

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 529

(Senator Simonaire, *et al.*)

Judicial Proceedings

Judiciary

Maryland General and Limited Power of Attorney Act - Modifications

This bill modifies the Maryland General and Limited Power of Attorney Act by defining the terms “property” and “stocks and bonds”; modifying the term “statutory form power of attorney” specifying that, without exception, a presumption under the Act that powers of attorney are durable, and other related provisions, apply to all powers of attorney; and amending the statutory form powers of attorney to include specified authority of an agent with respect to banks and other financial institutions.

The bill takes effect June 1, 2011, and applies retroactively as specified below.

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 specifies that the term “property,” under the Maryland General and Limited Power of Attorney Act, includes both real and personal property and any right or title in real or personal property, whether held individually or jointly and whether indivisible, beneficial, contingent, or of any other nature. The bill also defines “stocks and bonds” to mean evidence of ownership in or debt issued by a corporation, partnership, limited liability company, firm, association, or similar entity and specifies various types of instruments that are included within the definition.

The bill modifies the term “statutory form power of attorney,” specifying that it does not include a statutory form personal financial power of attorney in which a principal incorporates by reference one or more provisions of another writing into the section of the power of attorney entitled “Special Instructions (Optional).”

The bill also specifies that a provision of the Maryland General and Limited Power of Attorney Act that establishes the presumption that powers of attorney are durable, and related provisions, are applicable to all powers of attorney. Under the existing Act, a durable power of attorney is defined as 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.

The bill also modifies the statutory form personal financial power of attorney and the statutory form limited power of attorney included in the Act to specify certain authority of an agent with respect to banks and other financial institutions. The bill specifies in the statutory forms the authority of an agent to transact all business in connection with an account or other banking arrangement made by or on behalf of the principal or established by the agent and the authority to deposit with, or leave in the custody of, a financial institution money or property of the principal.

The provisions relating to the durability of powers of attorney apply to any power of attorney existing on or after October 1, 2010, regardless of the effective date of the governing instrument in which the power of attorney was created. The definitional changes apply to and affect any power of attorney executed on or after May 20, 2010. Powers of attorney that are substantially in the form of one of the statutory form powers of attorney and executed on or after May 20, 2010 and before June 1, 2011, subject to any special instructions added to the power of attorney by the principal, are deemed to have granted the principal’s agent the authority added to the statutory forms by the bill (in the case of the statutory form limited power of attorney, if applicable authority is granted by the principal).

Current Law: The Maryland General and Limited Power of Attorney Act was established under Chapters 689 and 690 of 2010 (effective October 1, 2010). The Act included various new provisions derived in part from the Uniform Power of Attorney Act and also incorporated existing provisions governing powers of attorney, with minor alterations. The Act establishes requirements for a proper execution of a power of attorney, specifies when a power of attorney becomes effective, and the validity and enforceability of a power of attorney. The Act also establishes the fiduciary duties for the agent who exercises the power of attorney. The Act applies to all powers of attorney, with certain listed exceptions.

Under the Act, when a principal designates another 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. Any act done by the attorney in fact or agent in accordance with the power of attorney during a period of disability or incompetence of the principal or during a period of 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 the principal, the attorney in fact or agent accounts to the guardian, who has the same power as 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 Act includes two statutory form powers of attorney. The statutory form personal financial power of attorney allows a principal to grant an agent a broad range of authority specified in detail. The statutory form limited power of attorney allows the principal to specifically choose which of a broad range of powers the principal does or does not want to grant to the agent.

The Maryland General and Limited Power of Attorney Act was signed by the Governor on May 20, 2010. The bill's retroactive provisions that apply to the definitional changes and changes to the statutory forms account for the use of the two statutory form powers of attorney by lawyers after the Act was signed, in anticipation of it taking effect on October 1, 2010.

Additional Information

Prior Introductions: None.

Cross File: HB 247 (Delegate Simmons, *et al.*) - Judiciary.

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

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