

Stricken language would be deleted from and underlined language would be added to present law.
Act 804 of the Regular Session

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H3/15/21

A Bill

HOUSE BILL 1518

By: Representative Penzo

By: Senator L. Eads

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING THE CREATION OF A TRUST; TO AMEND THE LAW CONCERNING A POWER OF ATTORNEY AS IT RELATES TO THE CREATION AND VALIDITY OF A TRUST; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING THE CREATION OF A TRUST; AND TO AMEND THE LAW CONCERNING A POWER OF ATTORNEY AS IT RELATES TO THE CREATION AND VALIDITY OF A TRUST.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 28-68-201(a)(1), concerning required specific grants of authority and grants of general authority under the Uniform Power of Attorney Act, is amended to read as follows:

(1) create, amend, revoke, or terminate an inter vivos trust;

SECTION 2. Arkansas Code § 28-68-301 is amended to read as follows:
28-68-301. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this chapter.

ARKANSAS STATUTORY FORM POWER OF ATTORNEY
IMPORTANT INFORMATION



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following person as my agent:

Name of Agent:

Agent's Address:

Agent's Telephone Number:

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:

Successor Agent's Address:

Successor Agent's Telephone Number:

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:

Second Successor Agent's Address:

Second Successor Agent's Telephone Number:

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

Real Property

Tangible Personal Property

Stocks and Bonds

Commodities and Options

Banks and Other Financial Institutions

Operation of Entity or Business

Insurance and Annuities

Estates, Trusts, and Other Beneficial Interests

- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- ~~Amend, Create, amend,~~ revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of § 28-68-217 of the Uniform Power of Attorney Act and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

NOMINATION OF GUARDIAN (OPTIONAL)

If it becomes necessary for a court to appoint a guardian of my estate or guardian of my person, I nominate the following person(s) for appointment:

Name of Nominee for guardian of my estate:

Nominee's Address:

Nominee's Telephone Number:

Name of Nominee for guardian of my person:

Nominee's Address:

Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature

Date

Your Name Printed

Your Address

Your Telephone Number

State of

County of

This document was acknowledged before me on _____ ,
(Date)

by _____ .
(Name of Principal)

(Seal, if any)

Signature of Notary

My commission expires:

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;

(2) act in good faith;

(3) do nothing beyond the authority granted in this power of attorney; and

(4) disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

Unless the Special Instructions in this power of attorney state otherwise, you must also:

(1) act loyally for the principal's benefit;

(2) avoid conflicts that would impair your ability to act in the principal's best interest;

(3) act with care, competence, and diligence;

(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably

expects or, if you do not know the principal's expectations, to act in the principal's best interest; and

(6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) death of the principal;
 - (2) the principal's revocation of the power of attorney or your authority;
 - (3) the occurrence of a termination event stated in the power of attorney;
 - (4) the purpose of the power of attorney is fully accomplished;
- or

(5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68. If you violate the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

SECTION 3. Arkansas Code § 28-73-401 is amended to read as follows:

28-73-401. Methods of creating trust.

A trust may be created by:

- (1) transfer of property to another person as trustee during the settlor's lifetime or by will or other disposition taking effect upon the settlor's death;
- (2) declaration by the owner of property that the owner holds identifiable property as trustee; ~~or~~
- (3) exercise of a power of appointment in favor of a trustee; or
- (4) an agent under a power of attorney that expressly grants the agent the authority to create a trust.

SECTION 4. Arkansas Code § 28-73-402, concerning the requirements for the creation of a trust under the Arkansas Trust Code, is amended to add an additional subsection to read as follows:

(d) Notwithstanding subsection (a)(1) of this section, a trust created by an agent under a power of attorney is valid if the:

- (1) Trust is created by an agent under a power of attorney executed by the settlor as described in § 28-73-401(4); and
- (2) Settlor had the capacity to create a trust at the time he or she executed the power of attorney.

SECTION 5. Arkansas Code § 28-73-601 is amended to read as follows:

28-73-601. Capacity of settlor of revocable trust.

(a) The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

(b) Notwithstanding subsection (a) of this section, action taken by an agent under a power of attorney to create, amend, revoke, add property to a revocable trust, or direct the actions of a trustee of a revocable trust is valid if the:

- (1) Power of attorney expressly grants the agent the authority to perform the action; and
- (2) Settlor had the capacity to take the action at the time the power or attorney was executed.

APPROVED: 4/20/21