

SENATE

STATE OF MINNESOTA

EIGHTY-EIGHTH LEGISLATURE

S.F. No. 327

(SENATE AUTHORS: GOODWIN, Latz, Limmer and Hall)

DATE	D-PG	OFFICIAL STATUS
02/07/2013	171	Introduction and first reading Referred to Judiciary
02/21/2013		Comm report: To pass as amended Second reading

1.1

A bill for an act

1.2

relating to civil law; modifying the statutory short form power of attorney;

1.3

authorizing certain judicial relief; amending Minnesota Statutes 2012, sections

1.4

523.20; 523.23, subdivision 1; 523.24, subdivisions 8, 14; proposing coding for

1.5

new law in Minnesota Statutes, chapter 523.

1.6

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

1.7

Section 1. Minnesota Statutes 2012, section 523.20, is amended to read:

1.8

523.20 LIABILITY OF PARTIES REFUSING AUTHORITY OF

1.9

ATTORNEY-IN-FACT TO ACT ON PRINCIPAL'S BEHALF.

1.10

Any party refusing to accept the authority of an attorney-in-fact to exercise a power

1.11

granted by a power of attorney which (1) is executed in conformity with section 523.23 or

1.12

a form prepared under section 523.231; (2) contains a an acknowledgement and specimen

1.13

signature of the attorney-in-fact authorized to act; (3) with regard to the execution

1.14

or delivery of any recordable instrument relating to real property, is accompanied by

1.15

affidavits that satisfy the provisions of section 523.17; (4) with regard to any other

1.16

transaction, is signed by the attorney-in-fact in a manner conforming to section 523.18;

1.17

and (5) when applicable, is accompanied by an affidavit and any other document required

1.18

by section 523.16, is liable to the principal and to the principal's heirs, assigns, and

1.19

representative of the estate of the principal in the same manner as the party would be liable

1.20

had the party refused to accept the authority of the principal to act on the principal's own

1.21

behalf unless: (1) the party has actual notice of the revocation of the power of attorney

1.22

prior to the exercise of the power; (2) the duration of the power of attorney specified in the

1.23

power of attorney itself has expired; or (3) the party has actual knowledge of the death of

1.24

the principal or, if the power of attorney is not a durable power of attorney, actual notice of

a judicial determination that the principal is legally incompetent. This provision does not negate any liability which a party would have to the principal or to the attorney-in-fact under any other form of power of attorney under the common law or otherwise.

Sec. 2. Minnesota Statutes 2012, section 523.23, subdivision 1, is amended to read:

Subdivision 1. **Form.** The following form may be used to create a power of attorney, and, when used, it must be construed in accordance with sections 523.23 and 523.24:

STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23

IMPORTANT NOTICE TO THE PRINCIPAL: The powers granted by this document are broad and sweeping. They are defined in Minnesota Statutes, section 523.24. If you have any questions about these powers, obtain competent advice. This power of attorney may be revoked by you if you wish to do so. This power of attorney is automatically terminated if it is to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney-in-fact to act for you.

IMPORTANT NOTICE TO THE ATTORNEY-IN-FACT: Each person named as an attorney-in-fact in this document must sign and date below before exercising authority as an attorney-in-fact.

PRINCIPAL (Name and Address of Person Granting the Power)

.....
.....
.....

	SUCCESSOR
ATTORNEY(S)-IN-FACT	ATTORNEY(S)-IN-FACT
(Name and Address)	(Optional) To act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve.
	(Name and Address)
.....	First Successor
.....
.....
.....	Second Successor
.....
.....

NOTICE: If more than one attorney-in-fact is designated, make a check or "x" on the line in front of one of the following statements:

3.1 ... Each attorney-in-fact

3.2 may independently

3.3 exercise

3.4 the powers granted.

3.5 ... All attorneys-in-fact

3.6 must jointly exercise the

3.7 powers granted.

Expiration Date (Optional)

..... ,

Use Specific Month Day Year Only

3.8 I, (the above-named Principal) hereby appoint the above named Attorney(s)-in-Fact to act

3.9 as my attorney(s)-in-fact:

3.10 FIRST: To act for me in any way that I could act with respect to the following

3.11 matters, as each of them is defined in Minnesota Statutes, section 523.24:

3.12 (To grant to the attorney-in-fact any of the following powers, make a check or "x" on

3.13 the line in front of each power being granted. You may, but need not, cross out each power

3.14 not granted. Failure to make a check or "x" on the line in front of the power will have the

3.15 effect of deleting the power unless the line in front of the power of (N) is checked or x-ed.)

