

Title 21. Fiduciary Relations and the Mentally Ill. (Refs & Annos)

Chapter 21. Uniform General Power of Attorney. (Refs & Annos)

§ 21-2101. Statutory form of power of attorney.

(a) The following statutory form of power of attorney is legally sufficient:

STATUTORY POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT OF 1998. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I _____ (insert your name and address) appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL ____ (A) Real property transactions, except transactions subject to D.C. Official Code § 42-101.

____ (B) Tangible personal property transactions.

____ (C) Stock and bond transactions.

____ (D) Commodity and option transactions.

____ (E) Banking and other financial institution transactions.

____ (F) Business operating transactions.

____ (G) Insurance and annuity transactions.

____ (H) Estate, trust, and other beneficiary transactions.

____ (I) Claims and litigation.

____ (J) Personal and family maintenance.

____ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or military service.

____ (L) Retirement plan transactions.

____ (M) Tax matters.

____ (N) ALL OF THE POWERS LISTED ABOVE.

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS: ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT: _____

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

This power of attorney will continue to be effective even though I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ____ day of _____, _____

(Your Signature)

(Your Social Security Number)

District of Columbia

This document was acknowledged before me on _____ (Date) by _____ (name of principal)

(Signature of notary public)

(Seal) _____

[My commission expires: _____]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(b) A statutory power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with subsection (a) of this section, the form is properly completed, and the signature of the principal is acknowledged.

(c) If the line in front of line (N) of the form under subsection (a) of this section is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

CREDIT(S)

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 12, 2000, D.C. Law 13-91, § 143(b), 47 DCR 520.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2101.

Effect of Amendments

D.C. Law 13-91 validated a previously made technical amendment.

Legislative History of Laws

Law 12-147, the "Uniform Statutory Form Power of Attorney Act of 1998," was introduced in Council and assigned Bill No. 12-157, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on April 7, 1998, and May 5, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-359 and transmitted to both Houses of Congress for its review. D.C. Law 12-147 became effective on September 18, 1998.

Law 13-91, the "Technical Amendments Act of 1999," was introduced in Council and assigned Bill No. 13-435, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 2, 1999, and December 7, 1999, respectively. Signed by the Mayor on December 29, 1999, it was assigned Act No. 13-234 and transmitted to both Houses of Congress for its review. D.C. Law 13-91 became effective on April 12, 2000.

Uniform Law

This section is based upon § 1 of the Uniform Statutory Form Power of Attorney Act. See 8B Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

DC CODE § 21-2101

Current through July 7, 2008

§ 21-2102. Durable power of attorney.

A power of attorney legally sufficient under this chapter is durable to the extent that durable powers are permitted by sections 21-2081 through 21-2085, or other law of the District of Columbia and the power of attorney contains language such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent," showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

CREDIT(S)

(Sept. 18, 1998, D.C. Law 12-147, § 2, 45 DCR 3853; Apr. 12, 2000, D.C. Law 13-91, § 143, 47 DCR 520.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2102.

Effect of Amendments

D.C. Law 13-91 validated a previously made technical amendment.

Legislative History of Laws

For legislative history of D.C. Law 12-147, see Historical and Statutory Notes following § 21-2101.

For Law 13-91, see notes following § 21-2101.

Uniform Law

This section is based upon § 2 of the Uniform Statutory Form Power of Attorney Act. See 8B Uniform Laws Annotated, Master Edition, or ULA Database on WESTLAW.

§ 21-2103. Construction of powers generally.

By executing a statutory power of attorney with respect to a subject listed in section 21-2101(a), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent, for that subject to:

(1) Demand, receive, and obtain by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled; and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) Execute, acknowledge, seal, and deliver a revocation, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) Seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) Engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) Keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) Prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) Reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) In general, do any other lawful act with respect to the subject.

§ 21-2104. Construction of power relating to real property transactions.

(a) In a statutory power of attorney, the language granting power with respect to real property transactions empowers the agent to:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire, an interest in real property or a right incident to real property;

(2) Subject to subsection (b) of this subsection, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, or sublease of real property;

(3) Release, assign, satisfy, and enforce by litigation or otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to real property which exists or is asserted, except with respect to instruments subject to section 42-101; and

(4) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned, or claimed to be owned, by the principal, including:

(A) Insuring against a casualty, liability, or loss;

(B) Obtaining or regaining possession, or protecting the interest or right, by litigation or otherwise;

(C) Paying, compromising, or contesting taxes or assessments, or applying for and receiving refunds in connection with them; and

(D) Purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

(5) Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(6) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold shares of stock or obligations received in a plan of reorganization, and act with respect to them, including:

(A) Selling or otherwise disposing of them;

(B) Exercising or selling an option, conversion, or similar right with respect to them; and

(C) Voting them in person or by proxy;

(7) Change the form of title of an interest in or right incident to real property; and

(8) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

(b) This chapter may not be construed to authorize the use of the statutory form power of attorney under this chapter for a transaction that is subject to the execution and recordation requirements of section 42-101.

