

Section 42 - Durable Power of Attorney

42.10 In General

The law pertaining to durable power of attorney was substantially revised by the General Assembly in 1989. This section only comments on those sections directly related to action by the Probate Division. The Durable Power of Attorney law of Missouri is found in §§ 404.700 to 404.735 RSMo 1989. That law was significantly amended with respect to the handling of health care matters by an attorney-in-fact appointed by a durable power of attorney in 1991 by amendments to § 404.710 and by the addition of several new sections consisting of §§ 404.800 to 404.865 RSMo 1991.

Actions involving a durable power of attorney are adversary civil actions to which the Civil Rules and Civil Code are fully applicable. However § 472.300, RSMo, applies to judicial proceedings involving powers of attorney to the extent that they apply to judicial proceedings involving trusts and are not inconsistent with provisions of the durable power of attorney law.

42.20 Jurisdiction of Probate Division

The Probate Division has concurrent jurisdiction with regular divisions of the Circuit Court to hear all matters related to durable powers of attorney, except that certain provisions of the durable power of attorney law relating to accounting and declaration of disability and incapacity require filing and hearing in the Probate Division.

Reference: § 404.731

42.30 Court Appointment of Guardian./Conservator for Principal

If the Court appoints a legal representative (guardian or conservator) for a principal who has executed a durable power of attorney, the attorney-in-fact thereunder shall follow the instructions of the Court or legal representative and shall communicate with and be accountable to the principal's guardian on matters affecting the principal's personal welfare and to the principal's conservator on matters affecting the principal's property and business interests, to the extent that the responsibilities of the guardian or conservator and the authority of the attorney-in-fact involve the same subject matter. See Section 42.60.30.

Reference: § 404.714.5

42.40 Court Appointment of Personal Representative for Principal

On the death of the principal, an attorney-in-fact shall follow the instructions of the Court having jurisdiction over the principal's estate and shall be accountable to the principal's personal representative or, if none, the principal's successors. The principal's property, including records held by the attorney-in-fact shall be turned over to the personal representative.

Reference: § 404.714.9

42.50 Accounting

42.50.1 Who May Petition

The principal may petition the Court for an accounting by the principal's attorney-in-fact or the attorney-in-fact's legal representative. If the principal is disabled, incapacitated or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

Reference: § 404.727.1

42.50.2 Waiver or Ex Parte Approval

Any requirement for an accounting may be waived or approved by the Court without hearing, if the accounting is waived in writing or approved by a principal who is not disabled, or by a principal who has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions remain unsatisfied.

Reference: § 404.727.2

42.60 Declaration of Incapacity or Disability

42.60.1 Petition for Court Action

If the principal is found to be incapacitated or disabled, on petition of the principal's legal representative, an adult member of his family, or any person interested in the principal's welfare, the Court may terminate, suspend, modify or confirm authority granted under a durable power of attorney, generally or as to particulars, as specifically set out in § 404.727.5

42.60.2 Accounting to Successor

If the Court suspends or terminates the authority of the attorney-in-fact as specified in Section 42.60.1, the Court may require an accounting and order delivery of the principal's property to a successor attorney-in-fact or the principal's legal representative.

Reference: § 404.727.6

42.60.3 Duties and Powers Specified by Court Order

If a principal is declared incapacitated or disabled, and a guardian/conservator is appointed, the Court may enter an order, after notice and hearing, specifying the respective duties and powers of the guardian/conservator and the attorney-in-fact as to the principal/protectee's affairs. See Section 42.30, supra.

Reference: § 404.731.3

42.70 Appointment of Guardian Ad Litem or Conservator Ad Litem

The Court may, upon petition, appoint a guardian ad litem or conservator ad litem to act for the principal if it appears a conflict of interest may exist between the principal and the attorney-in-fact. Compensation for the guardian/conservator ad litem may be paid out of the principal's estate or may be charged as costs against any party whose conduct may have given rise to the appointment of the guardian ad litem/conservator ad litem.

Reference: § 404.731.5

[END OF SECTION]