3.16 (A) real property transactions;

3.17 I choose to limit this power to real property in County,

3.18 Minnesota, described as follows:

3.19 (Use legal description. Do not use street address.)

3.20

3.21

3.22

3.23

3.24 (If more space is needed, continue on the back or on an attachment.)

- 3.25 (B) tangible personal property transactions;
- 3.26 (C) bond, share, and commodity transactions;
- 3.27 (D) banking transactions;
- 3.28 (E) business operating transactions;
- 3.29 (F) insurance transactions;
- 3.30 (G) beneficiary transactions;
- 3.31 (H) gift transactions;
- 3.32 (I) fiduciary transactions;
- 3.33 (J) claims and litigation;
- 3.34 (K) family maintenance;
- 3.35 (L) benefits from military service;
- 3.36 (M) records, reports, and statements;
- 3.37 (N) all of the powers listed in (A) through (M) above and all other financial
- 3.38 matters.

3.39 SECOND: (You must indicate below whether or not this power of attorney will be

3.40 effective if you become incapacitated or incompetent. Make a check or "x" on the line in

3.41 front of the statement that expresses your intent.)

4.1 This power of attorney shall continue to be effective if I become incapacitated or
4.2 incompetent.

4.3 This power of attorney shall not be effective if I become incapacitated or
4.4 incompetent.

4.5 THIRD: ~~(You must indicate below whether or not this power of attorney authorizes~~
4.6 ~~the attorney-in-fact to transfer your property to the attorney-in-fact. Make a check or "x" on~~
4.7 ~~the line in front of the statement that expresses your intent.)~~ My attorney-in-fact MAY NOT
4.8 make gifts to the attorney-in-fact or to anyone the attorney-in-fact is legally obligated to
4.9 support UNLESS I have initialed below and written in the name(s) of the attorney-in-fact:

4.10 (CAUTION: Granting this power may make it easier for your attorney-in-fact
4.11 to make improper or illegal transactions).

4.12 ~~This power of attorney authorizes the attorney-in-fact to transfer my property~~
4.13 ~~to the attorney-in-fact. I authorize my spouse,, as my~~
4.14 ~~attorney-in-fact, to make gifts to my spouse.~~

4.15 ~~This power of attorney does not authorize the attorney-in-fact to transfer my~~
4.16 ~~property to the attorney-in-fact. I authorize,, (write-in~~
4.17 ~~name(s)), as my attorney-in-fact, to make gifts to the attorney-in-fact (or to anyone~~
4.18 ~~the attorney-in-fact has a legal obligation to support) but only as allowed by~~
4.19 ~~Minnesota Statutes, section 523.24, subdivision 8, which limits the value of such~~
4.20 ~~gifts to the federal annual gifting exclusion amount.~~

4.21 FOURTH: (You may indicate below whether or not the attorney-in-fact is required
4.22 to make an accounting. Make a check or "x" on the line in front of the statement that
4.23 expresses your intent.)

4.24 My attorney-in-fact need not render an accounting unless I request it or the
4.25 accounting is otherwise required by Minnesota Statutes, section 523.21.

4.26 My attorney-in-fact must render
4.27 (Monthly, Quarterly, Annual)

4.28 accountings to me or
4.29 (Name and Address)

4.30 during my lifetime, and a final accounting to the personal representative of my
4.31 estate, if any is appointed, after my death.

4.32 In Witness Whereof I have hereunto signed my name thisday of,

4.33
4.34 (Signature of Principal)

4.35 (Acknowledgment of Principal)

4.36 STATE OF MINNESOTA)

4.37) ss.

4.38 COUNTY OF)

5.1

The foregoing instrument was acknowledged before me this day of,,

5.2

by

5.3

(Insert Name of Principal)

5.4

.....

5.5

(Signature of Notary Public or

5.6

other Official)

5.7

Acknowledgement and Specimen

5.8

Signature of Attorney(s)-in-Fact

5.9

(Notarization not required)

5.10

By signing below, I acknowledge that I

5.11

am a nominated attorney-in-fact, have

5.12

read this document, and understand

5.13

the duties assumed if I exercise the

5.14

powers granted. I am under no duty

5.15

to exercise any authority granted by

5.16

this document. If I take any action as

5.17

attorney-in-fact, I must act with the

5.18

interests of the principal utmost in mind.

5.19

I must also keep complete records of all

5.20

transactions entered under the authority

5.21

of this document and must give written

5.22

accountings as directed by the principal.

