

HOUSE BILL No. 2568

By Committee on Judiciary

1-28

9 AN ACT concerning the Kansas power of attorney act; relating to durable
10 powers of attorney; amending K.S.A. 58-651 and 58-663 and K.S.A.
11 2009 Supp. 58-652, 58-654 and 58-656 and repealing the existing
12 sections.
13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 58-651 is hereby amended to read as follows: 58-
16 651. As used in the Kansas power of attorney act:

17 (a) “Attorney in fact” means an individual, corporation or other legal
18 entity appointed to act as agent of a principal in a written power of
19 attorney.

20 (b) “Court” means the district court.

21 (c) “Disabled” means a person who is wholly or partially disabled as
22 defined in K.S.A. 77-201, and amendments thereto, or a similar law of
23 the place having jurisdiction of the person whose capacity is in question.

24 (d) “Durable power of attorney” means a written power of attorney
25 in which the authority of the attorney in fact does not terminate in the
26 event the principal becomes disabled or in the event of later uncertainty
27 as to whether the principal is dead or alive and which complies with
28 subsection (a) of K.S.A. 58-652, and amendments thereto, or is durable
29 under the laws of any of the following places:

30 (1) The law of the place where executed;

31 (2) the law of the place of the residence of the principal when exe-
32 cuted; or

33 (3) the law of a place designated in the written power of attorney if
34 that place has a reasonable relationship to the purpose of the instrument.

35 (e) “Immediate family” means a person’s parents, spouse, children
36 and siblings and the parents, children and siblings of the person’s spouse.

37 ~~(f)~~ (f) “Legal representative” means a decedent’s personal represen-
38 tative, a guardian or a conservator.

39 ~~(g)~~ (g) “Nondurable power of attorney” means a written power of
40 attorney which does not meet the requirements of a durable power of
41 attorney.

42 ~~(h)~~ (h) “Person” means an adult individual, corporation or other legal
43 entity.

- 1 ~~(h)~~ (i) “Personal representative” means a legal representative as de-
2 fined in K.S.A. 59-102, and amendments thereto.
- 3 ~~(i)~~ (j) “Power of attorney” means a written power of attorney, either
4 durable or nondurable.
- 5 ~~(j)~~ (k) “Principal’s family” means the principal’s parent, grandparent,
6 uncle, aunt, brother, sister, son, daughter, grandson, granddaughter and
7 their descendants, whether of the whole blood or the half blood, or by
8 adoption, and the principal’s spouse, stepparent and stepchild.
- 9 ~~(k)~~ (l) “Third person” means any individual, corporation or legal en-
10 tity that acts on a request from, contracts with, relies on or otherwise
11 deals with an attorney in fact pursuant to authority granted by a principal
12 in a power of attorney and includes a partnership, either general or lim-
13 ited, governmental agency, financial institution, issuer of securities, trans-
14 fer agent, securities or commodities broker, real estate broker, title in-
15 surance company, insurance company, benefit plan, legal representative,
16 custodian or trustee.
- 17 Sec. 2. K.S.A. 2009 Supp. 58-652 is hereby amended to read as fol-
18 lows: 58-652. (a) The authority granted by a principal to an attorney in
19 fact in a written power of attorney is not terminated in the event the
20 principal becomes wholly or partially disabled or in the event of later
21 uncertainty as to whether the principal is dead or alive if:
- 22 (1) The power of attorney is denominated a “durable power of
23 attorney;”
- 24 (2) the power of attorney includes a provision that states in substance
25 one of the following:
- 26 (A) “This is a durable power of attorney and the authority of my
27 attorney in fact shall not terminate if I become disabled or in the event
28 of later uncertainty as to whether I am dead or alive”; or
- 29 (B) “This is a durable power of attorney and the authority of my
30 attorney in fact, when effective, shall not terminate or be void or voidable
31 if I am or become disabled or in the event of later uncertainty as to
32 whether I am dead or alive”; ~~and~~
- 33 (3) *the power of attorney contains:*
- 34 (A) *An attestation signed by the principal, which acknowledges the*
35 *delegation of general powers to the attorney in fact set forth in K.S.A. 58-*
36 *654, and amendments thereto, and states in substance, “By signing this*
37 *durable power of attorney I am authorizing my designated attorney in*
38 *fact to act for me and on my behalf. This document grants my attorney*
39 *in fact the powers to manage, dispose of, sell and convey any finances and*
40 *real or personal property. I understand that these powers will exist after*
41 *I become disabled or incapacitated.”;*
- 42 (B) *an attestation signed by the grantee acknowledging their under-*
43 *standing that as the attorney in fact under this durable power of attorney*

