursuant to the power of attorney if it believes in good faith that
12 the power of attorney does not appear to be genuine, that the
13 principal is dead, that the power of attorney has been revoked or
14 that the principal was under a disability at the time of the
15 execution of the power of attorney. The banking institution shall
16 have a reasonable time under the circumstances within which to
17 decide whether it will rely on or act pursuant to a power of
18 attorney presented to it, but it may refuse to act or rely upon a
19 power of attorney first presented to it more than 10 years after
20 its date or on which it has not acted for a 10-year period unless
21 the agent is either the spouse, parent or a descendant of a parent
22 of the principal;
- 23 c. If the power of attorney provides that it "shall become
24 effective upon the disability of the principal" or similar words,
25 the banking institution is not obligated to rely on or act pursuant
26 to the power of attorney unless the banking institution is provided
27 by the agent with proof to its satisfaction that the principal is
28 then under a disability as provided in the power of attorney;
- 29 d. If the agent seeks to withdraw or pay funds from an account
30 of the principal, the agent shall provide evidence satisfactory to
31 the banking institution of his identity and shall execute a
32 signature card in a form as required by the banking institution;
- 33 e. If the banking institution refuses to rely on or act pursuant
34 to a power of attorney and the agent or principal has, in writing,
35 provided the banking institution with an address of the agent, the
36 institution shall notify the agent by a writing addressed to the
37 address provided to it that the power of attorney has been
38 rejected and the reason for the rejection;
- 39 f. The banking institution has viewed a form of power of
40 attorney which contains an actual original signature of the
41 principal. Alternatively, if the banking institution receives an
42 affidavit of the agent that such an original is not available to be
43 presented, the banking institution may accept a photocopy of the
44 power of attorney certified to be a true copy of the original by
45 either (1) another banking institution or (2) the county recording
46 office of the county in which the original was recorded.
47 (cf: P.L.1991, c.95, s.4)

48 3. This act shall take effect immediately.

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STATEMENT

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53 This bill clarifies two provisions of P.L.1991, c.95 (C.46:2B-10
54 et seq.) regarding powers of attorney for banking transactions.

1 **The definition of the term "account" is amended to confirm**
2 **that the bank transactions referred to do not include trust or**
3 **other fiduciary instruments and to make clear that the power is**
4 **not to be used to amend, supplement, cancel or otherwise change**
5 **fiduciary agreements.**

6 **The second change confirms that the "disability" of a principal**
7 **is to be determined pursuant to the terms of the power of**
8 **attorney. The banking institution need not independently**
9 **determine the fact of disability, but need only determine that**
10 **whatever condition the principal created in the power of attorney**
11 **is met. This is consistent with the law governing durable powers**
12 **of attorney, P.L.1971, c.373 (C.46:2B-8 et seq.).**

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17 **Clarifies powers of attorney used for banking transactions.**

ASSEMBLY FINANCIAL INSTITUTIONS COMMITTEE

STATEMENT TO

ASSEMBLY, No. 713

STATE OF NEW JERSEY

DATED: JANUARY 24, 1994

The Assembly Financial Institutions Committee reports favorably Assembly, No. 713.

This bill clarifies two provisions of P.L.1991, c.95 (C.46:2B-10 et seq.) regarding powers of attorney for banking transactions.

The definition of the term "account" is amended to confirm that the bank transactions referred to do not include trust or other fiduciary instruments and to make clear that the power is not to be used to amend, supplement, cancel or otherwise change fiduciary agreements.

The second change confirms that the "disability" of a principal is to be determined pursuant to the terms of the power of attorney. The banking institution need not independently determine the fact of disability, but need only determine that whatever condition the principal created in the power of attorney is met. This is consistent with the law governing durable powers of attorney, P.L.1971, c.373 (C.46:2B-8 et seq.).

This bill was pre-filed for introduction in the 1994 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 713

STATE OF NEW JERSEY

DATED: MAY 12, 1994

The Senate Commerce Committee reports favorably Assembly, No. 713.

This bill clarifies two provisions of P.L.1991, c.95 (C.46:2B-10 et seq.) regarding powers of attorney for banking transactions.

The definition of the term "account" is amended to confirm that the bank transactions referred to do not include trust or other fiduciary instruments and to make clear that the power is not to be used to amend, supplement, cancel or otherwise change fiduciary agreements.

The second change confirms that the "disability" of a principal is to be determined pursuant to the terms of the power of attorney. The banking institution need not independently determine the fact of disability, but need only determine that whatever condition the principal created in the power of attorney is met. This is consistent with the law governing durable powers of attorney, P.L.1971, c.373 (C.46:2B-8 et seq.).