WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

House Bill No. 1184

(By Mr. Del Neal & Del Rogers)

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Passed .................................................. March 8, 1986

In Effect .............................................. July 1, 1986

Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1184
(By Delegate Neal and Delegate Rogers)

[Passed March 8, 1986; in effect July 1, 1986.]

AN ACT to repeal section six, article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended and to amend chapter thirty-nine of said code by adding thereto a new article, designated article four, relating to enacting the uniform durable power of attorney act; establishing when a power of attorney is effective upon the death or disability of a principal; allowing for good faith exercise of the power; providing for exercise of power in relation to fiduciary; allowing for revocation; and providing for severability and effective date.

Be it enacted by the Legislature of West Virginia:

That section six, article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty-nine of said code be amended by adding thereto a new article, designated article four, to read as follows:

ARTICLE 4. UNIFORM DURABLE POWER OF ATTORNEY.

§39-4-1. Definition.

1 A durable power of attorney is a power of attorney by which a principal designates another his attorney in
fact in writing and the writing contains the words “This power of attorney shall not be affected by subsequent disability or incapacity of the principal,” or “This power of attorney shall become effective upon the disability or incapacity of the principal,” or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent disability or incapacity.

§39-4-2. Durable power of attorney not affected by disability.

All acts done by an attorney in fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were competent and not disabled.

§39-4-3. Relation of attorney in fact to court-appointed fiduciary.

(a) If, following execution of a durable power of attorney, a court or county commission of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney in fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

§39-4-4. Power of attorney not revoked until notice.

(a) The death of a principal who has executed a written power of attorney, durable or otherwise, does
not revoke or terminate the agency as to the attorney
in fact or other person, who, without actual knowledge
of the death of the principal, acts in good faith under
the power. Any action so taken, unless otherwise invalid
or unenforceable, binds successors in interest of the
principal.

(b) The disability or incapacity of a principal who has
previously executed a written power of attorney that is
not a durable power does not revoke or terminate the
agency as to the attorney in fact or other person, who,
without actual knowledge of the disability or incapacity
of the principal, acts in good faith under the power. Any
action so taken, unless otherwise invalid or unenforceable,
binds the principal and his successors in interest.

§39-4-5. Proof of continuance of durable and other
powers of attorney by affidavit.

As to acts undertaken in good faith reliance thereon,
an affidavit executed by the attorney in fact under a
power of attorney, durable or otherwise, stating that he
did not have at the time of exercise of the power actual
knowledge of the termination of the power by revocation
or of the principal's death, disability or incapacity is
conclusive proof of the nonrevocation or nontermination
of the power at that time. If the exercise of the power
of attorney requires execution and delivery of any
instrument that is recordable, the affidavit when
authenticated for record is likewise recordable. Any
bona fide purchaser for value who purchases property
from an attorney in fact who acts under a power of
attorney specifying that the power shall become effec-
tive upon the disability, incompetence or incapacity of
the principal or similar words is under no duty to
ascertain whether the principal was or is, in fact,
disabled, incompetent or incapacitated at the time of the
contract of sale or the actual transfer of the property,
and such right, title and interest as such purchaser may
acquire shall not be affected by the principal's ability,
competency or capacity or lack thereof. This section does
not affect any provision in a power of attorney for its
termination by expiration of time or occurrence of an
event other than express revocation or a change in the
26 principal capacity.

§39-4-6. Uniformity of application and construction.

1 This article shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

§39-4-7. Short title.

1 This article may be cited as the "Uniform Durable Power of Attorney Act."
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Wilkinson  
Chairman Senate Committee

Floyd Fuller  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Tollie B. Smith  
Clerk of the Senate

Donald Keys  
Clerk of the House of Delegates

Dan Redmond  
President of the Senate

Joseph P. Allen, Jr.  
Speaker of the House of Delegates

The within ............................................ this the 26th day of ............................................ 1986.

Ann A. Walsh  
Governor