1 *they assume the fiduciary and other legal responsibilities of an agent.*
2 *These responsibilities include, but are not limited to, the general powers*
3 *outlined in K.S.A. 58-654, and amendments thereto; and*

4 *(C) an attestation signed by a witness, who is not a member of the*
5 *principal's immediate family, stating that by signing as a witness they are*
6 *acknowledging the following:*

7 *(i) The signature is the principal's and was signed in their presence*
8 *and the presence of a notary public;*

9 *(ii) that the principal has stated that this power of attorney reflects*
10 *the principal's wishes and is being executed voluntarily;*

11 *(iii) that at the time of signing the principal appeared to be of sound*
12 *mind and capable of creating this power of attorney; and*

13 *(iv) that to the best of the witness's knowledge the witness is not re-*
14 *lated to the principal by blood, marriage or adoption and is not entitled*
15 *to any portion of the principal's estate under the principal's will;*

16 ~~(4)~~ *(4) the power of attorney is signed by the principal, and dated*
17 *and acknowledged in the manner prescribed by K.S.A. 53-501 et seq.,*
18 *and amendments thereto. If the principal is physically unable to sign the*
19 *power of attorney but otherwise competent and conscious, the power of*
20 *attorney may be signed by an adult designee of the principal in the pres-*
21 *ence of the principal and at the specific direction of the principal ex-*
22 *pressed in the presence of a notary public. The designee shall sign the*
23 *principal's name to the power of attorney in the presence of a notary*
24 *public, following which the document shall be acknowledged in the man-*
25 *ner prescribed by K.S.A. 53-501 et seq., and amendments thereto, to the*
26 *same extent and effect as if physically signed by the principal; and*

27 *(5) the power of attorney has been filed and recorded pursuant to*
28 *subsection (c) and contains a stamp from the register of deeds evidencing*
29 *such recordation.*

30 *(b) All acts done by an attorney in fact pursuant to a durable power*
31 *of attorney shall inure to the benefit of and bind the principal and the*
32 *principal's successors in interest, notwithstanding any disability of the*
33 *principal. Any acts done by the attorney in fact not strictly for the benefit*
34 *of the principal or the principal's estate are in violation of the durable*
35 *power of attorney, making such acts void and may result in prosecution*
36 *under all applicable laws.*

37 ~~(c) (1) A power of attorney does not have to be recorded to be valid~~
38 ~~and binding between the principal and attorney in fact or between the~~
39 ~~principal and third persons.~~

40 ~~—(2)— A power of attorney may be recorded in the same manner as a~~
41 ~~conveyance of land is recorded. A certified copy of a recorded power of~~
42 ~~attorney may be admitted into evidence.~~

43 ~~—(3)— If a power of attorney is recorded any revocation of that power~~

1 of attorney must be recorded in the same manner for the revocation to
2 be effective. If a power of attorney is not recorded it may be revoked by
3 a recorded revocation or in any other appropriate manner. The power of
4 attorney must be filed and recorded in the office of the register of deeds
5 of:

