

1 **SENATE FLOOR VERSION**

2 February 17, 2015

3 SENATE BILL NO. 109

By: Anderson of the Senate

4 and

5 Rousset of the House

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7  
8 An Act relating to durable powers of attorney;  
9 amending 58 O.S. 2011, Sections 1074 and 1075, which  
10 relate to relationship of court-appointed fiduciary  
11 and attorney-in-fact and incapacity of principal;  
12 modifying authority of certain fiduciary; modifying  
13 certain termination procedures; requiring filing of  
14 certain notice; allowing reliance on certain  
15 authority prior to filing of certain notice; and  
16 providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. AMENDATORY 58 O.S. 2011, Section 1074, is  
19 amended to read as follows:

20 Section 1074. A. If, following execution of a durable power of  
21 attorney, a court of the principal's domicile appoints a  
22 conservator, guardian of the estate, or other fiduciary charged with  
23 the management of all of the principal's property or all of the  
24 principal's property except specified exclusions, the ~~durable power  
of attorney, upon notice of such appointment, shall terminate~~  
attorney-in-fact is accountable to the fiduciary as well as to the

1 principal. The fiduciary has the same power to revoke or amend the  
2 power of attorney that the principal would have had if the principal  
3 were not disabled or incapacitated.

4 B. A principal may nominate, by a durable power of attorney,  
5 the conservator, guardian of his or her estate, or guardian of his  
6 or her person for consideration by the court if protective  
7 proceedings for the principal's person or estate are thereafter  
8 commenced. The court shall make its appointment in accordance with  
9 the principal's most recent nomination in a durable power of  
10 attorney except for good cause or disqualification. ~~In the event~~  
11 ~~such appointment is made by the court, upon notice, the durable~~  
12 ~~power of attorney shall terminate.~~

13 SECTION 2. AMENDATORY 58 O.S. 2011, Section 1075, is  
14 amended to read as follows:

15 Section 1075. A. Death of the principal revokes and terminates  
16 the power of attorney, provided however, the death of a principal  
17 who has executed a written power of attorney, durable or otherwise,  
18 does not revoke or terminate the agency as to the attorney-in-fact  
19 or other person, who, without actual knowledge of the death of the  
20 principal, acts in good faith under the power. Any action so taken,  
21 unless otherwise invalid or unenforceable, binds successors in  
22 interest of the principal.

23 B. The disability or incapacity of a principal who has  
24 previously executed a written power of attorney that is not a

1 durable power does not revoke or terminate the agency as to the  
2 attorney-in-fact or other person, who, without actual knowledge of  
3 the disability or incapacity of the principal, acts in good faith  
4 under the power. Any action so taken, unless otherwise invalid or  
5 unenforceable, binds the principal and his successors in interest.

6 C. If a durable power of attorney is recorded with the clerk in  
7 any county of this state, in the event of revocation of such durable  
8 power of attorney, notice of the revocation shall be filed in each  
9 county or counties where the durable power of attorney was recorded.  
10 Until such notice is recorded, any person or entity may rely on the  
11 recorded authority of the attorney-in-fact with respect to matters  
12 covered by the records of the county clerk, and the acts of the  
13 attorney-in-fact shall be binding on the principal or the  
14 principal's successors in interest.

15 SECTION 3. This act shall become effective November 1, 2015.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
17 February 17, 2015 - DO PASS  
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