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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1986

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1184.....

(By ~~Mr.~~ Del. Neal & Del. Rogers.....)

— ● —

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article eleven, chapter twenty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter thirty-nine of said code be amended by adding thereto a new article, designated article four, to read as follows: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
- 2 by which a principal designates another his attorney in

3 fact in writing and the writing contains the words "This
4 power of attorney shall not be affected by subsequent
5 disability or incapacity of the principal," or "This power
6 of attorney shall become effective upon the disability or
7 incapacity of the principal," or similar words showing
8 the intent of the principal that the authority conferred
9 shall be exercisable notwithstanding the principal's
10 subsequent disability or incapacity.

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

1 All acts done by an attorney in fact pursuant to a
2 durable power of attorney during any period of disabil-
3 ity or incapacity of the principal have the same effect
4 and inure to the benefit of and bind the principal and
5 his successors in interest as if the principal were
6 competent and not disabled.

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

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

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

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

1 (a) The death of a principal who has executed a
2 written power of attorney, durable or otherwise, does

3 not revoke or terminate the agency as to the attorney
4 in fact or other person, who, without actual knowledge
5 of the death of the principal, acts in good faith under
6 the power. Any action so taken, unless otherwise invalid
7 or unenforceable, binds successors in interest of the
8 principal.

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

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

1 As to acts undertaken in good faith reliance thereon,
2 an affidavit executed by the attorney in fact under a
3 power of attorney, durable or otherwise, stating that he
4 did not have at the time of exercise of the power actual
5 knowledge of the termination of the power by revocation
6 or of the principal's death, disability or incapacity is
7 conclusive proof of the nonrevocation or nontermination
8 of the power at that time. If the exercise of the power
9 of attorney requires execution and delivery of any
10 instrument that is recordable, the affidavit when
11 authenticated for record is likewise recordable. Any
12 bona fide purchaser for value who purchases property
13 from an attorney in fact who acts under a power of
14 attorney specifying that the power shall become effective
15 upon the disability, incompetence or incapacity of
16 the principal or similar words is under no duty to
17 ascertain whether the principal was or is, in fact,
18 disabled, incompetent or incapacitated at the time of the
19 contract of sale or the actual transfer of the property,
20 and such right, title and interest as such purchaser may
21 acquire shall not be affected by the principal's ability,
22 competency or capacity or lack thereof. This section does
23 not affect any provision in a power of attorney for its
24 termination by expiration of time or occurrence of an
25 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 effec-
2 tuate its general purpose to make uniform the law with
3 respect to the subject of this act among states enacting
4 it.

§39-4-7. Short title.

1 This article may be cited as the "Uniform Durable
2 Power of Attorney Act."

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The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originating in the House.

Takes effect July 1, 1986.

Todd C. Smith
Clerk of the Senate

Donald Stapp
Clerk of the House of Delegates

Dan Tonkonig
President of the Senate

Joseph P. Allright
Speaker of the House of Delegates

The within *approved* this the *26th*
day of *March*, 1986.

Archa Shaefer
Governor

PRESENTED TO THE
GOVERNOR

Date 3/21/86

Time 4:39 p.m.

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OFFICE OF THE
SECRETARY OF STATE

FILE IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/26/86