- 6 (A) The county in this state designated in the power of attorney;
7 (B) the county in which the legal residence of the principal is located
8 at the time of such recording; or
9 (C) if the principal has no legal residence in this state at the time of
10 such recording or the attorney in fact is uncertain as to the principal's
11 legal residence in this state, then:
- 12 (i) Some county in this state in which the principal owns real or per-
13 sonal property; or
14 (ii) the county in which one or more of the attorneys in fact reside.
- 15 (2) The fees and charges of the register of deeds for such recordation
16 shall be paid by the attorney in fact out of the principal's money or other
17 property and allowed in the principal's accounts.
- 18 (3) A certified copy of a recorded power of attorney may be admitted
19 into evidence.
- 20 (d) (1) For the revocation of a power of attorney to be effective it
21 must be recorded with the same register of deeds where the power of
22 attorney was recorded. If a power of attorney is not recorded it may be
23 revoked by a recorded revocation in the same manner.
- 24 ~~(4)~~ (2) A power of attorney requires notice of revocation be given
25 to named persons; Those persons may continue to rely on the authority
26 set forth in the power of attorney until such notice is received.
- 27 (e) No power of attorney executed pursuant to the provisions of K.S.A.
28 58-650 et seq., and amendments thereto, shall be valid subsequent to the
29 principal's incapacity or mental incompetence unless it is drafted and
30 recorded in accordance with the provisions of this section.
- 31 ~~(f)~~ (f) A person who is appointed an attorney in fact under a durable
32 power of attorney has no duty to exercise the authority conferred in the
33 power of attorney, unless the attorney in fact has agreed expressly in
34 writing to act for the principal in such circumstances. An agreement to
35 act on behalf of the principal is enforceable against the attorney in fact
36 as a fiduciary without regard to whether there is any consideration to
37 support a contractual obligation to do so. Acting for the principal in one
38 or more transactions does not obligate an attorney in fact to act for the
39 principal in subsequent transactions.
- 40 ~~(g)~~ (g) The grant of power or authority conferred by a power of at-
41 torney in which any principal shall vest any power or authority in an
42 attorney in fact, if such writing expressly so provides, shall be effective
43 only upon: (1) A specified future date; (2) the occurrence of a specified

1 future event; or (3) the existence of a specified condition which may occur
2 in the future. In the absence of actual knowledge to the contrary, any
3 person to whom such writing is presented shall be entitled to rely on an
4 affidavit, executed by the attorney in fact, setting forth that such event
5 has occurred or condition exists.

6 Sec. 3. K.S.A. 2009 Supp. 58-654 is hereby amended to read as fol-
7 lows: 58-654. (a) A principal may delegate to an attorney in fact in a
8 power of attorney general powers to act in a fiduciary capacity on the
9 principal's behalf with respect to all lawful subjects and purposes or with
10 respect to one or more express subjects or purposes. A power of attorney
11 with general powers may be durable or nondurable.

12 (b) If the power of attorney states that general powers are granted to
13 the attorney in fact and further states in substance that it grants power
14 to the attorney in fact to act with respect to all lawful subjects and pur-
15 poses or that it grants general powers for general purposes or does not
16 by its terms limit the power to the specific subject or purposes set out in
17 the instrument, then the authority of the attorney in fact acting under
18 the power of attorney shall extend to and include each and every action
19 or power which an adult who is not disabled may carry out through an
20 agent specifically authorized in the premises, with respect to any and all
21 matters whatsoever, except as provided in subsection (f) and (g). When
22 a power of attorney grants general powers to an attorney in fact to act
23 with respect to all lawful subjects and purposes, the enumeration of one
24 or more specific subjects or purposes does not limit the general authority
25 granted by that power of attorney, unless otherwise provided in the power
26 of attorney. An attorney in fact vested with general powers shall be au-
27 thorized to execute a power of attorney required by any governmental
28 agency or other legal entity on behalf of the principal, naming such at-
29 torney in fact as the attorney in fact authorized to enter into any trans-
30 action with such agency or legal entity.

31 (c) If the power of attorney states that general powers are granted to
32 an attorney in fact with respect to one or more express subjects or pur-
33 poses for which general powers are conferred, then the authority of the
34 attorney in fact acting under the power of attorney shall extend to and
35 include each and every action or power, but only with respect to the
36 specific subjects or purposes expressed in the power of attorney that an
37 adult who is not disabled may carry out through an agent specifically
38 authorized in the premises, with respect to any and all matters whatso-
39 ever, except as provided in subsection (f) and (g).

