

SENATE BILL 780

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2000 Regular Session
0lr0700
CF 0lr2798

By: **Senators Kelley, Lawlah, Stone, Colburn, Teitelbaum, Mitchell, Jimeno,
Van Hollen, Hughes, and Forehand**

Introduced and read first time: February 4, 2000

Assigned to: Budget and Taxation

A BILL ENTITLED

1 AN ACT concerning

2 **Powers of Attorney**

3 FOR the purpose of establishing certain requirements for the execution of a durable
4 power of attorney; requiring certain durable powers of attorney to include a
5 certain notice and to specify certain duties of the agent or attorney in fact;
6 providing that an attorney in fact or agent under a power of attorney who
7 commits certain acts is guilty of embezzlement and subject to certain criminal
8 penalties; defining a certain term; providing for the application of this Act; and
9 generally relating to powers of attorney.

10 BY renumbering

11 Article - Estates and Trusts
12 Section 13-602 and 13-603, respectively
13 to be Section 13-605 and 13-606, respectively
14 Annotated Code of Maryland
15 (1991 Replacement Volume and 1999 Supplement)

16 BY repealing and reenacting, with amendments,

17 Article 27 - Crimes and Punishments
18 Section 132
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 1999 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article - Estates and Trusts
23 Section 13-601
24 Annotated Code of Maryland
25 (1991 Replacement Volume and 1999 Supplement)

26 BY adding to

27 Article - Estates and Trusts
28 Section 13-601, 13-603, and 13-604

1 Annotated Code of Maryland
2 (1991 Replacement Volume and 1999 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That Section(s) 13-602 and 13-603, respectively, of Article - Estates
5 and Trusts of the Annotated Code of Maryland be renumbered to be Section(s) 13-605
6 and 13-606, respectively.

7 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
8 read as follows:

9 **Article 27 - Crimes and Punishments**

10 132.

11 If any executor, administrator, guardian, committee, trustee, receiver,
12 ATTORNEY IN FACT OR AGENT UNDER A POWER OF ATTORNEY, or any fiduciary shall
13 fraudulently and wilfully appropriate to any use and purpose not in the due and
14 lawful execution of his trust, any money or any other thing of value which may come
15 into his hands as such executor, administrator, guardian, committee, trustee, receiver,
16 ATTORNEY IN FACT OR AGENT UNDER A POWER OF ATTORNEY, or in any other
17 fiduciary capacity, or secrete it with a fraudulent intent to appropriate it to such use
18 or purpose, he shall be deemed guilty of embezzlement, and shall be punished upon
19 conviction by imprisonment in the penitentiary for not less than one year nor more
20 than five years.

21 **Article - Estates and Trusts**

22 13-601.

23 IN THIS SUBTITLE, "DURABLE POWER OF ATTORNEY" MEANS A POWER OF
24 ATTORNEY BY WHICH A PRINCIPAL DESIGNATES ANOTHER AS AN ATTORNEY IN FACT
25 OR AGENT AND THE AUTHORITY IS EXERCISABLE NOTWITHSTANDING THE
26 PRINCIPAL'S SUBSEQUENT DISABILITY OR INCAPACITY.

27 [13-601.] 13-602.

28 (a) [In this section, "durable power of attorney" means a power of attorney by
29 which a principal designates another as an attorney in fact or agent and the authority
30 is exercisable notwithstanding the principal's subsequent disability or incapacity.

31 (b) Except as provided in subsection [(e)] (D) of this section, when a principal
32 designates another as an attorney in fact or agent by a power of attorney in writing,
33 it is a durable power of attorney unless otherwise provided by its terms.

34 [(c)] (B) Any act done by the attorney in fact or agent pursuant to the power
35 during any period of disability or incompetence or uncertainty as to whether the
36 principal is dead or alive has the same effect and inures to the benefit of and binds the
37 principal as if the principal were alive, competent, and not disabled.

1 [(d)] (C) If a guardian is appointed for the principal, the attorney in fact or
2 agent shall account to the guardian rather than the principal. The guardian has the
3 same power the principal would have but for his disability or incompetence to revoke,
4 suspend, or terminate all or any part of the power of attorney or agency.

