

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 659

(Delegate Simmons, *et al.*)

Judiciary

Judicial Proceedings

Maryland General and Limited Power of Attorney Act (Loretta's Law)

This bill establishes the Maryland General and Limited Power of Attorney Act, incorporating existing statutory provisions governing powers of attorney into the Act.

Fiscal Summary

State Effect: Any impact the bill will have on the workload of the Judiciary is expected to be handled with existing resources.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill incorporates existing provisions governing powers of attorney, with minor alterations, into the newly established Maryland General and Limited Power of Attorney Act.

The bill applies to all powers of attorney, with specified exceptions. A “principal” is an individual who grants authority to an agent in a power of attorney. An “agent” is a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. A “power of attorney” is a writing or other record that grants authority to an agent to act in place of the principal, whether or not the term “power of attorney” is used.

The bill provides two statutory form powers of attorney and an optional form for use by an agent to certify facts concerning a power of attorney. One of the statutory forms (the “Maryland Statutory Form Personal Financial Power of Attorney”) provides an agent with broad authority as specified on the form, while the other statutory form (the “Maryland Statutory Form Limited Power of Attorney”) allows a principal to specifically indicate which of the various powers are given to an agent.

The bill specifies that a principal may delegate to one or more agents the authority to do any act specified in the statutory forms, though the acts specified in the statutory forms may not be deemed to invalidate or limit the validity of other authorized acts that a principal may delegate to an agent.

Other provisions of the bill address:

- requirements for proper execution of a power of attorney executed on or after October 1, 2010, including acknowledgement before a notary public and attestation by two or more adult witnesses;
- when a power of attorney becomes effective, and, if effective on the occurrence of a future event or contingency or the principal’s incapacity, the determination of the occurrence of the event or contingency or the principal’s incapacity;
- validity and enforceability of a power of attorney;
- required acceptance of a statutory form power of attorney, and sanctions applicable to a refusal of an acknowledged statutory form power of attorney;
- when a power of attorney terminates and when an agent’s authority terminates;
- standards applicable to an agent’s actions and other requirements of an agent; liability of an agent; and disclosure by an agent of receipts, disbursements, or transactions conducted on behalf of the principal upon request by specified persons or entities, including the principal, or order of a court;
- persons that may petition a court to construe a power of attorney or review an agent’s conduct, and grant appropriate relief; and the principal’s ability to have such a petition dismissed, unless the court finds the principal lacks capacity to revoke the agent’s authority or the power of attorney;

- entitlement of an agent to reimbursement of expenses reasonably incurred on behalf of the principal and, if the principal indicates in the power of attorney that the agent is entitled to compensation, authorization of the agent to receive compensation based on what is reasonable under the circumstances or on another basis as set forth in the power of attorney;

The bill does not supersede other laws applicable to financial institutions or other entities. To the extent those other laws are inconsistent with the bill, the other laws prevail.

Current Law: With the exception of an instrument or portion of an instrument that is an advance directive appointing a health care agent under the Health-General Article of the Annotated Code (which is governed by that Article), when a principal designates another person as an attorney-in-fact or agent by a power of attorney in writing, it is a durable power of attorney unless otherwise provided by its terms. “Durable power of attorney” means a power of attorney by which a principal designates another as an attorney in fact or agent and the authority is exercisable notwithstanding the principal’s subsequent disability or incapacity.

An action taken by an attorney-in-fact or agent pursuant to the power of attorney during a period of disability, incompetence, or uncertainty as to whether the principal is dead or alive has the same effect and inures to the benefit of and binds the principal as if the principal was alive, competent, and not disabled.

If a guardian is appointed for a principal, the attorney-in-fact or agent accounts to the guardian rather than the principal. The guardian has the same power the principal would have if not for the principal’s disability or incompetence, to revoke, suspend, or terminate all or any part of the power of attorney or agency.

Subject to any provision for revocation or termination contained in a power of attorney, the death, disability, or incompetence of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the attorney-in-fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. In the absence of fraud, an affidavit executed by the attorney-in-fact or agent, stating that the attorney-in-fact or agent did not have actual knowledge of the revocation or termination of the power of attorney is conclusive proof of the nonrevocation or nontermination of the power at that time. Any action taken binds the principal and the principal’s heirs, legatees, and personal representatives unless it is otherwise invalid or unenforceable.

If any member of the armed services of the United States has executed a power of attorney, the fact that the person has been reported or listed, officially or otherwise, as

“missing in action,” does not revoke the power of attorney, unless otherwise provided in the instrument.

Background: A power of attorney is an authorization for one person (the agent) to act on behalf of another (the principal). Under Maryland law, the authorization under a durable power of attorney continues despite the principal’s subsequent disability or incapacity. The National Conference of Commissioners on Uniform State Laws, which has promulgated a Uniform Power of Attorney Act (2006), portions of which are similar to provisions in the bill, indicates that the concept of a durable power of attorney was viewed in the past as an inexpensive method of surrogate decision making for people of modest means, but is now widely used for incapacity planning and convenience.

State and Local Expenditures: The bill could affect the number of cases brought relating to powers of attorney, possibly as a result of the bill’s provisions allowing a wide group of individuals/entities to petition a court to construe a power of attorney or review an agent’s conduct or the bill’s provisions relating to acceptance of an “acknowledged statutory form power of attorney.” Any impact the bill will have, however, is expected to be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: SB 519 (Senator Simonaire, *et al.*) - Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Register of Wills, National Conference of Commissioners on Uniform State Laws, Department of Legislative Services

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