40 (d) Except as provided in subsections (f) and (g), an attorney in fact
41 with general powers has, with respect to the subjects or purposes for
42 which the powers are conferred, all rights, power and authority to act for
43 the principal that the principal would have with respect to the principal's

1 own person or property, including property owned jointly or by the en-
2 tireties with another or others, as an adult who is not disabled. Without
3 limiting the foregoing an attorney in fact with general powers has, with
4 respect to the subject or purposes of the power, complete discretion to
5 make a decision for the principal, to act or not act, to consent or not
6 consent to, or withdraw consent for, any act, and to execute and deliver
7 or accept any deed, bill of sale, bill of lading, assignment, contract, note,
8 security instrument, consent, receipt, release, proof of claim, petition or
9 other pleading, tax document, notice, application, acknowledgment or
10 other document necessary or convenient to implement or confirm any
11 act, transaction or decision. An attorney in fact with general powers,
12 whether power to act with respect to all lawful subjects and purposes, or
13 only with respect to one or more express subjects or purposes, shall have
14 the power, unless specifically denied by the terms of the power of attor-
15 ney, to make, execute and deliver to or for the benefit of or at the request
16 of a third person, who is requested to rely upon an action of the attorney
17 in fact, an agreement indemnifying and holding harmless any third person
18 or persons from any liability, claims or expenses, including legal expenses,
19 incurred by any such third person by reason of acting or refraining from
20 acting pursuant to the request of the attorney in fact. Such indemnity
21 agreement shall be binding upon the principal who has executed such
22 power of attorney and upon the principal's successor or successors in
23 interest. No such indemnity agreement shall protect any third person
24 from any liability, claims or expenses incurred by reason of the fact that,
25 and to the extent that, the third person has honored the power of attorney
26 for actions outside the scope of authority granted by the power of attor-
27 ney. In addition, the attorney in fact has complete discretion to employ
28 and *reasonably* compensate real estate agents, brokers, attorneys, ac-
29 countants and subagents of all types to represent and act for the principal
30 in any and all matters, including tax matters involving the United States
31 government or any other government or taxing entity, including, but not
32 limited to, the execution of supplemental or additional powers of attorney
33 in the name of the principal in form that may be required or preferred
34 by any such taxing entity or other third person, and to deal with any or
35 all third persons in the name of the principal without limitation. No such
36 supplemental or additional power of attorney shall broaden the scope of
37 authority granted to the attorney in fact in the original power of attorney
38 executed by the principal.

39 (e) An attorney in fact, who is granted general powers for all subjects
40 and purposes or with respect to any express subjects or purposes, shall
41 exercise the powers conferred according to the principal's instructions, in
42 the principal's best interest, in good faith, prudently and in accordance
43 with K.S.A. 58-655 and 58-656, and amendments thereto.

- 1 (f) Any power of attorney, whether or not it grants general powers
2 for all subjects and purposes or with respect to express subjects or pur-
3 poses, shall be construed to grant power or authority to an attorney in
4 fact to carry out any of the actions described in this subsection only if the
5 actions are expressly enumerated and authorized in the power of attorney.
6 Any power of attorney may grant power or authority to an attorney in fact
7 to carry out any of the following actions if the actions are expressly au-
8 thorized in the power of attorney:
- 9 (1) To execute, amend or revoke any trust agreement;
 - 10 (2) to fund with the principal's assets any trust not created by the
11 principal;
 - 12 (3) to make or revoke a gift of the principal's property in trust or
13 otherwise;
 - 14 (4) to disclaim a gift or devise of property to or for the benefit of the
15 principal;
 - 16 (5) to create or change survivorship interests in the principal's prop-
17 erty or in property in which the principal may have an interest. The in-
18 clusion of the authority set out in this paragraph shall not be necessary
19 in order to grant to an attorney in fact acting under a power of attorney
20 granting general powers with respect to all lawful subjects and purposes
21 the authority to withdraw funds or other property from any account, con-
22 tract or other similar arrangement held in the names of the principal and
23 one or more other persons with any financial institution, brokerage com-
24 pany or other depository to the same extent that the principal would be
25 authorized to do if the principal were present, not disabled and seeking
26 to act in the principal's own behalf;
 - 27 (6) to designate or change the designation of beneficiaries to receive
28 any property, benefit or contract right on the principal's death;
 - 29 (7) to give or withhold consent to an autopsy or postmortem
30 examination;
 - 31 (8) to make a gift of, or decline to make a gift of, the principal's body
32 parts under the revised uniform anatomical gift act, K.S.A. 2009 Supp.
33 65-3220 through 65-3244, and amendments thereto;
 - 34 (9) to nominate a guardian or conservator for the principal; and if so
35 stated in the power of attorney, the attorney in fact may nominate such
36 attorney in fact's self as such;
 - 37 (10) to give consent on behalf of the principal to the sale, gift, trans-
38 fer, mortgage or other alienation of the principal's homestead or interest
39 therein if:
 - 40 (A) The principal's spouse, personally or through such spouse's at-
41 torney in fact, has also consented to such alienation;
 - 42 (B) the power of attorney specifically describes the homestead by
43 reference to a legal description and the street address of the property;