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

8 (2) An instrument or portion of an instrument that is an advance
9 directive appointing a health care agent is subject to the provisions of Title 5, Subtitle
10 6 of the Health - General Article.

11 13-603.

12 A DURABLE POWER OF ATTORNEY SHALL BE ACKNOWLEDGED BEFORE A
13 NOTARY PUBLIC.

14 13-604.

15 (A) THIS SECTION DOES NOT APPLY TO A DURABLE POWER OF ATTORNEY
16 PREPARED BY:

17 (1) A LAWYER;

18 (2) A FINANCIAL INSTITUTION; OR

19 (3) A BROKER-DEALER, AGENT, OR FEDERAL-COVERED ADVISER, AS
20 DEFINED IN § 11-101 OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

21 (B) EACH PREPRINTED DURABLE POWER OF ATTORNEY FORM SOLD OR
22 DISTRIBUTED IN THE STATE SHALL INCLUDE THE FOLLOWING NOTICE IN 10-POINT
23 BOLDFACE TYPE:

24 "NOTICE

25 BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW SEVERAL IMPORTANT
26 FACTS. THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON WHOM
27 YOU DESIGNATE (YOUR AGENT, ALSO KNOWN AS YOUR ATTORNEY IN FACT) BROAD
28 POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE BANK ACCOUNTS AND
29 REAL OR PERSONAL PROPERTY, WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL
30 BY YOU.

31 THESE POWERS CONTINUE TO EXIST EVEN IF YOU BECOME MENTALLY OR
32 PHYSICALLY DISABLED OR INCAPACITATED, UNLESS YOU STRIKE THAT PROVISION
33 IN THIS DOCUMENT.

34 SHOULD YOU WISH TO APPOINT THE SAME PERSON WHOM YOU DESIGNATE IN
35 THIS DOCUMENT OR ANY OTHER PERSON AS YOUR AGENT TO MAKE FUTURE HEALTH

1 CARE DECISIONS ON YOUR BEHALF, YOU SHOULD USE A SEPARATE DOCUMENT TO
2 MAKE THAT APPOINTMENT.

3 IF THERE IS ANYTHING ABOUT THIS DOCUMENT THAT YOU DO NOT
4 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU."

5 (C) EACH PREPRINTED DURABLE POWER OF ATTORNEY FORM SOLD OR
6 DISTRIBUTED IN THE STATE SHALL SPECIFY THE FOLLOWING DUTIES OF THE AGENT
7 OR ATTORNEY IN FACT:

8 (1) THE DUTY TO USE THE PRINCIPAL'S INCOME AND ASSETS FOR THE
9 PRINCIPAL'S BENEFIT ONLY, UNLESS THE POWER OF ATTORNEY EXPRESSLY
10 PROVIDES OTHERWISE;

11 (2) THE DUTY TO KEEP COMPLETE RECORDS OF ALL TRANSACTIONS
12 CONDUCTED ON BEHALF OF THE PRINCIPAL; AND

13 (3) THE DUTY TO FULLY DISCLOSE, UPON REQUEST, THE RECORDS
14 REQUIRED UNDER PARAGRAPH (2) OF THIS SUBSECTION TO THE PRINCIPAL OR TO
15 THE PRINCIPAL'S GUARDIAN IF ONE IS APPOINTED BY A COURT.

16 SECTION 3. AND BE IT FURTHER ENACTED, That Section 13-603 of the
17 Estates and Trusts Article as enacted by this Act shall apply to any durable power of
18 attorney executed in the State on or after October 1, 2000.

19 SECTION 4. AND BE IT FURTHER ENACTED, That Section 13-604 of the
20 Estates and Trusts Article as enacted by this Act shall apply to any preprinted
21 durable power of attorney form sold or distributed in the State on or after October 1,
22 2000.

23 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be
24 construed only prospectively and may not be applied or interpreted to have any effect
25 on or application to any power of attorney executed before the effective date of this
26 Act.

27 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2000.