

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 741

Short Title: Revoke Unrec. Powers of Atty.

(Public)

Sponsors: Senator Cooper.

Referred to: Judiciary I.

April 22, 1991

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE REVOCATION OF UNRECORDED DURABLE POWERS OF ATTORNEY AND TO PROVIDE FOR PROOF OF EFFECTIVENESS OF A DURABLE POWER OF ATTORNEY BY AFFIDAVIT OF ATTORNEY-IN-FACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-8 reads as rewritten:

"§ 32A-8. Definition.

A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains a statement that it is executed pursuant to the provisions of this Article or the words 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence,' or 'This power of attorney shall become effective after I become incapacitated or mentally incompetent,' or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity or mental incompetence. Unless the durable power of attorney provides otherwise, where the grant of power or authority conferred by a durable power of attorney is effective only upon the principal's subsequent incapacity or mental incompetence, any person to whom such writing is presented, in the absence of actual knowledge to the contrary, shall be entitled to rely on an affidavit, executed by the attorney-in-fact and setting forth that such condition exists, as conclusive proof of such incapacity or mental incompetence, subject to the provisions of G.S. 32A-13."

Sec. 2. G.S. 32A-13 reads as rewritten:

"§ 32A-13. Revocation.

1 (a) Every power of attorney executed pursuant to the provisions of this Article
2 and registered in an office of the register of deeds in this State as provided in G.S. 32A-
3 9(b) shall be revoked by:

- 4 (1) The death of the principal; or
- 5 (2) Registration in the office of the register of deeds where the power of
6 attorney has been registered of an instrument of revocation executed
7 and acknowledged by the principal while he is not incapacitated or
8 mentally incompetent, or by the registration in such office of an
9 instrument of revocation executed by any person or corporation who is
10 given such power of revocation in the power of attorney, or by this
11 Article, with proof of service thereof in either case on the attorney-in-
12 fact in the manner prescribed for service of summons in civil actions.

13 (b) Every power of attorney executed pursuant to the provisions of this Article
14 which has not been registered in an office of the register of deeds in this State shall be
15 revoked by:

- 16 (1) The death of the principal;
- 17 (2) Any method provided in the power of attorney;
- 18 (3) Being burnt, torn, canceled, obliterated, or destroyed, with the intent
19 and for the purpose of revoking it, by the principal himself or by
20 another person in his presence and by his direction, while the principal
21 is not incapacitated or mentally incompetent; or
- 22 (4) A subsequent written revocatory document executed and
23 acknowledged in the manner provided herein for the execution of
24 durable powers of attorney by the principal while not incapacitated or
25 mentally incompetent and delivered to the attorney-in-fact in person or
26 to his last known address by certified or registered mail, return receipt
27 requested.

28 (c) As to acts undertaken in good faith reliance upon an affidavit executed by the
29 attorney-in-fact stating that he did not have, at the time of exercise of the power, actual
30 knowledge of the termination of the power by revocation pursuant to the provisions of
31 G.S. 32A-13(b) or by the principal's death, such affidavit is conclusive proof of the
32 nonrevocation or nontermination of the power at that time. This section does not affect
33 any provision in a power of attorney for its termination by the expiration of time or
34 occurrence of an event other than an express revocation."

35 Sec. 3. This act is effective upon ratification and applies to all durable
36 powers of attorney in existence or created on or after that date.