1 and

2 (C) the principal's spouse, in a written document duly acknowledged
3 by the spouse, has stated such spouse's consent that the attorney in fact
4 may alienate the interests, in whole or in part, of the principal in the
5 described homestead and, further, the spouse agrees that the consent of
6 the attorney in fact will constitute the consent of the principal required
7 by Article 15, Section 9 of the Kansas Constitution. Nothing herein shall
8 be construed as a limitation or abridgement of the right of the spouse of
9 the principal to consent or withhold such spouse's consent to the alien-
10 ation of the spouse's homestead, or any rights therein, under Article 15,
11 section 9 of the Kansas Constitution;

12 (11) to designate one or more substitute or successor or additional
13 attorneys in fact;

14 (12) to delegate any or all powers granted in a power of attorney
15 pursuant to subsection (a) of K.S.A. 58-660, and amendments thereto; or

16 (13) to pay reasonable expenses incurred for the funeral and burial
17 or other disposition of the body of the principal.

18 (g) No power of attorney, whether or not it delegates general powers,
19 may delegate or grant power or authority to an attorney in fact to do or
20 carry out any of the following actions for the principal:

21 (1) To make, publish, declare, amend or revoke a will for the
22 principal;

23 (2) to make, execute, modify or revoke a declaration under K.S.A. 65-
24 28,101 et seq., and amendments thereto, for the principal or to make,
25 execute, modify or revoke a do not resuscitate directive under K.S.A. 65-
26 4941, and amendments thereto, for the principal or to make, execute,
27 modify or revoke a durable power of attorney for health care decisions
28 pursuant to K.S.A. 58-625, et seq., and amendments thereto, for the
29 principal;

30 (3) to require the principal, against the principal's will, to take any
31 action or to refrain from taking any action; or

32 (4) to carry out any actions specifically forbidden by the principal
33 while not under any disability or incapacity.

34 (h) A third person may freely rely on, contract and deal with an at-
35 torney in fact delegated general powers with respect to the subjects and
36 purposes encompassed or expressed in the power of attorney without
37 regard to whether the power of attorney expressly identifies the specific
38 property, account, security, storage facility or matter as being within the
39 scope of a subject or purpose contained in the power of attorney, and
40 without regard to whether the power of attorney expressly authorizes the
41 specific act, transaction or decision by the attorney in fact.

42 (i) It is the policy of this state that an attorney in fact acting pursuant
43 to the provisions of a power of attorney granting general powers shall be

1 accorded the same rights and privileges with respect to the personal wel-
2 fare, property and business interests of the principal, and if the power of
3 attorney enumerate some express subjects or purposes, with respect to
4 those subjects or purposes, as if the principal was personally present and
5 acting or seeking to act; and any provision of law and any purported
6 waiver, consent or agreement executed or granted by the principal to the
7 contrary shall be void and unenforceable.

8 (j) K.S.A. 58-650 through 58-665, and amendments thereto, shall not
9 be construed to preclude any person or business enterprise from provid-
10 ing in a contract with the principal as to the procedure that thereafter
11 must be followed by the principal or the principal's attorney in fact in
12 order to give a valid notice to the person or business enterprise of any
13 modification or termination of the appointment of an attorney in fact by
14 the principal. Any such contractual provision for notice shall be valid and
15 binding on the principal and the principal's successors so long as such
16 provision is reasonably capable of being carried out.

