

1 ENGROSSED SENATE
2 BILL NO. 109

By: Anderson of the Senate

3 and

4 Roussetot of the House

5
6 An Act relating to durable powers of attorney;
7 amending 58 O.S. 2011, Sections 1074 and 1075, which
8 relate to relationship of court-appointed fiduciary
9 and attorney-in-fact and incapacity of principal;
10 modifying authority of certain fiduciary; modifying
11 certain termination procedures; requiring filing of
12 certain notice; allowing reliance on certain
13 authority prior to filing of certain notice; and
14 providing an effective date.

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

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

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

1 power of attorney that the principal would have had if the principal
2 were not disabled or incapacitated.

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

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

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

22 B. The disability or incapacity of a principal who has
23 previously executed a written power of attorney that is not a
24 durable power does not revoke or terminate the agency as to the

1 attorney-in-fact or other person, who, without actual knowledge of
2 the disability or incapacity of the principal, acts in good faith
3 under the power. Any action so taken, unless otherwise invalid or
4 unenforceable, binds the principal and his successors in interest.

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

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

15 Passed the Senate the 2nd day of March, 2015.

16

17

Presiding Officer of the Senate

18

19 Passed the House of Representatives the ____ day of _____,

20 2015.

21

22

Presiding Officer of the House
of Representatives

23

24