

SENATE BILL 663

N2

8lr2393
CF 8lr2319

By: **Senator Simonaire**

Introduced and read first time: February 1, 2008

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Power of Attorney Accountability Act (Lorretta's Law)**

3 FOR the purpose of establishing certain duties of an agent under a power of attorney;
4 requiring an agent to disclose certain receipts, disbursements, or transactions if
5 ordered by a court or requested by certain persons; requiring an agent to comply
6 with a certain request within a certain period; establishing that an agent that
7 violates certain provisions is liable for certain amounts; requiring that a power
8 of attorney executed in this State contain a certain notice; authorizing certain
9 persons to petition a court to construe a power of attorney or review the agent's
10 conduct; providing for the application of certain provisions of this Act; and
11 generally relating to powers of attorney.

12 BY adding to

13 Article – Estates and Trusts
14 Section 13–604 through 13–606
15 Annotated Code of Maryland
16 (2001 Replacement Volume and 2007 Supplement)

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

19 **Article – Estates and Trusts**

20 **13–604.**

21 (A) NOTWITHSTANDING ANY PROVISION IN THE POWER OF ATTORNEY,
22 AN AGENT THAT HAS ACCEPTED APPOINTMENT SHALL:

23 (1) **ACT IN THE PRINCIPAL'S BEST INTEREST;**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **(2) ACT IN GOOD FAITH;**

2 **(3) ACT ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED IN**
3 **THE POWER OF ATTORNEY;**

4 **(4) ACT WITH THE CARE, COMPETENCE, AND DILIGENCE**
5 **ORDINARILY EXERCISED BY AGENTS IN SIMILAR CIRCUMSTANCES; AND**

6 **(5) KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS, AND**
7 **TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL.**

8 **(B) (1) AN AGENT SHALL DISCLOSE RECEIPTS, DISBURSEMENTS, OR**
9 **TRANSACTIONS CONDUCTED ON BEHALF OF THE PRINCIPAL IF ORDERED BY A**
10 **COURT OR REQUESTED BY THE PRINCIPAL, A GUARDIAN, ANOTHER FIDUCIARY**
11 **ACTING FOR THE PRINCIPAL, A GOVERNMENTAL AGENCY HAVING AUTHORITY**
12 **TO PROTECT THE WELFARE OF THE PRINCIPAL, OR, ON THE DEATH OF THE**
13 **PRINCIPAL, BY THE PERSONAL REPRESENTATIVE OF THE PRINCIPAL'S ESTATE.**

14 **(2) IF A REQUEST DESCRIBED IN PARAGRAPH (1) OF THIS**
15 **SUBSECTION IS MADE, THE AGENT SHALL:**

16 **(I) COMPLY WITH THE REQUEST WITHIN 30 DAYS; OR**

17 **(II) SUBSTANTIATE IN WRITING WHY ADDITIONAL TIME IS**
18 **NEEDED AND COMPLY WITH THE REQUEST WITHIN AN ADDITIONAL 30 DAYS.**

19 **(C) AN AGENT THAT VIOLATES THIS SECTION IS LIABLE TO THE**
20 **PRINCIPAL OR THE PRINCIPAL'S SUCCESSORS IN INTEREST FOR THE AMOUNT**
21 **REQUIRED TO:**

22 **(1) RESTORE THE VALUE OF THE PRINCIPAL'S PROPERTY TO**
23 **WHAT IT WOULD HAVE BEEN HAD THE VIOLATION NOT OCCURRED; AND**

24 **(2) REIMBURSE THE PRINCIPAL OR THE PRINCIPAL'S**
25 **SUCCESSORS IN INTEREST FOR THE ATTORNEY'S FEES AND COSTS PAID ON THE**
26 **AGENT'S BEHALF.**

27 **13-605.**

28 **A POWER OF ATTORNEY EXECUTED IN THIS STATE SHALL CONTAIN THE**
29 **FOLLOWING NOTICE IN AT LEAST 12 POINT, BOLDFACE TYPE:**

30 **"NOTICE**

1 **THIS POWER OF ATTORNEY GRANTS YOU THE AUTHORITY TO ACT FOR**
2 **(INSERT NAME OF PRINCIPAL), ALSO KNOWN AS THE “PRINCIPAL”. AS THE**
3 **AGENT FOR THE PRINCIPAL UNDER THIS POWER OF ATTORNEY, YOU HAVE THE**
4 **FOLLOWING DUTIES:**

