

CHAPTER 633B

POWERS OF ATTORNEY

[P]

See also chapter 144B concerning
durable power of attorney for health care
[SP] Transferred from ch 633, division XVII, in Code Supplement 2005
pursuant to Code editor directive; 2005 Acts, ch 38, §53

633B.1 When power of attorney not
affected by disability.

633B.2 Other powers of attorney not
revoked until notice of death
or disability.

633B.1 When power of attorney not affected by disability.

1. Whenever a principal designates another the principal's attorney in fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal", or "This power of attorney shall become effective upon the disability of the principal", or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's disability, the authority of the attorney in fact or agent is exercisable as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney in fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal and the principal's heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator thereafter is appointed for the principal, the attorney in fact or agent, during the continuance of the appointment, shall account to the conservator rather than the principal, and the conservator shall have the power to revoke the power of attorney on behalf of the principal.

2. An affidavit, executed by the attorney in fact or agent stating that the attorney in fact or agent did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death or by the act of the principal, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is also recordable.

3. Receipt of the affidavit described in subsection 2 by the holder of the principal's property constitutes sufficient acquittance for the payment of money, delivery of property, or transfer of a registered ownership of property as directed by the attorney in fact or agent and discharges the holder from further liability with respect to the money or property, if the holder has taken reasonable steps to verify the identity of the person acting as attorney in fact or agent. The holder of the principal's property may rely in good faith on the statements contained in the affidavit and has no duty to inquire into the truth of any statements in the affidavit.

4. If an attorney in fact or agent has provided the affidavit described in subsection 2 and the holder of the principal's property refuses to pay, deliver, or transfer any property or evidence thereof within a reasonable amount of time, the principal, acting through the attorney in fact or agent, may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

a. If an action is brought against the holder under this subsection and the court finds that the holder of the principal's property acted unreasonably in refusing to pay, deliver, or transfer the property as directed by the attorney in fact, the court may award any or all of the following to the principal:

- (1) Damages sustained by the principal.
- (2) Costs of the action.

(3) A penalty in an amount determined by the court, not less than five hundred dollars nor more than one thousand dollars.

(4) Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the principal.

b. No action shall be brought pursuant to this section more than one year after the date of the occurrence of the violation.

[C77, 79, 81, §633.705]

2000 Acts, ch 1150, §6; 2005 Acts, ch 38, §33, 53

CS2005, §633B.1

Referred to in §144A.7, 231E.3, 633B.2

633B.2 Other powers of attorney not revoked until notice of death or disability.

1. The death, disability, or incompetence of any principal who has executed a power of attorney in writing other than a power as described by section 633B.1 does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the death, disability, or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and the principal's heirs, devisees, and personal representatives.

2. An affidavit, executed by the attorney in fact or agent stating that the attorney in fact or agent did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney, by death, disability, or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when properly acknowledged is likewise recordable.

3. Receipt, by the holder of the principal's property, of the affidavit described in subsection 2 constitutes sufficient acquittance for the payment of money, delivery of property, or transfer of the registered ownership of property as directed by the attorney in fact or agent and discharges the holder from any further liability to any person with respect to the money or the property, if the holder has taken reasonable steps to verify the identity of the person acting as attorney in fact or agent. The holder of the principal's property may rely in good faith on the statements in the affidavit and has no duty to inquire into the truth of any of the statements in the affidavit.

4. If an attorney in fact or agent has provided the affidavit described in subsection 2 and the holder of the principal's property refuses to pay, deliver, or transfer any property or evidence thereof within a reasonable amount of time, the principal, acting through the attorney in fact may recover the property or compel its payment, delivery, or transfer in an action brought for that purpose against the holder of the property.

a. If an action is brought against the holder under this subsection and the court finds that the holder of the principal's property acted unreasonably in refusing to pay, deliver, or transfer the property as directed by the attorney in fact, the court may award any or all of the following to the principal:

(1) Damages sustained by the principal.

(2) Costs of the action.

(3) A penalty in an amount determined by the court, not less than five hundred dollars nor more than one thousand dollars.

(4) Reasonable attorney fees, as determined by the court, based on the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the principal.

b. No action shall be brought pursuant to this section more than one year after the date of the occurrence of the violation.

5. This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

[C77, 79, 81, §633.706]

2005 Acts, ch 38, §34, 53, 55

CS2005, §633B.2