

SB0851/373024/1

BY: Judicial Proceedings Committee

AMENDMENTS TO SENATE BILL 851
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with “**Assistance**” in line 2 down through “**Programs**” in line 3 and substitute “**Alterations**”; and in line 4, after “of” insert “altering a certain statutory form for a general power of attorney by including certain provisions informing the principal and agent of certain matters, granting general authority with respect to tangible personal property and trusts and estates, authorizing the principal to grant the agent certain specific powers relating to successor agents, compensation, gifts or transfers, and opening joint accounts and beneficiary designations, and clarifying the force and effect of the form;”.

AMENDMENT NO. 2

On page 2, after line 13, insert:

“YOU SHOULD UNDERSTAND THAT GRANTING YOUR AGENT THE AUTHORITY TO TAKE ACTIONS UNDER THIS POWER OF ATTORNEY MAY:

(1) SIGNIFICANTLY REDUCE YOUR PROPERTY AND LIMIT YOUR ACCESS TO YOUR ASSETS;

(2) CHANGE HOW YOUR PROPERTY IS DISTRIBUTED UNDER YOUR EXISTING ESTATE PLANS TO YOUR HEIRS OR OTHERS ON YOUR DEATH; OR

(3) RESULT IN TAX CONSEQUENCES TO YOURSELF OR OTHERS.”;

and after line 17, insert:

“IMPORTANT INFORMATION FOR AGENT

SIMPLY BECAUSE YOU ARE GRANTED A POWER OF ATTORNEY DOES NOT MEAN YOU SHOULD EXERCISE IT. YOU ARE BOUND BY AN UTMOST DUTY OF LOYALTY TO THE INTERESTS OF THE PRINCIPAL. YOU MAY NOT ACT IN YOUR OWN SELF-INTEREST. YOU ARE FURTHER LIMITED BY LEGAL DUTIES TO THE PRINCIPAL THAT GOVERN YOUR ACTIONS.

WHEN EXERCISING THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY, YOU SHALL CONSIDER THE STATED INTENTIONS OF THE PRINCIPAL REGARDING THE PRINCIPAL’S SELF-INTEREST, FAMILY, ESTATE, AND TAXES.”.

On page 3, after line 27, insert:

“POWER TO APPOINT SUCCESSOR AGENT(S) IF NO AGENT OR SUCCESSOR AGENT IS ABLE TO SERVE (OPTIONAL)

ONLY IF I HAVE INITIALED BELOW, MY AGENT(S) MAY APPOINT A SUCCESSOR AGENT(S).

() EACH AGENT, WHILE SERVING IN THAT CAPACITY, MAY APPOINT AN INDIVIDUAL TO SUCCEED TO THE AGENT’S OFFICE ON THE AGENT’S DEATH, RESIGNATION, OR INCAPACITY; PROVIDED, HOWEVER, THAT AN APPOINTMENT UNDER THIS SECTION BECOMES EFFECTIVE ONLY WHEN NO OTHER AGENT OR SUCCESSOR AGENT DESIGNATED BY ME IS WILLING OR ABLE TO ACT.

COMPENSATION (OPTIONAL)

YOUR AGENT IS ENTITLED TO REIMBURSEMENT FOR THEIR EXPENSES. YOUR AGENT IS ENTITLED TO COMPENSATION ONLY IF YOU HAVE INITIALED ONE OF THE OPTIONS LISTED BELOW:

() MY AGENT(S) IS ENTITLED TO REASONABLE COMPENSATION.

() MY AGENT(S) IS ENTITLED TO THE FOLLOWING COMPENSATION:".

On page 5, after line 2, insert:

“TANGIBLE PERSONAL PROPERTY, INCLUDING MOTOR VEHICLES, BOATS, PLANES, AND OTHER TITLED AND UNTITLED TANGIBLE PERSONAL PROPERTY – WITH RESPECT TO THIS SUBJECT, I AUTHORIZE MY AGENT TO: DEMAND, BUY, RECEIVE, ACCEPT AS A GIFT OR AS SECURITY FOR AN EXTENSION OF CREDIT, OR OTHERWISE ACQUIRE OR REJECT OWNERSHIP OR POSSESSION OF TANGIBLE PERSONAL PROPERTY OR AN INTEREST IN TANGIBLE PERSONAL PROPERTY; SELL, EXCHANGE, CONVEY WITH OR WITHOUT COVENANTS, REPRESENTATIONS, OR WARRANTIES, QUITCLAIM, RELEASE, SURRENDER, CREATE A SECURITY INTEREST IN, GRANT OPTIONS CONCERNING, LEASE, SUBLEASE, OR OTHERWISE DISPOSE OF TANGIBLE PERSONAL PROPERTY OR AN INTEREST IN TANGIBLE PERSONAL PROPERTY; GRANT A SECURITY INTEREST IN TANGIBLE PERSONAL PROPERTY OR AN INTEREST IN TANGIBLE PERSONAL PROPERTY AS SECURITY TO BORROW MONEY OR PAY, RENEW, OR EXTEND THE TIME OF PAYMENT OF A DEBT OF THE PRINCIPAL OR A DEBT GUARANTEED BY THE PRINCIPAL; RELEASE, ASSIGN, SATISFY, OR ENFORCE BY LITIGATION OR OTHERWISE, A SECURITY INTEREST, LIEN, OR OTHER CLAIM ON BEHALF OF THE PRINCIPAL, WITH RESPECT TO TANGIBLE PERSONAL PROPERTY OR AN INTEREST IN TANGIBLE PERSONAL PROPERTY; MANAGE OR CONSERVE TANGIBLE PERSONAL PROPERTY OR AN INTEREST IN TANGIBLE PERSONAL PROPERTY ON BEHALF OF THE PRINCIPAL, INCLUDING: (1) INSURING AGAINST LIABILITY OR CASUALTY OR

(Over)

OTHER LOSS; (2) OBTAINING OR REGAINING POSSESSION OF OR PROTECTING THE PROPERTY OR INTEREST, BY LITIGATION OR OTHERWISE; (3) PAYING, ASSESSING, COMPROMISING, OR CONTESTING TAXES OR ASSESSMENTS OR APPLYING FOR AND RECEIVING REFUNDS IN CONNECTION WITH TAXES OR ASSESSMENTS; (4) MOVING THE PROPERTY FROM PLACE TO PLACE; (5) STORING THE PROPERTY FOR HIRE OR ON A GRATUITOUS BAILMENT; AND (6) USING AND MAKING REPAIRS, ALTERATIONS, OR IMPROVEMENTS TO THE PROPERTY; AND CHANGE THE FORM OF TITLE OF AN INTEREST IN TANGIBLE PERSONAL PROPERTY.”.

On page 6 in line 25, on page 23 in line 11, and on page 26 in line 29, in each instance, after “A” insert “GOVERNMENTAL”.

On page 6 in line 29, and on page 23 in line 15, in each instance, after “a” insert “GOVERNMENTAL”.

On page 6, strike beginning with “AND” in line 27 down through “PROPERTY” in line 28.

On page 7, after line 38, insert:

“TRUST AND ESTATE MATTERS – WITH RESPECT TO THIS SUBJECT:

(1) MY AGENT MAY ACT FOR ME IN ALL MATTERS THAT AFFECT A TRUST, PROBATE ESTATE, ESCROW, CUSTODIANSHIP, OR OTHER FUND TO WHICH I AM NOW, CLAIM TO BE, OR LATER BECOME ENTITLED AS A BENEFICIARY, TO A SHARE OR PAYMENT, INCLUDING PETITIONS, OBJECTIONS, WAIVERS, CONSENTS, RECEIPTS, SETTLEMENTS, AND OTHER RELATED AGREEMENTS;

(2) TO THE EXTENT PERMITTED IN THE TRUST AGREEMENT, MY AGENT MAY CONSENT TO THE AMENDMENT, REVOCATION, OR TERMINATION OF A TRUST OF WHICH I AM A BENEFICIARY, OR TO THE TRANSFER OF THE ASSETS OF THE TRUST INTO ANOTHER TRUST FOR MY BENEFIT, AND TO ENTER INTO TRANSACTIONS WITH ANY TRUST CREATED BY ME, FOR ME, ON MY BEHALF, OR IN CONNECTION WITH GIFTS FROM ME TO OTHERS AS PROVIDED IN THE PARAGRAPH BELOW AUTHORIZING GIFTS; AND TO PARTICIPATE IN EITHER JUDICIAL OR NONJUDICIAL MODIFICATION OF A TRUST AS PERMITTED UNDER § 14.5-111 OF THE ESTATES AND TRUSTS ARTICLE; AND

(3) MY AGENT MAY CREATE AND TRANSFER PROPERTY TO AN INTERVIVOS REVOCABLE OR IRREVOCABLE TRUST FOR MY SOLE BENEFIT THAT ON MY DEATH DISTRIBUTES THE PROPERTY IN A MANNER CONSISTENT WITH MY EXISTING ESTATE PLAN, IF ANY, AND IN ACCORDANCE WITH MARYLAND LAW.

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

(CAUTION: GRANTING ANY OF THE FOLLOWING WILL GIVE YOUR AGENT THE AUTHORITY TO TAKE ACTIONS THAT COULD SIGNIFICANTLY REDUCE YOUR PROPERTY OR CHANGE HOW YOUR PROPERTY IS DISTRIBUTED AT YOUR DEATH.)

A. GIFTS OR TRANSFERS – ONLY IF I HAVE INITIALED BELOW, MY AGENT MAY MAKE GIFTS OR TRANSFER OWNERSHIP OF MY ASSETS OUTRIGHT OR IN TRUST TO OR FOR THE BENEFIT OF ONE OR MORE OF THE FOLLOWING PERSONS AND ONLY IN THE AMOUNTS SPECIFICALLY AUTHORIZED IN THE NEXT SECTION:

() MY AGENT, SUBJECT TO THE FOLLOWING CONDITIONS, IF ANY:

(Over)

MY SPOUSE

MY PARENTS

MY GRANDPARENTS

MY CHILDREN AND THEIR DESCENDANTS

A NONPROFIT OR CHARITABLE ORGANIZATION IN A MANNER
CONSISTENT WITH MY PREVIOUS GIVING HISTORY

THE PEOPLE AND CHARITABLE ORGANIZATIONS, IF ANY,
NAMED IN MY ESTATE PLAN AND IN ACCORDANCE WITH THE TERMS OF MY
ESTATE PLAN THAT ARE IN EXISTENCE AT THE TIME THE GIFT IS MADE

MY INTESTATE HEIRS WHO WOULD RECEIVE MY ESTATE
UNDER MARYLAND LAW IF I DIED A RESIDENT OF MARYLAND WITHOUT A WILL

ONE OR MORE OF THE FOLLOWING PERSONS:

MY AGENT IS AUTHORIZED TO MAKE GIFTS UNDER THIS SECTION IN THE
FOLLOWING AMOUNTS ONLY IF I HAVE INITIALED BELOW:

IN AN AMOUNT NOT TO EXCEED \$ _____ PER PERSON EACH
CALENDAR YEAR TO THE PERSONS, NONPROFITS, OR CHARITABLE
ORGANIZATIONS THAT I HAVE SPECIFIED IN THE SECTION ABOVE;

() IN AN AMOUNT FOR EACH PERSON I HAVE SPECIFIED IN THE SECTION ABOVE NOT TO EXCEED THE ANNUAL DOLLAR LIMITS OF THE FEDERAL GIFT TAX EXCLUSION UNDER § 2503(B) OF THE INTERNAL REVENUE CODE, OR IF MY SPOUSE AGREES TO CONSENT TO A SPLIT GIFT, IN AN AMOUNT NOT TO EXCEED THE AGGREGATE ANNUAL GIFT TAX EXCLUSION FOR BOTH SPOUSES;

() IN AN UNLIMITED AMOUNT, FOR THE PURPOSE OF ESTATE PLANNING OR QUALIFYING ME FOR A GOVERNMENTAL BENEFIT OR PROGRAM, WITH SUCH GIFTS TO BE MADE IN A MANNER CONSISTENT WITH MY EXISTING ESTATE PLAN, IF ANY, AND IN ACCORDANCE WITH STATE LAW.

SPECIAL INSTRUCTIONS FOR GIFTING DESIRES – YOU MAY GIVE SPECIAL INSTRUCTIONS FOR GIFTING DESIRES ON THE FOLLOWING LINES:

B. JOINT ACCOUNTS AND BENEFICIARY DESIGNATIONS – I AUTHORIZE MY AGENT TO DO ONE OR MORE OF THE FOLLOWING ONLY IF I HAVE INITIALED BELOW:

() OPEN A JOINT ACCOUNT WITH ME AND ONE OR MORE OTHER PERSONS AS ACCOUNT OWNERS. EACH OWNER OF A JOINT ACCOUNT HAS FULL LEGAL AUTHORITY TO USE THE ACCOUNT FOR THEIR OWN BENEFIT AND ON MY DEATH WILL BECOME THE PROPERTY OF THE OTHER OWNER(S).

