

2021 Kansas Statutes

58-652. **Effectiveness of power of attorney; recording; revocation; attorney in fact.** (a) The authority granted by a principal to an attorney in fact in a written power of attorney is not terminated in the event the principal becomes wholly or partially disabled or in the event of later uncertainty as to whether the principal is dead or alive if:

- (1) The power of attorney is denominated a "durable power of attorney";
- (2) the power of attorney includes a provision that states in substance one of the following:
 - (A) "This is a durable power of attorney and the authority of my attorney in fact shall not terminate if I become disabled or in the event of later uncertainty as to whether I am dead or alive"; or
 - (B) "this is a durable power of attorney and the authority of my attorney in fact, when effective, shall not terminate or be void or voidable if I am or become disabled or in the event of later uncertainty as to whether I am dead or alive"; and
- (3) the power of attorney is signed by the principal, and dated and acknowledged in the manner prescribed by the revised uniform law on notarial acts. If the principal is physically unable to sign the power of attorney but otherwise competent and conscious, the power of attorney may be signed by an adult designee of the principal in the presence of the principal and at the specific direction of the principal expressed in the presence of a notary public. The designee shall sign the principal's name to the power of attorney in the presence of a notary public, following which the document shall be acknowledged in the manner prescribed by the revised uniform law on notarial acts, to the same extent and effect as if physically signed by the principal.

(b) All acts done by an attorney in fact pursuant to a durable power of attorney shall inure to the benefit of and bind the principal and the principal's successors in interest, notwithstanding any disability of the principal.

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

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

(3) If a power of attorney is recorded any revocation of that power of attorney must be recorded in the same manner for the revocation to be effective. If a power of attorney is not recorded it may be revoked by a recorded revocation or in any other appropriate manner.

(4) If a power of attorney requires notice of revocation be given to named persons, those persons may continue to rely on the authority set forth in the power of attorney until such notice is received.

(d) A person who is appointed an attorney in fact under a durable power of attorney has no duty to exercise the authority conferred in the power of attorney, unless the attorney in fact has agreed expressly in writing to act for the principal in such circumstances. An agreement to act on behalf of the principal is enforceable against the attorney in fact as a fiduciary without regard to whether there is any consideration to support a contractual obligation to do so. Acting for the principal in one or more transactions does not obligate an attorney in fact to act for the principal in subsequent transactions.

(e) The grant of power or authority conferred by a power of attorney in which any principal shall vest any power or authority in an attorney in fact, if such writing expressly so provides, shall be effective only upon: (1) A specified future date; (2) the occurrence of a specified future event; or (3) the existence of a specified condition which may occur in the future. In the absence of actual knowledge to the contrary, any person to whom such writing is presented shall be entitled to rely on an affidavit, executed by the attorney in fact,

setting forth that such event has occurred or condition exists.

(f) A power of attorney executed on or after July 1, 2021, shall be deemed sufficient if in substantial compliance with the form set forth by the judicial council. The judicial council shall develop a form for use under this section.

(g) The amendments made to this section by this act apply prospectively and shall not affect the validity of a power of attorney executed prior to July 1, 2021.

History: L. 2003, ch. 58, § 3; L. 2009, ch. 73, § 2; L. 2021, ch. 62, § 1; L. 2021, ch. 113, § 4; January 1, 2022.

Revisor's Note:

Section was also amended by L. 2021, ch. 64, § 39, but that version was repealed by L. 2021, ch. 113, § 9.