§ 21-2105. Construction of power relating to tangible personal property transactions.

In a statutory power of attorney the language granting power with respect to tangible personal property transactions empowers the agent to:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

(4) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) Insuring against casualty, liability, or loss;

(B) Obtaining or regaining possession, or protecting the property or interest, by litigation or otherwise;

(C) Paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

- (D) Moving from place to place;
- (E) Storing for hire or on a gratuitous bailment; and
- (F) Using, altering, and making repairs or alterations.

§ 21-2106. Construction of power relating to stock and bond transactions.

In a statutory power of attorney the language granting power with respect to stock and bond transactions empowers the agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments, except commodity futures contracts, and call and put options on stocks and stock indexes, receive certificates, and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

§ 21-2107. Construction of power relating to commodity and option transactions.

In a statutory power of attorney the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify, and terminate option accounts with a broker.

§ 21-2108. Construction of power relating to banking and other financial institution transactions.

In a statutory power of attorney the language granting power with respect to banking and other financial institution transactions empowers the agent to:

- (1) Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
- (3) Hire a safe deposit box or space in a vault;
- (4) Contract to procure other services available from a financial institution as the agent considers desirable;

(5) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them;

(7) Enter a safe deposit box or vault and withdraw or add to the contents;

(8) Borrow money at an interest rate agreeable to the agent and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, receive the cash or other proceeds of those transactions, accept a draft drawn by a person upon the principal, and pay it when due;

(10) Receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) Apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit; and

(12) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

§ 21-2109. Construction of power relating to business operating transactions.

In a statutory power of attorney the language granting power with respect to business operating transactions empowers the agent to:

(1) Operate, buy, sell, enlarge, reduce, and terminate a business interest;

(2) To the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement to:

(A) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under a partnership agreement, whether or not the principal is a partner;

(B) Enforce the terms of a partnership agreement by litigation or otherwise; and

(C) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in the partnership;

(3) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;

(4) With respect to a business owned solely by the principal:

(A) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(B) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;

(C) Change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(D) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business;

(5) Put additional capital into a business in which the principal has an interest;

(6) Join in a plan of reorganization, consolidation, or merger of the business;

(7) Sell or liquidate a business or part of it at the time and upon the terms the agent considers desirable;

(8) Establish the value of a business under a buy-out agreement to which the principal is a party;

(9) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business which are required by a governmental agency or instrumentality or which the agent considers desirable, and make related payments; and

(10) Pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or

assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

§ 21-2110. Construction of power relating to insurance transactions.

In a statutory power of attorney the language granting power with respect to insurance and annuity transactions empowers the agent to:

(1) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents; and select the amount, type of insurance or annuity, and mode of payment;

(3) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

(4) Designate the beneficiary of the contract, but an agent may be named a beneficiary of the contract, or an extension, renewal, or substitute for it, only to the extent the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) Apply for and receive a loan on the security of the contract of insurance or annuity;

(6) Surrender and receive the cash surrender value;

(7) Exercise an election;

(8) Change the manner of paying premiums;

(9) Change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described in this section;

(10) Change the beneficiary of a contract of insurance or annuity, but the agent may not be designated a beneficiary except to the extent permitted by paragraph (4) of this section;

(11) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) Pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

§ 21-2111. Construction of power relating to estate, trust, and other beneficiary transactions.

In a statutory power of attorney the language granting power with respect to estate, trust, and other beneficiary transactions empowers the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) Demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

(3) Initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;

(5) Conserve, invest, disburse, and use anything received for an authorized purpose; and

(6) Transfer an interest of the principal in stocks, bonds, accounts with financial institutions, insurance, and other property, to the trustee of a revocable trust created by the principal as settlor.

§ 21-2112. Construction of power relating to claims and litigation.

In a statutory power of attorney the language with respect to claims and litigation empowers the agent to:

(1) Assert and prosecute before a court or administrative agency a claim, a cause of action, counterclaim, offset, and defend against an individual, a legal entity, or government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;

(3) In connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) In connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding the principal in litigation;

(5) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive and execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding, or a receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value; and

(8) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money, or other thing of value paid in settlement of or as proceeds of a claim or litigation.

§ 21-2113. Construction of power relating to personal and family maintenance.

(a) In a statutory power of attorney the language granting power with respect to personal and family maintenance empowers the agent to:

(1) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, domestic partner, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) Provide for the individuals described in paragraph (1) of this section normal domestic help; usual vacations and travel expenses; and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) Pay for the individuals described in paragraph (1) of this section necessary medical, dental, and surgical care, hospitalization, and custodial care;

(4) Continue any provision made by the principal, for the individuals described in paragraph (1) of this section, for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;

(5) Maintain or open charge accounts for the convenience of the individuals described in paragraph (1) of this section and open new accounts the agent considers desirable to accomplish a lawful purpose; and

(6) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

(b) For the purposes of this section, the term "domestic partner" shall have the same meaning as provided in § 32-701(3).

§ 21-2114. Construction of power relating to benefits from social security, medicare, medicaid, or other governmental programs, or military service.

In a statutory power of attorney the language granting power with respect to benefits from social security, medicare, medicaid or other governmental programs, or civil or military service empowers the agent to:

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section 21-2113(1), and for shipment of their household effects;

(2) Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled, under a statute or governmental regulation;

(4) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) Receive the financial proceeds of a claim of the type described in this section, conserve, invest, disburse, or use anything received for a lawful purpose.

§ 21-2115. Construction of power relating to retirement plan transactions.

In a statutory power of attorney the language granting power with respect to retirement plan transactions empowers the agent to:

(1) Select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

- (2) Designate beneficiaries under those plans and change existing designations;
- (3) Make voluntary contributions to those plans;
- (4) Exercise the investment powers available under any self-directed retirement plan;
- (5) Make "rollovers" of plan benefits into other retirement plans;
- (6) If authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and
- (7) Waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

§ 21-2116. Construction of power relating to tax matters.

In a statutory power of attorney the language granting power with respect to tax matters empowers the agent to:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act returns, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code, section 2032A or any successor section, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

§ 21-2117. Existing interests; foreign interests.

The powers described in sections 21-2103 through 21-2116 are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in the District of Columbia, and whether or not the powers are exercised or the power of attorney is executed in the District of Columbia.

§ 21-2118. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

Chapter 22. Health-Care Decisions. (Refs & Annos)

§ 21-2201. Purpose.

The purpose of this chapter is to affirm the right of all competent adults to control decisions relating to their own health care and to have their rights and intentions in health care matters respected and implemented by others if they become incapable of making or communicating decisions for themselves.

§ 21-2202. Definitions.

For the purposes of this chapter, the term:

(1) "Attorney in fact" means the person who receives the power of attorney for health-care decisions pursuant to the provisions of this chapter.

(1A) "Close friend" means any adult who has exhibited significant care and concern for the patient, and has maintained regular contact with the patient so as to be familiar with his or her activities, health, and religious and moral beliefs.

(2) "District" means the District of Columbia.

(2A) "Domestic partner" means an adult person living with, but not married to, another adult person in a committed, intimate relationship. The term "domestic partner" shall include any adult who has registered as a domestic partner under the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701 et seq.), as well as any adult who has registered as a domestic partner in a substantially equivalent program administered by another jurisdiction.

(3) "Durable power of attorney for health care" means a legally enforceable document that:

(A) Is executed in the District in a manner consistent with this chapter or validly executed in another jurisdiction pursuant to similar provisions of the law of that jurisdiction; and

(B) Creates a power of attorney for health-care decisions, which is effective upon, and only during incapacitation and is unaffected by the subsequent disability or incapacity of the principal as defined in this chapter.

(4) "Health-care provider" means any person or organizational entity, including health care facilities as defined in § 44-501, licensed or otherwise authorized to provide health-care services in the District.

(5) "Incapacitated individual" means an adult individual who lacks sufficient mental capacity to appreciate the nature and implications of a health-care decision, make a choice regarding the alternatives presented or communicate that choice in an unambiguous manner.

(5A) "Member of a religious order or diocesan priest" means an unmarried adult who, by vow or other bond of commitment, voluntarily undertakes a style of living under the rule and direction of a religious order or community that has been established for religious purposes and has been recognized and approved as a religious order or community by a church.

(6) "Principal" means a person who is competent to make health-care decisions for his or her own benefit or on his or her own account.

(7) "Religious superior" means a bishop or a member of a religious order who, under the approved constitution, laws, statutes, bylaws, or rules of the religious order or community, exercises authority over the particular community or unit of the religious order to which the member of the religious order or community belongs.

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(2) "District" means the District of Columbia.

(2A) "Domestic partner" means an adult person living with, but not married to, another adult person in a committed, intimate relationship. The term "domestic partner" shall include any adult who has registered as a domestic partner under the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701 et seq.), as well as any adult who has registered as a domestic partner in a substantially equivalent program administered by another jurisdiction.

(3) "Durable power of attorney for health care" means a legally enforceable document that:

(A) Is executed in the District in a manner consistent with this chapter or validly executed in another jurisdiction pursuant to similar provisions of the law of that jurisdiction; and

(B) Creates a power of attorney for health-care decisions, which is effective upon, and only during incapacitation and is unaffected by the subsequent disability or incapacity of the principal as defined in this chapter.

(4) "Health-care provider" means any person or organizational entity, including health care facilities as defined in § 44-501, licensed or otherwise authorized to provide health-care services in the District.

(5) "Incapacitated individual" means an adult individual who lacks sufficient mental capacity to appreciate the nature and implications of a health-care decision, make a choice regarding the alternatives presented or communicate that choice in an unambiguous manner.

(5A) "Member of a religious order or diocesan priest" means an unmarried adult who, by vow or other bond of commitment, voluntarily undertakes a style of living under the rule and direction of a religious order or community that has been established for religious purposes and has been recognized and approved as a religious order or community by a church.

(6) "Principal" means a person who is competent to make health-care decisions for his or her own benefit or on his or her own account.

(7) "Religious superior" means a bishop or a member of a religious order who, under the approved constitution, laws, statutes, bylaws, or rules of the religious order or community, exercises authority over the particular community or unit of the religious order to which the member of the religious order or community belongs.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 3, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(a), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(c), 40 DCR 6311; Mar. 24, 1998, D.C. Law 12-81, § 14(z), 45 DCR 745; Apr. 20, 1999, D.C. Law 12-264, § 57(c), 46 DCR 2118; June 21, 2003, D.C. Law 15-17, § 2(a), 50 DCR 3387.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2202.

Effect of Amendments

D.C. Law 15-17 added pars. (1A) and (2A).

Temporary Amendments of Section

Section 3(a) of D.C. Law 16-46 added par. (6A) to read as follows:

"(6A) 'Qualified psychologist' means a person who is licensed pursuant to § 3- 1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health care setting, one year of which must be post-doctoral."

Section 6(b) of D.C. Law 16-46 provides that the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 16-194 added a new par. (6A) to read as follows:

"(6A) 'Qualified psychologist' means a person who is licensed pursuant to § 3- 1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral."

Section 6(b) of D.C. Law 16-194 provides that the act shall expire after 225 days of its having taken effect.

Section 3(a) of D.C. Law 17-100 added par. (6A) to read as follows:

"(6A) 'Qualified psychologist' means a person who is licensed pursuant to § 3- 1205.01 and has:

"(A) One year of formal training within a hospital setting; or

"(B) Two years of supervised clinical experience in an organized health-care setting, one year of which must be post-doctoral."

Section 6(b) of D.C. Law 17-100 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(a) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

Law 9-67, the "Health-Care Decisions Amendment Act of 1991," was introduced in Council and assigned Bill No. 9-41, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 5, 1991, and December 3, 1991, respectively. Signed by the Mayor on December 20, 1991, it was assigned Act No. 9-118 and transmitted to both Houses of Congress for its review.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2201.

Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Law 15-17, the "Health-Care Decisions Act of 2003", was introduced in Council and assigned Bill No. 15-37, which was referred to Committee on the Judiciary. The Bill was adopted on first and second readings on March 4, 2003, and April 1, 2003, respectively. Signed by the Mayor on April 16, 2003, it was assigned Act No. 15-64 and transmitted to both Houses of Congress for its review. D.C. Law 15-17 became effective on June 21, 2003.

§ 21-2203. Presumption of capacity.

An individual shall be presumed capable of making health-care decisions unless certified otherwise under § 21-2204. Mental incapacity to make a health-care decision shall not be inferred from the fact that an individual:

- (1) Has been voluntarily or involuntarily hospitalized for mental illness pursuant to § 21-501 et seq.;
- (2) Has a diagnosis of mental retardation or has been determined by a court to be incompetent to refuse commitment under § 7-1301.01 et seq.; or
- (3) Has a conservator or guardian appointed pursuant to § 21-1501 et seq. or § 21-2001 et seq.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 4, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(d), 40 DCR 6311; Apr. 24, 2007, D.C. Law 16-305, § 35(d), 53 DCR 6198.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2203.

Effect of Amendments

D.C. Law 16-305, in par. (2), substituted "Has a diagnosis of mental retardation" for "Is mentally retarded".

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

For Law 16-305, see notes following § 21-501.

§ 21-2204. Certification of incapacity.

(a) Mental incapacity to make a health-care decision shall be certified by 2 physicians who are licensed to practice in the District and qualified to make a determination of mental incapacity. One of the 2 certifying physicians shall be a psychiatrist. At least 1 of the 2 certifying physicians shall examine the individual in question within 1 day preceding certification. Both certifying physicians shall give an opinion regarding the cause and nature of the mental incapacity as well as its extent and probable duration.

(b) All professional findings and opinions forming the basis of certification under subsection (a) of this section shall be expressed in writing, included in the patient-care records of the individual, and provide clear evidence that the person is incapable of understanding the health-care choice, making a decision concerning the particular treatment or services in question, or communicating a decision even if capable of making it.

(c) Certification of incapacity under this section shall be limited in its effect to the capacity to make health-care decisions and shall not be construed as a finding of incompetency for any other purpose.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 5, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(e), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2204.

Temporary Amendments of Section

Section 3(b) of D.C. Law 16-46, in subsec. (a), substituted "professionals" for "physicians" wherever it appears and substituted "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." for "One of the 2 certifying physicians shall be a psychiatrist."

Section 6(b) of D.C. Law 16-46 provides that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 16-194, in subsec. (a), substituted "professionals" for "physicians" throughout, and substituted "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." for the second sentence.

Section 6(b) of D.C. Law 16-194 provides that the act shall expire after 225 days of its having taken effect.

Section 3(b) of D.C. Law 17-100, in subsec. (a), substituted "professionals" for "physicians" throughout and "One of the 2 certifying professionals shall be a physician and one shall be a qualified psychologist or psychiatrist." for the second sentence.

Section 6(b) of D.C. Law 17-100 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(b) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2205. Durable power of attorney for health care.

(a) A competent adult may designate, in writing, an individual who shall be empowered to make health-care decisions on behalf of the competent adult, if the competent adult becomes incapable, by reason of mental disability, of making or communicating a choice regarding a particular health-care decision.

(b) A durable power of attorney for health care shall include language which clearly communicates that the principal intends the attorney in fact to have the authority to make health-care decisions on behalf of the principal and shall include language identical or substantially similar to the following:

(1) "This power of attorney shall not be affected by the subsequent incapacity of the principal."; or

(2) "This power of attorney becomes effective upon the incapacity of the principal."

(c) A durable power of attorney for health care shall be dated and signed by the principal and 2 adult witnesses who affirm that the principal was of sound mind and free from duress at the time of signing. The 2 adult witnesses shall not include the principal, the health-care provider of the principal or an employee of the health-care provider of the principal.

(d) Of the 2 adult witnesses referred to in subsection (c) of this section, at least 1 shall not be related to the principal by blood, marriage or adoption and shall not be entitled to any part of the estate of the principal by a current will or operation of law.

(e) Any durable power of attorney for health care executed prior to March 16, 1989, and specifically written to include health-care decision making after incompetency shall be effective, if the execution of the prior document meets the requirements of this chapter.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 6, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(f), 40 DCR 6311; Apr. 9, 1997, D.C. Law 11-255, § 20(e), 44 DCR 1271; Mar. 24, 1998, D.C. Law 12-81, § 14(aa), 45 DCR 745.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2205.

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

For legislative history of D.C. Law 12-81, see Historical and Statutory Notes following § 21-2201.

DC CODE § 21-2205

Current through July 7, 2008

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§ 21-2206. Rights and duties of attorney in fact.

(a) Subject to any express limitations in the durable power of attorney for health care, an attorney in fact shall have all the rights, powers and authority related to health-care decisions that the principal would have under District and federal law. This authority shall include, at a minimum:

(1) The authority to grant, refuse or withdraw consent to the provision of any health-care service, treatment, or procedure;

(2) The right to review the health care records of the principal;

(3) The right to be provided with all information necessary to make informed health-care decisions;

(4) The authority to select and discharge health-care professionals; and

(5) The authority to make decisions regarding admission to or discharge from health-care facilities and to take any lawful actions that may be necessary to carry out these decisions.

(b)(1) Except as provided in paragraph (2) of this subsection and unless a durable power of attorney for health care provides otherwise, the designated attorney in fact, if known to a health-care provider to be available and willing to make a particular health-care decision, shall have priority over any other person to act for the principal in all matters regarding health care.

(2) A designated attorney in fact shall not have the authority to make a particular health-care decision, if the principal is able to give or withhold informed consent with respect to that decision.

(c) In exercising authority under a durable power of attorney for health care, the attorney in fact shall have a duty to act in accordance with:

(1) The wishes of the principal as expressed in the durable power of attorney for health care; or

(2) The good faith belief of the attorney in fact as to the best interests of the principal, if the wishes of the principal are unknown and cannot be ascertained.

(d) Nothing in this chapter shall affect any right that an attorney in fact may have, independent of the designation in a durable power of attorney for health care, to make or otherwise participate in health-care decisions on behalf of the principal.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 7, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(g), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2206.

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2207. Forms for creating a durable power of attorney for health care.

Any written form meeting the requirements of § 21-2205 may be used to create a durable power of attorney for health care. The following is offered as a sample form only and its inclusion in this section shall not be construed to preclude the use of alternative language:

"INFORMATION ABOUT THIS DOCUMENT

"THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, IT IS VITAL FOR YOU TO KNOW AND UNDERSTAND THESE FACTS:

"THIS DOCUMENT GIVES THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT THE POWER TO MAKE HEALTH-CARE DECISIONS FOR YOU IF YOU CANNOT MAKE THE DECISIONS FOR YOURSELF.

"AFTER YOU HAVE SIGNED THIS DOCUMENT, YOU HAVE THE RIGHT TO MAKE HEALTH-CARE DECISIONS FOR YOURSELF IF YOU ARE MENTALLY COMPETENT TO DO SO. IN ADDITION, AFTER YOU HAVE SIGNED THIS DOCUMENT, NO TREATMENT MAY BE GIVEN TO YOU OR STOPPED OVER YOUR OBJECTION IF YOU ARE MENTALLY COMPETENT TO MAKE THAT DECISION.

"YOU MAY STATE IN THIS DOCUMENT ANY TYPE OF TREATMENT THAT YOU DO NOT DESIRE AND ANY THAT YOU WANT TO MAKE SURE YOU RECEIVE.

"YOU HAVE THE RIGHT TO TAKE AWAY THE AUTHORITY OF YOUR ATTORNEY IN FACT, UNLESS YOU HAVE BEEN ADJUDICATED INCOMPETENT, BY NOTIFYING YOUR ATTORNEY IN FACT OR HEALTH-CARE PROVIDER EITHER ORALLY OR IN WRITING. SHOULD YOU REVOKE THE AUTHORITY OF YOUR ATTORNEY IN FACT, IT IS ADVISABLE

TO REVOKE IN WRITING AND TO PLACE COPIES OF THE REVOCATION WHEREVER THIS DOCUMENT IS LOCATED.

"IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A SOCIAL WORKER, LAWYER, OR OTHER PERSON TO EXPLAIN IT TO YOU.

* * * * *

"YOU SHOULD KEEP A COPY OF THIS DOCUMENT AFTER YOU HAVE SIGNED IT. GIVE A COPY TO THE PERSON YOU NAME AS YOUR ATTORNEY IN FACT. IF YOU ARE IN A HEALTH-CARE FACILITY, A COPY OF THIS DOCUMENT SHOULD BE INCLUDED IN YOUR MEDICAL RECORD.

"POWER OF ATTORNEY FOR HEALTH CARE

"I, _____, hereby appoint:

name	home address	_____
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home telephone number	_____
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work telephone number	_____
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as my attorney in fact to make health-care decisions for me if I become unable to make my own health-care decisions. This gives my attorney in fact the power to grant, refuse, or withdraw consent on my behalf for any health-care service, treatment or procedure. My attorney in fact also has the authority to talk to health-care personnel, get information and sign forms necessary to carry out these decisions.

"If the person named as my attorney in fact is not available or is unable to act as my attorney in fact, I appoint the following person to serve in the order listed below:

1. _____

name	home address	_____
------	--------------	-------

home telephone number	_____
-----------------------	-------

work telephone number

2. _____
name home address

home telephone number

work telephone number

"With this document, I intend to create a power of attorney for health care, which shall take effect if I become incapable of making my own health-care decisions and shall continue during that incapacity.

"My attorney in fact shall make health-care decisions as I direct below or as I make known to my attorney in fact in some other way.

"(a) STATEMENT OF DIRECTIVES CONCERNING LIFE-PROLONGING CARE, TREATMENT, SERVICES, AND PROCEDURES:

"(b) SPECIAL PROVISIONS AND LIMITATIONS:

"BY MY SIGNATURE I INDICATE THAT I UNDERSTAND THE PURPOSE AND EFFECT OF THIS DOCUMENT.

"I sign my name to this form on _____
(date)

at: _____
_____ (address).

(Signature)

"WITNESSES

"I declare that the person who signed or acknowledged this document is personally known to me, that the person signed or acknowledged this durable power of attorney for health care in my presence, and that the person appears to be of sound mind and under no duress, fraud, or undue influence. I am not the person appointed as the attorney in fact by this document, nor am I the health-care provider of the principal or an employee of the health-care provider of the principal.

First Witness

Signature: _____

Home Address: _____

Print Name: _____

Date: _____

Second Witness

Signature: _____

Home Address: _____

Print Name: _____

Date: _____

(AT LEAST 1 OF THE WITNESSES LISTED ABOVE SHALL ALSO SIGN THE FOLLOWING DECLARATION.)

"I further declare that I am not related to the principal by blood, marriage or adoption, and, to the best of my knowledge, I am not entitled to any part of the estate of the principal under a currently existing will or by operation of law.

Signature: _____

Signature: _____."

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 8, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(h), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2207.

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

DC CODE § 21-2207

§ 21-2208. Revocation.

(a) At any time that the principal has the capacity to create a durable power of attorney for health care, the principal may:

(1) Revoke the appointment of the attorney in fact under a durable power of attorney for health care by notifying the attorney in fact orally or in writing; or

(2) Revoke the authority to make health-care decisions granted to the attorney in fact under a durable power of attorney for health care by notifying the health-care provider orally or in writing.

(b) If a health-care provider is notified of a revocation pursuant to subsection (a)(2) of this section, the health-care provider shall document this fact in the patient-care records of the principal and make a reasonable effort to notify the attorney in fact of the revocation.

(c) There shall be a rebuttable presumption, affecting the burden of proof, that a principal has the capacity to revoke a durable power of attorney for health care.

(d) Unless it expressly provides otherwise, a valid durable power of attorney for health care revokes any prior durable power of attorney for health-care decisions only.

(e) Unless a durable power of attorney for health care expressly provides otherwise, and after its execution the marriage of the principal is dissolved or annulled, the dissolution or annulment shall automatically revoke a designation of the former spouse as an attorney in fact to make health-care decisions for the principal. If a designation is revoked solely on account of this subsection, it shall be revived by the remarriage of the principal to the former spouse but may be subsequently revoked by an act of the principal.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 9, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(i), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2208.

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2209. Health-care provider limitation.

(a) No health-care provider may require an individual to execute a durable power of attorney for health care as a condition for the provision of health-care services or admission to a health-care facility, as defined in § 44- 501.

(b) After an individual has spent at least 48 hours in a health care facility, a health care provider may request the individual to execute a durable power of attorney for health care subject to the limitations set forth in this chapter. The health care provider may not be named as the attorney in fact.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 10, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(j), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2209.

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

§ 21-2210. Substituted consent.

(a) In the absence of a durable power of attorney for health care and provided that the incapacity of the principal has been certified in accordance with § 21-2204, the following individuals, in the order of priority set forth below, shall be authorized to grant, refuse or withdraw consent on behalf of the patient with respect to the provision of any health-care service, treatment, or procedure:

(1) A court-appointed guardian or conservator of the patient, if the consent is within the scope of the guardianship or conservatorship;

(2) The spouse or domestic partner of the patient;

(3) An adult child of the patient;

(4) A parent of the patient;

(5) An adult sibling of the patient;

(5A) A religious superior of the patient, if the patient is a member of a religious order or a diocesan priest;

(5B) A close friend of the patient; or

(6) The nearest living relative of the patient.

(b) A decision to grant, refuse or withdraw consent made pursuant to subsection (a) of this section shall be based on the known wishes of the patient or, if the wishes of the patient are unknown and cannot be ascertained, on a good faith belief as to the best interests of the patient.

(c) There shall be at least 1 witness present whenever a person specified in subsection (a)(2) through (6) of this section grants, refuses or withdraws consent on behalf of the patient.

(d) If no individual in a prior class is reasonably available, mentally capable and willing to act, responsibility for decisionmaking shall rest with the next reasonably available, mentally capable, and willing person on the priority list.

(e) Any person listed in subsection (a) of this section shall have legal standing to challenge in the Superior Court of the District of Columbia any decision made by a person of higher priority as listed within that subsection.

(f) The order of priority established in subsection (a) of this section creates a presumption that may be rebutted if a person of lower priority is found to have better knowledge of the wishes of the patient, or, if the wishes of the patient are unknown and cannot be ascertained, is better able to demonstrate a good-faith belief as to the interests of the patient.

(g) An individual identified in subsection (a)(5B) of this section shall not be authorized to grant, refuse, or withdraw consent on behalf of the patient with respect to a decision regarding a health-care service, treatment, or procedure if the individual is:

(1) A health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision; or

(2) An owner, operator, administrator, or employee of, or a person with decision-making authority for, a health-care provider treating or providing services to the incapacitated patient at the time of the health-care decision.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 11, 35 DCR 8653; Mar. 11, 1992, D.C. Law 9-67, § 2(b), 39 DCR 12; Feb. 5, 1994, D.C. Law 10-68, § 23(k), 40 DCR 6311; June 21, 2003, D.C. Law 15-17, § 2(b), 50 DCR 3387; Mar. 13, 2004, D.C. Law 15-105, § 106, 51 DCR 881.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2210.

Effect of Amendments

D.C. Law 15-17, in subsec. (a), inserted "or domestic partner" after "spouse" in par. (2), made a nonsubstantive change in par. (5A), and added par. (5B); and added subsecs. (f) and (g).

D.C. Law 15-105, in subsec. (g), validated previously made technical corrections.

Temporary Amendments of Section

Section 3(c) of D.C. Law 16-46 added par. (1A) to subsec. (a) and added subsec. (h) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under § 7-1304.13."

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7 of the District of Columbia Official Code, or any interested person may petition the Superior Court of the District of Columbia for appointment of a limited guardian for health care pursuant to § 21-2044(c)."

Section 6(a) of D.C. Law 16-46 provides that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 16-194 added a new par. (1A) to subsec. (a), and added a new subsec. (h) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13."

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a health-care guardian pursuant to section 21-2044 or section 21-2046."

Section 6(b) of D.C. Law 16-194 provides that the act shall expire after 225 days of its having taken effect.

Section 3(c) of D.C. Law 17-100 added subsecs. (a)(1A), (h), and (i) to read as follows:

"(1A) A court-appointed mental retardation advocate of the patient, if the ability to grant, refuse, or withdraw consent is within the scope of the advocate's appointment under section 7-1304.13."

"(h) If no person listed in subsection (a) of this section is reasonably available, mentally capable, and willing to act, the health-care provider, or the District of Columbia, for those persons committed or admitted to receive habilitation or other services pursuant to Chapter 13 of Title 7, or any interested person may petition the Superior Court of the District of Columbia for appointment of a health-care guardian pursuant to section 21-2044 or section 21-2046."

"(i) The health-care provider who is treating or providing services to the incapacitated patient at the time of the health-care decision shall accept the decision of the individual authorized under this section to grant, refuse, or withdraw consent on behalf of the patient as the decision of the principal."

Section 6(b) of D.C. Law 17-100 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Mental Retardation and Developmental Disabilities Emergency Amendment Act of 2005 (D.C. Act 16-190, October 28, 2005, 52 DCR 10021).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Mental Retardation and Development Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-262, January 26, 2006, 53 DCR 795).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(c) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 9-67, see Historical and Statutory Notes following § 21-2202.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

For Law 15-17, see notes following § 21-2202.

For Law 15-105, see notes following § 21-541.

DC CODE § 21-2210

§ 21-2211. Limitations.

No person authorized to act pursuant to § 21-2210 shall have the power:

- (1) To consent to an abortion, sterilization or psycho-surgery, unless authorized by a court; or
- (2) To consent to convulsive therapy or behavior modification programs involving aversive stimuli, unless authorized by a court.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 12, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(1), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2211.

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

DC CODE § 21-2211

Current through July 7, 2008
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§ 21-2212. Effect of chapter.

Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural process of dying.

CREDIT(S)

(Mar. 16, 1989, D.C. Law 7-189, § 13, 35 DCR 8653; Feb. 5, 1994, D.C. Law 10-68, § 23(m), 40 DCR 6311.)

HISTORICAL AND STATUTORY NOTES

Prior Codifications

1981 Ed., § 21-2212.

Temporary Amendments of Section

Section 3(d) of D.C. Law 16-194 amended this section to read as follows:

"§ 21-2212. Effect of chapter.

"(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

"(b) Nothing in this chapter shall be construed to conflict with or supersede, the Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

"(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204 if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

"(1) A substantial risk of death;

"(2) The health of the incapacitated individual to be placed in serious jeopardy;

"(3) Serious impairment to the incapacitated individual's bodily functions; or

"(4) Serious dysfunction of any bodily organ or part."

Section 6(b) of D.C. Law 16-194 provides that the act shall expire after 225 days of its having taken effect.

Section 3(d) of D.C. Law 17-100 amended the section to read as follows:

"§ 21-2212. Effect of chapter.

"(a) Nothing in this chapter shall be construed to condone, authorize, or approve mercy-killing or to permit any affirmative or deliberate act to end a human life other than to permit the natural dying process.

"(b) Nothing in this chapter shall be construed to conflict with or supersede, the Emergency Medical Treatment and Labor Act, approved April 17, 1986 (100 Stat. 164; 42 U.S.C. § 1395dd).

"(c) Emergency health care may be provided without consent to a patient who is certified incapacitated under § 21-2204, if no authorized person is reasonably available or if, in the reasonable medical judgment of the attending physician, attempting to locate an authorized person would cause:

"(1) A substantial risk of death to the incapacitated individual;

"(2) The health of the incapacitated individual to be placed in serious jeopardy;

"(3) Serious impairment to the incapacitated individual's bodily functions; or

"(4) Serious dysfunction of a bodily organ or part of the incapacitated individual".

Section 6(b) of D.C. Law 17-100 provides that the act shall expire after 225 days of its having taken effect.

Emergency Act Amendments

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Amendment Act of 2006 (D.C. Act 16-480, September 25, 2006, 53 DCR 7940).

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2006 (D.C. Act 16-566, December 19, 2006, 53 DCR 10272).

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Emergency Act of 2007 (D.C. Act 17-161, October 18, 2007, 54 DCR 10932).

For temporary (90 day) amendment of section, see § 3(d) of Health-Care Decisions for Persons with Developmental Disabilities Congressional Review Emergency Amendment Act of 2008 (D.C. Act 17-245, January 23, 2008, 55 DCR 1230).

Legislative History of Laws

For legislative history of D.C. Law 7-189, see Historical and Statutory Notes following § 21-2201.

For legislative history of D.C. Law 10-68, see Historical and Statutory Notes following § 21-2201.

DC CODE § 21-2212

Current through July 7, 2008

§ 21-2213. Construction.

This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

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