17 Sec. 4. K.S.A. 2009 Supp. 58-656 is hereby amended to read as fol-
18 lows: 58-656. (a) An attorney in fact who elects to act under a power of
19 attorney is under a duty to act in the interest of the principal and to avoid
20 conflicts of interest that impair the ability of the attorney in fact so to act.
21 A person who is appointed an attorney in fact under a power of attorney
22 who undertakes to exercise the authority conferred in the power of at-
23 torney, has a fiduciary obligation to exercise the powers conferred in the
24 best interests of the principal, and to avoid self-dealing and conflicts of
25 interest, as in the case of a trustee with respect to the trustee's beneficiary
26 or beneficiaries. ~~The attorney in fact shall keep a record of receipts, dis-~~
27 ~~bursements and transactions made on behalf of the principal and shall~~
28 ~~not commingle funds or assets of the principal with the funds or assets of~~
29 ~~the attorney in fact.~~ In the absence of explicit authorization, the attorney
30 in fact shall exercise a high degree of care in maintaining, without mod-
31 ification, any estate plan which the principal may have in place, including,
32 but not limited to, arrangements made by the principal for disposition of
33 assets at death through beneficiary designations, ownership by joint ten-
34 ancy or tenancy by the entirety, trust arrangements or by will or codicil.
35 Unless otherwise provided in the power of attorney or in a separate agree-
36 ment between the principal and attorney in fact, an attorney in fact who
37 elects to act shall exercise the authority granted in a power of attorney
38 with that degree of care that would be observed by a prudent person
39 dealing with the property and conducting the affairs of another, except
40 that all investments made on or after July 1, 2003, shall be in accordance
41 with the provisions of the Kansas uniform prudent investor act, K.S.A.
42 58-24a01 et seq., and amendments thereto. If the attorney in fact has
43 special skills or was appointed attorney in fact on the basis of represen-

1 tations of special skills or expertise, the attorney in fact has a duty to use
2 those skills in the principal's behalf.

3 (b) On matters undertaken or to be undertaken in the principal's
4 behalf and to the extent reasonably possible under the circumstances, an
5 attorney in fact has a duty to keep in regular contact with the principal,
6 to communicate with the principal and to obtain and follow the instruc-
7 tions of the principal.

8 (c) If, following execution of a durable power of attorney, a court of
9 the principal's domicile appoints a conservator, guardian of the estate or
10 other fiduciary charged with the management of all of the principal's
11 property or all of the principal's property except specified exclusions, the
12 attorney in fact is accountable to the fiduciary as well as to the principal.
13 The fiduciary has the same power to revoke or amend the durable power
14 of attorney that the principal would have had if the principal were not an
15 adult with an impairment in need of a guardian or conservator or both as
16 defined by subsection (a) of K.S.A. 59-3051, and amendments thereto.

17 (d) A principal may nominate by a power of attorney, a guardian or
18 conservator, or both, for consideration by the court. If a petition to ap-
19 point a guardian or conservator, or both, is filed, the court shall make the
20 appointment in accordance with the principal's most recent nomination
21 in the power of attorney, so long as the individual nominated is a fit and
22 proper person.

23 (e) An attorney in fact shall exercise authority granted by the principal
24 in accordance with the instrument setting forth the power of attorney,
25 any modification made therein by the principal or the principal's legal
26 representative or a court, and the oral and written instructions of the
27 principal, or the written instructions of the principal's legal representative
28 or a court.

29 (f) An attorney in fact may be instructed in a power of attorney that
30 the authority granted shall not be exercised until, or shall terminate on,
31 the happening of a future event, condition or contingency, as determined
32 in a manner prescribed in the instrument.

33 (g) On the death of the principal, the attorney in fact shall follow the
34 instructions of the court, if any, having jurisdiction over the estate of the
35 principal, or any part thereof, and shall communicate with and be ac-
36 countable to the principal's personal representative, or if none, the prin-
37 cipal's successors. The attorney in fact shall promptly deliver to and put
38 in the possession and control of the principal's personal representative or
39 successors, any property of the principal and copies of any records of the
40 attorney in fact relating to transactions undertaken in the principal's be-
41 half that are deemed by the personal representative or the court to be
42 necessary or helpful in the administration of the decedent's estate.

43 (h) If an attorney in fact has a property or contract interest in the

1 subject of the power of attorney or the authority of the attorney in fact
2 is otherwise coupled with an interest in a person other than the principal,
3 this section does not impose any duties on the attorney in fact that would
4 conflict or be inconsistent with that interest.

