

HOUSE No. 1575

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the durable power of attorney act..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of Chapter 201B of the General Laws, as appearing in the 2004
2 Official Edition, is hereby amended by striking out subsection A and inserting in place thereof
3 the following subsection:—

4 (a) A durable power of attorney is a power of attorney by which a principal, in writing,
5 designates another as his attorney in fact and the writing contains the words, “This power of
6 attorney shall not be affected by subsequent disability or incapacity of the principal,” or “This
7 power of attorney shall not be affected by subsequent disability or incapacity of the principal or
8 by lapse of time,” or “This power of attorney shall become effective upon the disability or
9 incapacity of the principal,” or similar words showing the intent of the principal that the
10 authority conferred shall continue notwithstanding the subsequent disability or incapacity of the
11 principal, and, unless the instrument states a time of termination, shall continue notwithstanding
12 the lapse of time since the execution of the instrument.

13 SECTION 2. Said Chapter 201B is hereby further amended by striking out Section 2, as
14 appearing in the 2004 Official Edition and inserting in place thereof the following section:—

15 Section 2. Regardless of the date of execution of the durable power of attorney, all acts
16 done by an attorney in fact pursuant to a durable power of attorney during any period of
17 disability or incapacity of the principal shall have the same effect and inure to the benefit of, and
18 bind the principal and his successors in interest, as if the principal were competent and not
19 disabled.

20 SECTION 3. Said Chapter 201B is hereby further amended by striking out section 5, as
21 appearing in the 2004 Official Edition and inserting in place there of the following section:—

22 Section 5. Good faith reliance; knowledge of termination of power; damages and costs.

23 (a) As to acts undertaken in good faith reliance thereon, an affidavit executed by the
24 attorney in fact under a power of attorney, durable or otherwise, stating that he did not have, at
25 the time of exercise of the power, actual knowledge of the termination of the power by
26 revocation or of the death, disability or incapacity of the principal shall be conclusive proof of
27 the nonrevocation or nontermination of the power at that time. If the exercise of the power of
28 attorney requires execution and delivery of any instrument that is recordable, such affidavit when
29 authenticated for record shall be likewise recordable. This section shall not affect any provision
30 in a power of attorney for its termination by expiration of time or occurrence of an event other
31 than express revocation or a change in the capacity of the principal. Third parties who act in
32 reasonable reliance on such an affidavit shall not be liable in any action for any loss suffered or
33 liability incurred as a result of actions taken by an attorney in fact.

34 (b) An attorney in fact who prevails in enforcing a durable power of attorney shall be
35 entitled to recover attorney's fees, costs, and consequential damages, and such other equitable
36 relief as the court deems appropriate.