5 **(1) TO ACT IN THE PRINCIPAL’S BEST INTEREST;**

6 **(2) TO ACT IN GOOD FAITH;**

7 **(3) TO ACT ONLY WITHIN THE SCOPE OF AUTHORITY GRANTED IN**
8 **THE POWER OF ATTORNEY;**

9 **(4) TO ACT WITH THE CARE, COMPETENCE, AND DILIGENCE**
10 **ORDINARILY EXERCISED BY AGENTS IN SIMILAR CIRCUMSTANCES; AND**

11 **(5) TO KEEP A RECORD OF ALL RECEIPTS, DISBURSEMENTS, AND**
12 **TRANSACTIONS MADE ON BEHALF OF THE PRINCIPAL.**

13 **UNDER STATE LAW, YOU MUST DISCLOSE RECEIPTS, DISBURSEMENTS, OR**
14 **TRANSACTIONS CONDUCTED ON BEHALF OF THE PRINCIPAL IF ORDERED BY A**
15 **COURT OR REQUESTED BY THE PRINCIPAL, THE PRINCIPAL’S GUARDIAN,**
16 **ANOTHER FIDUCIARY ACTING FOR THE PRINCIPAL, A GOVERNMENTAL AGENCY**
17 **HAVING AUTHORITY TO PROTECT THE WELFARE OF THE PRINCIPAL, OR, ON THE**
18 **DEATH OF THE PRINCIPAL, BY THE PERSONAL REPRESENTATIVE OF THE**
19 **PRINCIPAL’S ESTATE.”.**

20 **13-606.**

21 **(A) THE FOLLOWING PERSONS MAY PETITION A COURT TO CONSTRUE A**
22 **POWER OF ATTORNEY OR REVIEW THE AGENT’S CONDUCT, AND GRANT**
23 **APPROPRIATE RELIEF:**

24 **(1) THE PRINCIPAL OR THE AGENT;**

25 **(2) A GUARDIAN, CONSERVATOR, OR OTHER FIDUCIARY ACTING**
26 **FOR THE PRINCIPAL;**

27 **(3) A PERSON AUTHORIZED TO MAKE HEALTH CARE DECISIONS**
28 **FOR THE PRINCIPAL;**

29 **(4) THE PRINCIPAL’S SPOUSE, PARENT, OR DESCENDANT;**

30 **(5) AN INDIVIDUAL WHO WOULD QUALIFY AS A PRESUMPTIVE**
31 **HEIR OF THE PRINCIPAL;**

1 **(6) A PERSON NAMED AS A BENEFICIARY TO RECEIVE ANY**
2 **PROPERTY, BENEFIT, OR CONTRACTUAL RIGHT ON THE PRINCIPAL'S DEATH OR**
3 **AS A BENEFICIARY OF A TRUST CREATED BY OR FOR THE PRINCIPAL THAT HAS A**
4 **FINANCIAL INTEREST IN THE PRINCIPAL'S ESTATE;**

5 **(7) A GOVERNMENTAL AGENCY HAVING REGULATORY**
6 **AUTHORITY TO PROTECT THE WELFARE OF THE PRINCIPAL;**

7 **(8) THE PRINCIPAL'S CAREGIVER OR ANOTHER PERSON THAT**
8 **DEMONSTRATES SUFFICIENT INTEREST IN THE PRINCIPAL'S WELFARE; AND**

9 **(9) A PERSON ASKED TO ACCEPT THE POWER OF ATTORNEY.**

10 **(B) ON MOTION BY THE PRINCIPAL, THE COURT SHALL DISMISS A**
11 **PETITION FILED UNDER THIS SECTION, UNLESS THE COURT FINDS THAT THE**
12 **PRINCIPAL LACKS CAPACITY TO REVOKE THE AGENT'S AUTHORITY OR THE**
13 **POWER OF ATTORNEY.**

14 SECTION 2. AND BE IT FURTHER ENACTED, That § 13-605 of the Estates
15 and Trusts Article as enacted by Section 1 of this Act shall apply to any power of
16 attorney executed in the State on or after October 1, 2008.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2008.