

46:2B-8 and 9

LEGISLATIVE HISTORY CHECKLIST

NJSA ~~46:2B-8 and 46:2B-9~~ (Power of attorney)

Laws of 1971 Chapter 37a

Bill No. S2116

Sponsor(s) M Sears

Date Introduced March 11, 1971

Committee: Assembly Judiciary

Senate Judiciary

Amended during passage Yes No

Date of passage: Assembly December 6

Senate April 26

Date of approval December 30, 1971

Following statements are attached if available:

Sponsor statement Yes Below No

Committee Statement: Assembly Yes No

Senate Yes No

Fiscal Note Yes No

Veto message Yes No

Message on signing Yes No

Following were printed:

Reports Yes No

Hearings Yes No

Sponsor's statement:

The object of this bill is to permit a person who is sui juris to execute a power of attorney which will remain effective in the event of his disability. The text of this bill has been adapted from the proposed Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association.

KB 8/??
10/4/76

(over)

For background see:

KF
765
A4269
A2
1969

American Bar Association. Special committee on
Uniform Probate Code.
Uniform probate code; official text with comments.
Pages 242-243, Secs. 5-501 and 5-502.

[ATTACHED]

CHAPTER 373 LAWS OF N. J. 1971
APPROVED 12-30-71
SENATE, No. 2116

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1971

By Senators SEARS, LYNCH, WHITE, KAY and KNOWLTON

Referred to Committee on Judiciary

AN ACT concerning the effect of death, disability or incapacity of
a principal upon a power of attorney.

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

1 1. a. Whenever a principal designates another his attorney in
2 fact or agent by a power of attorney in writing and the writing
3 contains the words "This power of attorney shall not be affected
4 by disability of the principal," or "This power of attorney shall
5 become effective upon the disability of the principal," or similar
6 words showing the intent of the principal that the authority con-
7 ferred shall be exercisable notwithstanding his disability, the
8 authority of the attorney in fact or agent is exercisable by him
9 as provided in the power on behalf of the principal notwithstanding
10 later disability or incapacity of the principal at law or later
11 uncertainty as to whether the principal is dead or alive. All acts
12 done by the attorney in fact or agent pursuant to the power during
13 any period of disability or incompetence or uncertainty as to
14 whether the principal is dead or alive have the same effect and
15 inure to the benefit of and bind the principal or his heirs, devisees
16 and personal representative as if the principal were alive, com-
17 petent and not disabled. If a guardian is appointed for the
18 principal, the attorney in fact or agent, during the continuance
19 of the appointment, shall account to the guardian rather than the
20 principal. The guardian has the same power the principal would
21 have had to revoke the power of attorney or agency.

22 b. A principal shall be under a disability if he is unable to
23 manage his property and affairs effectively for reasons such as
24 mental illness, mental deficiency, physical illness or disability,
25 advanced age, chronic use of drugs, chronic intoxication, confine-
26 ment, detention by a foreign power, or disappearance.

1 2. The death, disability, or incompetence of any principal who
2 has executed a power of attorney in writing other than a power
3 as described by section 1 hereof, does not revoke or terminate the
4 agency as to the attorney in fact, agent or other person who, without
5 actual knowledge of the death, disability, or incompetence of the
6 principal, acts in good faith under the power of attorney or agency.
7 Any action so taken, unless otherwise invalid or unenforceable,
8 binds the principal and his heirs, devisees, and personal repre-
9 sentatives.

10 An affidavit, executed by the attorney in fact or agent stating
11 that he did not have, at the time of doing an act pursuant to the
12 power of attorney, actual knowledge of the revocation or termina-
13 tion of the power of attorney by death, disability or incompetence,
14 is, in the absence of fraud, conclusive proof of the nonrevocation
15 or nontermination of the power at that time. If the exercise of
16 the power requires execution and delivery of any instrument which
17 is recordable, the affidavit when authenticated for record is likewise
18 recordable.

19 This section shall not be construed to alter or affect any provision
20 for revocation or termination contained in the power of attorney.

1 3. This act shall take effect January 1, 1972.

STATEMENT

The object of this bill is to permit a person who is sui juris to execute a power of attorney which will remain effective in the event of his disability. The text of this bill has been adapted from the proposed Uniform Probate Code which has been approved by the National Conference of Commissioners on Uniform State Laws and by the American Bar Association.