

HOUSE No. 1575

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the durable power of attorney act.

PETITION OF:

NAME:

Eugene L. O'Flaherty

DISTRICT/ADDRESS:

2nd Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1654 OF .]

The Commonwealth of Massachusetts

In the Year Two Thousand and 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 Official Edition, is
2 hereby amended by striking out subsection A and inserting in place thereof the following subsection:—

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

11 SECTION 2. Said Chapter 201B is hereby further amended by striking out Section 2, as appearing in the
12 2004 Official Edition and inserting in place thereof the following section:—

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

17 SECTION 3. Said Chapter 201B is hereby further amended by striking out section 5, as appearing in the
18 2004 Official Edition and inserting in place thereof the following section:—

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

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

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