

By Senator Klein

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A bill to be entitled
An act relating to powers of attorney; creating
s. 709.085, F.S.; providing for contingent
powers of attorney; providing guidelines for
such powers of attorney; creating s. 709.0851,
F.S.; providing a statutory short form for a
contingent power of attorney; providing an
effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 709.085, Florida Statutes, is
created to read:

709.085 Contingent power of attorney.--

(1) An instrument granting a power of attorney may
limit such power to take effect at a specified future time.

(2) An instrument granting a power of attorney may
limit such power to take effect upon the occurrence of a
specified contingency, including, but not limited to, the
incapacity of the principal. Such an instrument must require
that a person or persons named in it declare, in writing, that
the contingency has occurred. A power so limited will take
effect upon the written declaration of the person or persons
named in the instrument that the contingency has occurred,
without regard to whether that contingency has, in fact,
occurred.

(3) The disability or incompetence of a principal does
not revoke or terminate the authority of an attorney in fact
who acts under a power of attorney executed in writing by the
principal in accordance with subsection (1) or subsection (2)
if the instrument contains the phrase "this power of attorney

1 is not affected by my subsequent disability or incompetence"
2 or similar words that show the intent of the principal that
3 the authority conferred is exercisable notwithstanding his or
4 her disability or incompetence.

5 (4) The powers delegable to an attorney in fact under
6 this section are the same as those delegable under s. 709.08.

7 Section 2. Section 709.0851, Florida Statutes, is
8 created to read:

9 709.0851 Contingent power of attorney; form.--A
10 contingent power of attorney must be in substantially the
11 following form:

12 CONTINGENT POWER OF ATTORNEY; SHORT FORM

13 (CAUTION: THIS IS AN IMPORTANT DOCUMENT. IT GIVES THE
14 PERSON WHOM YOU DESIGNATE BROAD POWER TO HANDLE YOUR PROPERTY
15 DURING YOUR LIFETIME, WHICH MAY INCLUDE THE POWER TO MORTGAGE,
16 SELL, OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY
17 WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. THESE POWERS
18 MAY BE USED ONLY AFTER A CERTIFICATION THAT YOU HAVE BECOME
19 DISABLED, INCAPACITATED, OR INCOMPETENT OR THAT SOME OTHER
20 EVENT HAS OCCURRED.

21 THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL
22 OR OTHER HEALTH-CARE DECISIONS.

23 IF THERE IS ANYTHING ABOUT THIS FORM WHICH YOU DO NOT
24 UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.)

25
26 This is intended to be a contingent power of attorney:

27
28 I, ...(insert your name and address)..., appoint:
29 ...(Insert the name and address of the person or persons to be
30 appointed agent)... my attorney in fact.

31

1 (DIRECTIONS: If more than one agent is appointed,
2 choose ONE of the following two choices by placing your
3 initials in ONE of the blank spaces to the left of your
4 choice. If neither option is chosen, the agents will be
5 required to act TOGETHER.)

6 () Each agent may act SEPARATELY.

7 () All agents may act TOGETHER.

8
9 This appointment will take effect upon the occasion of
10 the signing of a written statement EITHER:

11 (DIRECTIONS: Complete or omit either section I or
12 section II below, but never complete both section I and
13 section II. If you do not complete either section, the
14 provisions of section I WILL APPLY.)

15 (SECTION I)

16 by the following physician or physicians:

17
18 ...(Insert the name and address of the physician or physicians
19 you choose.)...

20
21 or, if I choose no physician or the physician or physicians I
22 choose are unable to act, by my regular physician or by a
23 physician who has treated me within 1 year before the date he
24 or she signs the statement or by a licensed psychologist or
25 psychiatrist certifying that I am suffering from diminished
26 capacity that would preclude me from competently conducting my
27 affairs;

28 (OR)

29 (SECTION II)

30 by a person or persons whom I name at this point:

1 ...(Insert the full name and address of the person or persons
2 you choose.)...
3
4 certifying that the following specified event has occurred:
5
6 ...(Insert the specified event the certification of which will
7 cause this power of attorney to take effect.)...
8
9 in my name, place, and stead in any way that I myself could do
10 if I were personally present, with respect to the following
11 matters, to the extent that I am permitted to act through an
12 agent:
13 (DIRECTIONS: Initial in the blank space to the left of
14 your choice one or more of the following lettered categories
15 as to which you WANT to give your agent authority. If the
16 blank space to the left of a lettered category is NOT
17 initialed, AUTHORITY WILL NOT BE GRANTED FOR MATTERS THAT ARE
18 INCLUDED IN THAT CATEGORY.)
19 () (A) Real estate transactions;
20 () (B) Chattel and goods transactions;
21 () (C) Bond, share, and commodity transactions;
22 () (D) Banking transactions;
23 () (E) Business operating transactions;
24 () (F) Insurance transactions;
25 () (G) Estate transactions;
26 () (H) Claims and litigation;
27 () (I) Personal relationships and affairs;
28 () (J) Benefits from military service;
29 () (K) Records, reports, and statements;
30 () (L) Retirement benefit transactions;
31

1 () (M) Making gifts to my spouse, children and
2 more remote descendents, and parents, not to exceed in the
3 aggregate \$10,000 to each of such persons in any year;

4 () (N) Tax matters;

5 () (O) All other matters;

6 () (P) Full and unqualified authority to my
7 attorney or attorneys in fact to delegate any or all of the
8 foregoing powers to any person or persons who my attorney or
9 attorneys in fact select.

10
11 This power of attorney is not affected by my subsequent
12 disability or incompetence.

13
14 To induce any third party to act under this power of
15 attorney, I agree that any third party receiving a duly
16 executed copy or facsimile of the written statement or
17 statements of certification required for this instrument to be
18 effective may act hereunder and that the suspension,
19 revocation, or termination of this power of attorney is
20 ineffective as to such third party until such third party
21 receives actual notice of such suspension, revocation, or
22 termination or otherwise has actual knowledge of such
23 suspension, revocation, or termination; and I for myself and
24 for my heirs, executors, legal representatives, and assigns
25 agree to indemnify and hold harmless any such third party from
26 all claims that arise against that third party by reason of
27 the third party having relied on the provisions of this
28 instrument.

29
30 This contingent power of attorney may be revoked by me
31 at any time.

1
2 In witness whereof I have signed my name this day
3 of, 20...

4 ...(Signature of Principal)...

5 (ACKNOWLEDGEMENT)

6
7 The execution of this statutory short form contingent power of
8 attorney must be acknowledged by the principal in the same
9 manner prescribed for the acknowledgement of a conveyance of
10 real property. This form is not exclusive, and a principal may
11 use any other form of contingent power of attorney. Each short
12 form contingent power of attorney, to be valid, must be in
13 writing; if typed or printed, the letters must be in a clear
14 type of no less than 12 points in size, and, if in writing,
15 must be in a reasonably equivalent size.

16 Section 3. This act shall take effect January 1, 2001.

17
18 *****

19 SENATE SUMMARY

20 Provides for the creation of a power of attorney that
21 will take effect at a specified future time or upon the
22 occurrence of a specified event. Prescribes requirements
23 for such powers of attorney and provides a statutory
24 form.

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