() CREATE OR CHANGE RIGHTS OF SURVIVORSHIP IN ACCOUNTS OR OTHER ASSETS IN WHICH I HAVE AN INTEREST, INCLUDING FOR THE BENEFIT OF MY AGENT, TO CHANGE A BENEFICIARY DESIGNATION FOR ANY ACCOUNTS OR FINANCIAL INSTRUMENTS, INCLUDING LIFE INSURANCE POLICIES, ANNUITIES,

(Over)

OR RETIREMENT ACCOUNTS OF ANY NATURE; AND TO WAIVE MY RIGHT TO BE A BENEFICIARY OF A JOINT AND SURVIVOR ANNUITY, INCLUDING A SURVIVOR BENEFIT UNDER A RETIREMENT PLAN OF ANY NATURE. IN DETERMINING SUCH RIGHTS OR BENEFICIARY INTERESTS, MY AGENT SHALL CONSIDER TAXES, PRESERVATION OF GOVERNMENTAL BENEFITS OR PROGRAMS, OR STATED INTENTIONS REGARDING MY ESTATE.

DISCLAIMERS

FOR THE PURPOSES OF TAX PLANNING OR EFFECTUATING STATED INTENTIONS REGARDING MY ESTATE, I AUTHORIZE MY AGENT TO DISCLAIM ANY INTEREST IN PROPERTY I MIGHT OTHERWISE RECEIVE, EITHER OUTRIGHT OR IN TRUST, INCLUDING FOR THE BENEFIT OF MY AGENT; ANY POWERS I HAVE OVER PROPERTY OR AS A BENEFICIARY OF ANY TRUSTS (EXCLUDING ANY POWERS I POSSESS IN A FIDUCIARY CAPACITY); AND ANY POWERS OF APPOINTMENT I HAVE OR MAY ACQUIRE EXCLUDING ANY TESTAMENTARY POWER OF APPOINTMENT THAT I CURRENTLY EXERCISE IN MY LAST WILL AND TESTAMENT.”.

On page 8, in line 10, strike “(OPTIONAL)”; after line 10, insert:

“ONLY IF I HAVE SPECIFIED A TERMINATION DATE BELOW, THIS POWER OF ATTORNEY IS DURABLE, MEANING IT SHALL CONTINUE IN FULL FORCE AND EFFECT FOR AN INDEFINITE PERIOD OF TIME UNTIL MY REVOCATION OF THIS POWER OF ATTORNEY OR MY DEATH, WHICHEVER OCCURS FIRST. I RESERVE THE RIGHT TO REVOKE THIS POWER OF ATTORNEY. THIS POWER OF ATTORNEY SHALL NOT TERMINATE UPON MY DISABILITY. ALL AUTHORITY OF MY AGENT(S) SHALL CONTINUE EVEN IF I BECOME DISABLED, INCOMPETENT, OR INCAPACITATED.”;

and after line 12, insert:

“COPIES

A COPY OF THIS DOCUMENT SHALL HAVE THE SAME FORCE AND EFFECT AS THE ORIGINAL UNLESS PROVIDED OTHERWISE IN SPECIAL INSTRUCTIONS.

REVOCAATION

I HEREBY REVOKE ALL OTHER POWERS OF ATTORNEY THAT I HAVE PREVIOUSLY EXECUTED. THIS SECTION DOES NOT APPLY TO POWERS OF ATTORNEY EXECUTED ON THE SAME DATE AS THIS POWER OF ATTORNEY OR TO LIMITED POWERS OF ATTORNEY THAT APPLY TO SPECIFIC ACCOUNTS OR TO SPECIFIC PROPERTY.

RELIANCE BY THIRD PARTIES

ANYONE RELYING OR ACTING UPON THIS POWER OF ATTORNEY SHALL BE ENTITLED TO PRESUME CONCLUSIVELY THAT IT IS IN FULL FORCE AND EFFECT UNLESS I HAVE GIVEN WRITTEN NOTICE TO THAT PERSON OR ENTITY THAT THIS POWER HAS BEEN REVOKED. NO ONE RELYING OR ACTING UPON THIS POWER OF ATTORNEY SHALL BE REQUIRED TO SEE TO THE APPLICATION AND DISPOSITION OF ANY FUNDS OR OTHER PROPERTY PAID TO OR DELIVERED TO MY AGENT OR ANY PERSONS APPOINTED BY MY AGENT. I AUTHORIZE MY AGENT TO SEEK DAMAGES AGAINST ANYONE WHO REFUSED TO HONOR THIS POWER OF ATTORNEY WITHOUT HAVING RECEIVED NOTICE THAT IT HAS BEEN REVOKED.”

On page 26, in line 30, after “PROGRAM” insert “, INCLUDING GIFTS TO OR IN FAVOR OF MY AGENT WHO IS MY SPOUSE OR DESCENDANT”.