

HOUSE BILL No. 5188

July 14, 2009, Introduced by Reps. Rocca, Meadows, Byrnes, Liss, Scripps, Roberts, Haase, Womack, Kennedy, Slavens, Haugh, Kandrevas, Constan, Durhal, Polidori, Terry Brown, Leland, Valentine, Segal, Spade, Miller, Geiss, Roy Schmidt, Bauer, Tlaib, Lemmons, Dean, Ebli, Gregory, Robert Jones, Donigan, Lisa Brown, Gonzales, Mayes, Sheltroun, McDowell, Neumann, Lahti, Bettie Scott and Jackson and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5501 (MCL 700.5501).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5501. (1) A durable power of attorney is a power of
2 attorney by which a principal designates another as the principal's
3 attorney in fact in ~~A writing and the writing~~ **THAT** contains the
4 words "This power of attorney is not affected by the principal's
5 subsequent disability or incapacity, or by the lapse of time", or
6 "This power of attorney is effective upon the disability or
7 incapacity of the principal", or similar words showing the
8 principal's intent that the authority conferred is exercisable
9 notwithstanding the principal's subsequent disability or incapacity

1 and, unless the power states a termination time, notwithstanding
2 the lapse of time since the execution of the instrument.

3 (2) BEFORE EXERCISING AUTHORITY AS ATTORNEY IN FACT UNDER A
4 DURABLE POWER OF ATTORNEY, A PERSON SHALL SIGN AN ACCEPTANCE OF THE
5 DESIGNATION, ACKNOWLEDGING AND ACCEPTING ALL OF THE FOLLOWING
6 OBLIGATIONS, LIABILITIES, AND RIGHTS:

7 (A) TO ACT IN THE BEST INTEREST OF THE PRINCIPAL.

8 (B) TO KEEP THE PRINCIPAL INFORMED OF THE ATTORNEY IN FACT'S
9 ACTIONS AND ACCOUNT TO THE PRINCIPAL.

10 (C) TO NOT MAKE GIFTS OF THE PRINCIPAL'S PROPERTY UNLESS
11 SPECIFICALLY AUTHORIZED BY THE POWER OF ATTORNEY.

12 (D) TO BE PROSECUTED AND PUNISHED FOR ANY CRIMINAL ACTS.

13 (E) TO KEEP THE PRINCIPAL'S ASSETS IN AN ACCOUNT THAT DOES NOT
14 INCLUDE MONEY OF THE ATTORNEY IN FACT OR ANOTHER PERSON.

15 (F) TO ONLY USE THE PRINCIPAL'S PROPERTY AND INCOME FOR THE
16 BENEFIT OF THE PRINCIPAL, UNLESS OTHERWISE AUTHORIZED SPECIFICALLY
17 IN THE POWER OF ATTORNEY.

18 (G) IF REQUESTED, TO PROVIDE AN ACCOUNTING AT ANY TIME TO THE
19 PRINCIPAL, A FIDUCIARY APPOINTED ON BEHALF OF THE PRINCIPAL, OR THE
20 COURT.

21 (H) TO MAINTAIN SUFFICIENT RECORDS OF EVERY TRANSACTION AND BE
22 PREPARED TO DEFEND EACH ACTION.

23 (I) TO BE HELD FINANCIALLY RESPONSIBLE FOR ANY TRANSACTION
24 THAT IS NOT SPECIFICALLY AUTHORIZED IN THE POWER OF ATTORNEY.

25 (J) TO HIRE AN ADVISOR, ATTORNEY, ACCOUNTANT, OR OTHER
26 PROFESSIONAL AS REASONABLY REQUIRED TO COMPLY WITH THE ATTORNEY IN
27 FACT'S DUTIES AND TO PAY FOR THE PROFESSIONAL'S SERVICES FROM THE

1 ESTATE OF THE PRINCIPAL.

2 (K) UNLESS PROHIBITED BY THE POWER OF ATTORNEY, TO RECEIVE
3 REASONABLE COMPENSATION FOR THE ATTORNEY IN FACT'S SERVICES, WHICH
4 COMPENSATION MAY BE SUBJECT TO SCRUTINY BY THE COURT.