5.23

~~Specimen Signature of~~

5.24

This instrument was drafted by: ~~Attorney(s)-in-Fact~~

5.25

~~(Notarization not required)~~

5.26

.....

5.27

.....

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.....

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.....

5.30

Sec. 3. Minnesota Statutes 2012, section 523.24, subdivision 8, is amended to read:

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Subd. 8. **Gift transactions.** In the statutory short form power of attorney, the

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language conferring general authority with respect to gift transactions, means that the

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principal authorizes the attorney-in-fact:

5.34

(1) to make gifts to organizations, whether charitable or otherwise, to which the

5.35

principal has made gifts, and to satisfy pledges made to organizations by the principal;

5.36

(2) to make gifts on behalf of the principal to the principal's spouse, children, and

5.37

other descendants or the spouse of any child or other descendant, and, if authorized by

5.38

the principal in part Third, to the attorney-in-fact, either outright or in trust, for purposes

5.39

which the attorney-in-fact deems to be in the best interest of the principal, specifically

5.40

including minimization of income, estate, inheritance, or gift taxes, provided that,

5.41

notwithstanding that the principal in part Third may have authorized the attorney-in-fact

to transfer the principal's property to the attorney-in-fact, no attorney-in-fact nor anyone the attorney-in-fact has a legal obligation to support may be the recipient of any gifts in any one calendar year which, in the aggregate, exceed \$10,000 in value to each recipient the then applicable federal annual gift exclusion amount to each recipient;

(3) to prepare, execute, consent to on behalf of the principal, and file any return, report, declaration, or other document required by the laws of the United States, any state or subdivision of a state, or any foreign government, which the attorney-in-fact deems to be desirable or necessary with respect to any gift made under the authority of this subdivision;

(4) to execute, acknowledge, seal, and deliver any deed, assignment, agreement, authorization, check, or other instrument which the attorney-in-fact deems useful for the accomplishment of any of the purposes enumerated in this subdivision;

(5) to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal based on or involving any gift transaction or to intervene in any related action or proceeding;

(6) to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney-in-fact deems that action to be desirable for the proper execution by the attorney-in-fact of any of the powers described in this subdivision, and for the keeping of needed records; and

(7) in general, and in addition to but not in contravention of all the specific acts listed in this subdivision, to do any other acts which the attorney-in-fact deems desirable or necessary to complete any gift on behalf of the principal.

All powers described in this subdivision are exercisable equally with respect to a gift of any property in which the principal is interested at the giving of the power of attorney or becomes interested after that time, and whether located in the state of Minnesota or elsewhere.

For purposes of clause (2), a gift shall include, but is not limited to, any transaction in which the attorney-in-fact: (i) names the attorney-in-fact or anyone the attorney-in-fact is legally obligated to support as beneficiary on a new or existing asset or account of the principal, or (ii) names the attorney-in-fact or anyone the attorney-in-fact is legally obligated to support as a joint owner with rights of survivorship on a new or existing asset or account of the principal.

Sec. 4. Minnesota Statutes 2012, section 523.24, subdivision 14, is amended to read:

Subd. 14. **All other financial matters.** In a statutory short form power of attorney, the language conferring general authority with respect to all other matters, means that the principal authorizes the attorney-in-fact to act as an alter ego of the principal with respect

to any and all possible matters ~~and affairs affecting property owned by the principal~~
affecting the financial affairs of the principal which are not enumerated in subdivisions 1
to 13, and which the principal can do through an agent.

Sec. 5. **[523.26] JUDICIAL RELIEF.**

Subdivision 1. **Authorization.** In addition to any other remedies available under the
law, the principal or any interested person, as defined in section 524.5-102, subdivision
7, may petition the court for a protective order directing the attorney-in-fact to provide
an accounting, on a schedule directed by the court, or for any other relief as provided in
sections 524.5-401 to 524.5-502.

Subd. 2. **Damages.** If the court finds that an attorney-in-fact has failed to account to
the principal after the principal has requested an accounting, or if the court finds that an
attorney-in-fact has failed to account to any person named by the principal in the power of
attorney to receive accountings, the principal is entitled to recover damages equal to three
times the amount of compensatory damages or \$10,000, whichever is greater. In addition
to damages, the principal, or other person to whom the attorney-in-fact failed to account,
is entitled to recover reasonable attorney fees and costs.

Sec. 6. **EFFECTIVE DATE.**

Sections 1 to 4 are effective August 1, 2013, and apply to powers-of-attorney
executed on or after that date. Section 5 is effective August 1, 2013, and applies to
powers-of-attorney executed before, on, or after that date.