

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 173
SENATE BILL 741

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.

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

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

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

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

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

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

In the General Assembly read three times and ratified this the 30th day of May, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives