

By: Zaffirini
(Thompson of Harris)

S.B. No. 41

A BILL TO BE ENTITLED

AN ACT

relating to the demand for an accounting from an attorney in fact or agent of a principal by certain persons.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 751.104, Estates Code, is amended to read as follows:

Sec. 751.104. ACCOUNTING. (a) The following persons ~~[principal]~~ may demand an accounting by the attorney in fact or agent:

(1) the principal; or

(2) if the principal is unable to demand an accounting because of the principal's mental or physical condition:

(A) a guardian or spouse of the principal;

(B) a person named as a successor attorney in fact or agent in the durable power of attorney;

(C) an agent of the principal authorized to make health care decisions on the principal's behalf by a medical power of attorney;

(D) an attorney who represents the principal; or

(E) any other family member of the principal who the court, for good cause shown, finds has standing to demand an accounting under this section.

(b) Unless otherwise directed by the principal or other person demanding an accounting, an accounting under Subsection (a)

1 must include:

2 (1) the property belonging to the principal that has
3 come to the attorney in fact's or agent's knowledge or into the
4 attorney in fact's or agent's possession;

5 (2) each action taken or decision made by the attorney
6 in fact or agent;

7 (3) a complete account of receipts, disbursements, and
8 other actions of the attorney in fact or agent that includes the
9 source and nature of each receipt, disbursement, or action, with
10 receipts of principal and income shown separately;

11 (4) a listing of all property over which the attorney
12 in fact or agent has exercised control that includes:

13 (A) an adequate description of each asset; and

14 (B) the asset's current value, if the value is
15 known to the attorney in fact or agent;

16 (5) the cash balance on hand and the name and location
17 of the depository at which the cash balance is kept;

18 (6) each known liability; and

19 (7) any other information and facts known to the
20 attorney in fact or agent as necessary for a full and definite
21 understanding of the exact condition of the property belonging to
22 the principal.

23 (c) Unless directed otherwise by the person demanding an
24 accounting under this section [~~principal~~], the attorney in fact or
25 agent shall also provide to the person [~~principal~~] all
26 documentation regarding the principal's property.

27 SECTION 2. Section 751.105, Estates Code, is amended to

1 read as follows:

2 Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the
3 attorney in fact or agent fails or refuses to inform the principal,
4 provide documentation, or deliver an accounting to the principal or
5 other person under Section 751.104 within 60 days of a demand under
6 that section, or a longer or shorter period as demanded by the
7 person [~~principal~~] or ordered by a court:

8 (1) [~~7~~] the principal or other person may file suit
9 to[~~+~~

10 [~~(1)~~] compel the attorney in fact or agent to deliver
11 the accounting or the assets; or

12 (2) the principal may file suit to terminate the power
13 of attorney.

14 SECTION 3. Section 752.051, Estates Code, is amended to
15 read as follows:

16 Sec. 752.051. FORM. The following form is known as a
17 "statutory durable power of attorney":

18 STATUTORY DURABLE POWER OF ATTORNEY
19 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
20 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
21 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE
22 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
23 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS
24 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO
25 DO SO.

26 You should select someone you trust to serve as your agent
27 (attorney in fact). Unless you specify otherwise, generally the

1 agent's (attorney in fact's) authority will continue until:

- 2 (1) you die or revoke the power of attorney;
- 3 (2) your agent (attorney in fact) resigns or is unable
- 4 to act for you; or
- 5 (3) a guardian is appointed for your estate.

6 I, _____ (insert your name and address), appoint
 7 _____ (insert the name and address of the person appointed) as
 8 my agent (attorney in fact) to act for me in any lawful way with
 9 respect to all of the following powers that I have initialed below.

10 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
 11 FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
 12 LISTED IN (A) THROUGH (M).

13 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
 14 POWER YOU ARE GRANTING.

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

- 17 ____ (A) Real property transactions;
- 18 ____ (B) Tangible personal property transactions;
- 19 ____ (C) Stock and bond transactions;
- 20 ____ (D) Commodity and option transactions;
- 21 ____ (E) Banking and other financial institution
- 22 transactions;
- 23 ____ (F) Business operating transactions;
- 24 ____ (G) Insurance and annuity transactions;
- 25 ____ (H) Estate, trust, and other beneficiary transactions;
- 26 ____ (I) Claims and litigation;
- 27 ____ (J) Personal and family maintenance;

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

3 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
4 ALTERNATIVE NOT CHOSEN:

5 (A) This power of attorney is not affected by my subsequent
6 disability or incapacity.

7 (B) This power of attorney becomes effective upon my
8 disability or incapacity.

9 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
10 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

11 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT
12 YOU CHOSE ALTERNATIVE (A).

13 If Alternative (B) is chosen and a definition of my
14 disability or incapacity is not contained in this power of
15 attorney, I shall be considered disabled or incapacitated for
16 purposes of this power of attorney if a physician certifies in
17 writing at a date later than the date this power of attorney is
18 executed that, based on the physician's medical examination of me,
19 I am mentally incapable of managing my financial affairs. I
20 authorize the physician who examines me for this purpose to
21 disclose my physical or mental condition to another person for
22 purposes of this power of attorney. A third party who accepts this
23 power of attorney is fully protected from any action taken under
24 this power of attorney that is based on the determination made by a
25 physician of my disability or incapacity.

26 I agree that any third party who receives a copy of this
27 document may act under it. Revocation of the durable power of

1 attorney is not effective as to a third party until the third party
2 receives actual notice of the revocation. I agree to indemnify the
3 third party for any claims that arise against the third party
4 because of reliance on this power of attorney.

5 If any agent named by me dies, becomes legally disabled,
6 resigns, or refuses to act, I name the following (each to act alone
7 and successively, in the order named) as successor(s) to that
8 agent: _____.

9 Signed this _____ day of _____, _____
10 _____
11 (your signature)

12 State of _____
13 County of _____

14 This document was acknowledged before me on _____ (date) by
15 _____
16 (name of principal)

17 _____
18 (signature of notarial officer)

19 (Seal, if any, of notary) _____
20 (printed name)

21 My commission expires: _____

22 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

23 Agent's Duties

24 When you accept the authority granted under this power of
25 attorney, you establish a "fiduciary" relationship with the
26 principal. This is a special legal relationship that imposes on you
27 legal duties that continue until you resign or the power of attorney

1 is terminated or revoked by the principal or by operation of law. A
2 fiduciary duty generally includes the duty to:

- 3 (1) act in good faith;
- 4 (2) do nothing beyond the authority granted in this
5 power of attorney;
- 6 (3) act loyally for the principal's benefit;
- 7 (4) avoid conflicts that would impair your ability to
8 act in the principal's best interest; and
- 9 (5) disclose your identity as an agent or attorney in
10 fact when you act for the principal by writing or printing the name
11 of the principal and signing your own name as "agent" or "attorney
12 in fact" in the following manner:

13 (Principal's Name) by (Your Signature) as Agent (or as
14 Attorney in Fact)

15 In addition, the Durable Power of Attorney Act (Subtitle P,
16 Title 2, Estates Code) requires you to:

- 17 (1) maintain records of each action taken or decision
18 made on behalf of the principal;
- 19 (2) maintain all records until delivered to the
20 principal, released by the principal, or discharged by a court; and
- 21 (3) if requested by the principal or, if the principal
22 is unable to demand the accounting because of the principal's
23 mental or physical condition, the principal's spouse, agent under a
24 medical power of attorney, legal representative, or, for good cause
25 shown to the court, other family member, provide an accounting to
26 the principal or other person that, unless otherwise directed by
27 the principal or other person or otherwise provided in the Special

1 Instructions, must include:

2 (A) the property belonging to the principal that
3 has come to your knowledge or into your possession;

4 (B) each action taken or decision made by you as
5 agent or attorney in fact;

6 (C) a complete account of receipts,
7 disbursements, and other actions of you as agent or attorney in fact
8 that includes the source and nature of each receipt, disbursement,
9 or action, with receipts of principal and income shown separately;

10 (D) a listing of all property over which you have
11 exercised control that includes an adequate description of each
12 asset and the asset's current value, if known to you;

13 (E) the cash balance on hand and the name and
14 location of the depository at which the cash balance is kept;

15 (F) each known liability;

16 (G) any other information and facts known to you
17 as necessary for a full and definite understanding of the exact
18 condition of the property belonging to the principal; and

19 (H) all documentation regarding the principal's
20 property.

21 Termination of Agent's Authority

22 You must stop acting on behalf of the principal if you learn
23 of any event that terminates this power of attorney or your
24 authority under this power of attorney. An event that terminates
25 this power of attorney or your authority to act under this power of
26 attorney includes:

27 (1) the principal's death;

1 (2) the principal's revocation of this power of
2 attorney or your authority;

3 (3) the occurrence of a termination event stated in
4 this power of attorney;

5 (4) if you are married to the principal, the
6 dissolution of your marriage by court decree of divorce or
7 annulment;

8 (5) the appointment and qualification of a permanent
9 guardian of the principal's estate; or

10 (6) if ordered by a court, the suspension of this power
11 of attorney on the appointment and qualification of a temporary
12 guardian until the date the term of the temporary guardian expires.

13 Liability of Agent

14 The authority granted to you under this power of attorney is
15 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
16 Estates Code). If you violate the Durable Power of Attorney Act or
17 act beyond the authority granted, you may be liable for any damages
18 caused by the violation or subject to prosecution for
19 misapplication of property by a fiduciary under Chapter 32 of the
20 Texas Penal Code.

21 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
22 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
23 RESPONSIBILITIES OF AN AGENT.

24 SECTION 4. (a) Sections 751.104 and 751.105, Estates Code,
25 as amended by this Act, apply to a durable power of attorney,
26 including a statutory durable power of attorney, executed before,
27 on, or after the effective date of this Act.

1 (b) Section 752.051, Estates Code, as amended by this Act,
2 applies to a statutory durable power of attorney executed on or
3 after the effective date of this Act. A statutory durable power of
4 attorney executed before the effective date of this Act is governed
5 by the law as it existed on the date the statutory durable power of
6 attorney was executed, and the former law is continued in effect for
7 that purpose.

8 SECTION 5. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2017.