
By: Delegate Finifter

Introduced and read first time: February 13, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Durable Power of Attorney - Registry**

3 FOR the purpose of requiring the register of wills in each county to establish and
4 maintain a registry of the names of principals who choose to register a durable
5 power of attorney and the names of their attorneys in fact or agents; requiring a
6 principal who seeks to register a durable power of attorney to meet certain
7 requirements; providing that a third party is not civilly liable for acting in good faith
8 and in reliance on the information contained in the registry; allowing the enabling
9 document that establishes an individual as an attorney in fact or agent to provide for
10 the revocation of the durable power of attorney and expungement of the name of
11 the individual from the registry; authorizing a register of wills to charge each
12 principal who seeks to be listed in the registry a reasonable registry fee; making this
13 Act not applicable to an instrument or portion of an instrument that is an advance
14 directive appointing a certain health care agent; defining a certain term; and
15 generally relating to a registry of the names of principals who choose to register a
16 durable power of attorney and the names of their attorneys in fact or agents.

17 BY repealing and reenacting, without amendments,
18 Article - Estates and Trusts
19 Section 2-208(a)
20 Annotated Code of Maryland
21 (1991 Replacement Volume and 1996 Supplement)

22 BY repealing and reenacting, with amendments,
23 Article - Estates and Trusts
24 Section 13-601
25 Annotated Code of Maryland
26 (1991 Replacement Volume and 1996 Supplement)

27 BY adding to
28 Article - Estates and Trusts
29 Section 2-208(l) and 13-604
30 Annotated Code of Maryland
31 (1991 Replacement Volume and 1996 Supplement)

2

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Estates and Trusts**

4 2-208.

5 (a) In addition to other powers and duties provided for in this title, each register
6 has the additional powers and duties specified in this section.

7 (L) AS SET FORTH UNDER § 13-604 OF THIS ARTICLE, EACH REGISTER SHALL
8 ESTABLISH AND MAINTAIN A REGISTRY OF THE NAMES OF PRINCIPALS WHO
9 CHOOSE TO REGISTER A DURABLE POWER OF ATTORNEY AND THE NAMES OF
10 THEIR ATTORNEYS IN FACT OR AGENTS.

11 13-601.

12 (a) Except as provided in subsection [(d)] (E) of this section, if a principal
13 designates his attorney in fact or agent by a power of attorney in writing and the writing
14 contains the words:

15 (1) "This power of attorney shall not be affected by disability of the
16 principal";

17 (2) "This power of attorney becomes effective upon the disability of the
18 principal"; or

19 (3) Similar words showing the intent of the principal that the authority
20 conferred shall be exercisable notwithstanding his disability, the authority of the attorney
21 in fact or agent is exercisable by him notwithstanding the later disability of the principal
22 or uncertainty whether the principal is dead or alive.

23 (b) A PERSON WHO DESIGNATES AN ATTORNEY IN FACT OR AGENT UNDER
24 THIS SECTION MAY SUBMIT A COPY OF THE ENABLING DOCUMENT TO THE
25 REGISTER OF WILLS FOR THE COUNTY IN WHICH THE PRINCIPAL OR ATTORNEY IN
26 FACT OR AGENT RESIDES AS SET FORTH IN § 13-604 OF THIS SUBTITLE.

27 (C) Any act done by the attorney in fact or agent pursuant to the power during any
28 period of disability or incompetence or uncertainty as to whether the principal is dead or
29 alive has the same effect and inures to the benefit of and binds the principal as if the
30 principal were alive, competent, and not disabled.

31 [(c)] (D) If a guardian is appointed for the principal, the attorney in fact or agent
32 shall account to the guardian rather than the principal. The guardian has the same power
33 the principal would have but for his disability or incompetence to revoke, suspend, or
34 terminate all or any part of the power of attorney or agency.

35 [(d)] (E) (1) This section does not apply to an instrument or portion of an
36 instrument that is an advance directive appointing a health care agent under Title 5,
37 Subtitle 6 of the Health - General Article.

38 (2) An instrument or portion of an instrument that is an advance directive
39 appointing a health care agent is subject to the provisions of Title 5, Subtitle 6 of the
40 Health - General Article.

3

1 13-604.

2 (A) IN THIS SECTION, "DURABLE POWER OF ATTORNEY" MEANS A POWER OF
3 ATTORNEY:

4 (1) THAT IS ESTABLISHED WHEN A PRINCIPAL DESIGNATES IN WRITING
5 ANOTHER ATTORNEY IN FACT OR AGENT; AND

6 (2) THAT IS EXERCISABLE NOTWITHSTANDING THE PRINCIPAL'S
7 SUBSEQUENT DISABILITY OR INCAPACITY.

8 (B) (1) THIS SECTION DOES NOT APPLY TO AN INSTRUMENT OR PORTION
9 OF AN INSTRUMENT THAT IS AN ADVANCE DIRECTIVE APPOINTING A HEALTH CARE
10 AGENT UNDER TITLE 5, SUBTITLE 6 OF THE HEALTH - GENERAL ARTICLE.

11 (2) AN INSTRUMENT OR PORTION OF AN INSTRUMENT THAT IS AN
12 ADVANCE DIRECTIVE APPOINTING A HEALTH CARE AGENT IS SUBJECT TO THE
13 PROVISIONS OF TITLE 5, SUBTITLE 6 OF THE HEALTH - GENERAL ARTICLE.

14 (C) THE REGISTER OF WILLS IN EACH COUNTY SHALL ESTABLISH AND
15 MAINTAIN A REGISTRY OF THE NAMES OF PRINCIPALS WHO CHOOSE TO REGISTER
16 THEIR DURABLE POWER OF ATTORNEY AND THE NAMES OF THE ATTORNEYS IN
17 FACT OR AGENTS OF THE PRINCIPALS.

18 (D) A PRINCIPAL WHO SEEKS TO REGISTER THE DURABLE POWER OF
19 ATTORNEY SHALL:

20 (1) EXECUTE AN ENABLING DOCUMENT IN ACCORDANCE WITH § 13-601
21 OF THIS SUBTITLE; AND

22 (2) SUBMIT A COPY OF THE ENABLING DOCUMENT TO THE REGISTER
23 OF WILLS OF THE COUNTY IN WHICH THE PRINCIPAL OR THE PRINCIPAL'S
24 ATTORNEY IN FACT OR AGENT RESIDES.

25 (E) A THIRD PARTY:

26 (1) SHALL ACCEPT FOR ALL PURPOSES A DURABLE POWER OF
27 ATTORNEY FILED IN THE REGISTRY; AND

28 (2) IS NOT CIVILLY LIABLE FOR ACTING IN RELIANCE ON THE
29 INFORMATION CONTAINED IN THE REGISTRY.

30 (F) THE ENABLING DOCUMENT THAT ESTABLISHES AN INDIVIDUAL AS AN
31 ATTORNEY IN FACT OR AGENT MAY PROVIDE FOR THE REVOCATION OF THE
32 DURABLE POWER OF ATTORNEY AND EXPUNGEMENT OF THE NAME OF THE
33 INDIVIDUAL FROM THE REGISTRY.

34 (G) A REGISTER MAY CHARGE EACH PRINCIPAL WHO SEEKS TO BE LISTED IN
35 THE REGISTRY A REASONABLE REGISTRY FEE.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1997.