5 (i) *The attorney in fact shall keep an adequate record of receipts,*
6 *disbursements and transactions made on behalf of the principal and shall*
7 *not commingle funds or assets of the principal with the funds or assets of*
8 *the attorney in fact.*

9 (j) (1) *Failure to maintain adequate records is negligently failing to*
10 *maintain such records as are necessary to disclose fully the nature of the*
11 *receipts, disbursements and transactions made by the attorney in fact on*
12 *behalf of the principal. Such records of receipts, disbursements and trans-*
13 *actions shall be maintained by the attorney in fact for five years after the*
14 *date on which such receipt, disbursement or transaction occurred.*

15 (2) *Failure to maintain adequate records as described in paragraph*
16 *(1) is a class A, nonperson misdemeanor.*

17 (k) (1) *Destruction or concealment of records of receipts, disburse-*
18 *ments and transactions is intentionally destroying or concealing such re-*
19 *records as are necessary to disclose fully the nature of the receipts, dis-*
20 *bursements and transactions made by the attorney in fact on behalf of the*
21 *principal. Such records of receipts, disbursements and transactions shall*
22 *not be destroyed or concealed for a period of five years after the date on*
23 *which such receipt, disbursement or transaction occurred.*

24 (2) *Destruction or concealment of records as described in paragraph*
25 *(1) is a severity level 9, nonperson felony.*

26 Sec. 5. K.S.A. 58-663 is hereby amended to read as follows: 58-663.

27 (a) This act applies to the acts and transaction in this state of attorneys in
28 fact under powers of attorney executed in this state or by residents of this
29 state. Further, this act applies to acts and transactions of attorneys in fact
30 in this state or outside this state under powers of attorney that refer to
31 the power of attorney law of Kansas in the instrument creating the power
32 of attorney, if any of the following conditions are met:

33 (1) The principal or attorney in fact was a resident of this state at the
34 time the power of attorney was executed;

35 (2) the powers and authority conferred relate to property, acts or
36 transactions in this state;

37 (3) the acts and transactions of the attorney in fact or successor oc-
38 curred or were to occur in this state;

39 (4) the power of attorney was executed in this state; or

40 (5) there is otherwise a reasonable relationship between this state and
41 the subject matters of the power of attorney.

42 The power of attorney so created remains subject to this act despite a
43 subsequent change in residence of the principal or the attorney in fact

1 and any successor, or the removal from this state of property which was
2 the subject of the power of attorney.

3 (b) A person who acts as an attorney in fact or successor pursuant to
4 a power of attorney governed by this act is subject to personal jurisdiction
5 in this state with respect to matters relating to acts and transactions of
6 the attorney in fact or successor performed in this state, performed for a
7 resident of this state or affecting property in this state.

8 (c) A durable power of attorney that purports to have been made
9 under the provisions of the durable power of attorney act of another state
10 is governed by the law of that state ~~and, if durable where executed, is~~
11 ~~durable and may be carried out and enforced in this state, unless the~~
12 *principal establishes a legal residence in Kansas. Upon establishing a legal*
13 *residence in this state the durable power of attorney must be recorded*
14 *with the office of the register of deeds of the county in which the principal*
15 *has established a legal residence, and the durable power of attorney shall*
16 *be subject to the laws of the state of Kansas and the requirements of K.S.A.*
17 *58-650 et seq., and amendments thereto.*

18 (d) A power of attorney executed by a resident of another state, may
19 authorize the carrying out in this state of all acts permitted to be delegated
20 to an attorney in fact by the laws of the state of the residence of the
21 principal, the laws of the state where the power of attorney is executed
22 or the laws of this state, whichever law is most favorable toward author-
23 izing such delegation, and is durable if so designated either under the
24 laws of this state, under the laws of the state of residence of the principal
25 or under the laws of the state where the power of attorney is executed.

26 Sec. 6. K.S.A. 58-651 and 58-663 and K.S.A. 2009 Supp. 58-652, 58-
27 654 and 58-656 are hereby repealed.

28 Sec. 7. This act shall take effect and be in force from and after its
29 publication in the statute book.