

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 663

(Senator Simonaire)

Judicial Proceedings

Power of Attorney Accountability Act (Lorretta's Law)

This bill • specifies the duties of an agent that has accepted appointment under a power of attorney, regardless of any provision in the power of attorney; • requires specified disclosures by the agent of receipts, disbursements, or transactions conducted on behalf of a principal; • establishes specified liability of an agent to a principal or the principal's successors in interest for violations of the requirements under the bill; and • requires a power of attorney executed in the State to contain specified notice to an agent of those requirements. The bill also allows specified individuals and entities to petition a court to construe a power of attorney or review an agent's conduct and grant appropriate relief. The court must dismiss the petition on motion by the principal unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

The provisions of the bill requiring a power of attorney to contain specified notices apply to any power of attorney executed in the State on or after October 1, 2008.

Fiscal Summary

State Effect: The effect the bill might have on the number of cases filed relating to powers of attorney is uncertain and thus, any effect on the Judiciary's operations or finances cannot be reliably estimated.

Local Effect: See above.

Small Business Effect: None.

Analysis

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, 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, meaning the attorney in fact or agent’s authority is exercisable regardless of 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 were 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.

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.

Background: The provisions of State law relating to powers of attorney were last substantively amended by Chapter 619 of 1997, which took effect January 1, 2000, making a power of attorney durable unless it provides otherwise. According to the National Conference of Commissioners on Uniform State Laws, a durable power of attorney was originally viewed as an inexpensive method of surrogate decision making for people of modest means, but is now widely used for incapacity planning and convenience.

Additional Information

Prior Introductions: HB 961, SB 185, and SB 385 of 2007 contained provisions similar or identical to certain provisions in the bill. HB 961 was introduced but was later withdrawn. SB 185 received an unfavorable report from the Senate Judicial Proceedings Committee. SB 385 received a hearing in Judicial Proceedings but no further action was taken.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2008
ncs/jr

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