IC 30-5-3

Chapter 3. General Provisions

IC 30-5-3-1

Rules of law; interpretation and application; conflict with terms of power

Sec. 1. The rules of law contained in this article shall be interpreted and applied to the terms of a power of attorney to implement the intent of the principal and the purposes of the power of attorney. If the rules of law conflict with the terms of the power of attorney, the terms of the power of attorney control unless the rules of law clearly prohibit or restrict what the terms of the power of attorney purport to authorize.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-2

Validity of power; execution under certain laws

Sec. 2. A power of attorney is valid if the power of attorney was valid at the time the power of attorney was executed under any of the following:

(1) This article.

(2) IC 30-2-11 (repealed).

(3) Common law.

(4) The law of another state or foreign country.

(5) The requirements for a military power of attorney under 10 U.S.C. 1044b.

As added by P.L.149-1991, SEC.2. Amended by P.L.143-2009, SEC.24.

IC 30-5-3-3

Recording power of attorney

Sec. 3. (a) Except as provided in subsection (b), an attorney in fact may act under a power of attorney without recording the power of attorney with the county recorder.

(b) An attorney in fact shall record the power of attorney authorizing the execution of a document that must be recorded before presenting the document for recording.

(c) A county recorder may not accept a document for recording if the document:

(1) was executed; and

(2) is presented;

by an attorney in fact whose power of attorney is unrecorded.

(d) A document creating a power of attorney must comply with recording requirements, including notary and preparation statements, to be recorded under this section.

(e) A document that is presented by an attorney in fact for recording must reference the book and page or instrument number where the instrument creating the power of attorney is recorded before the document may be presented by the attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-4

Guardians; nomination; appointment; powers and duties; amendment or revocation of power; hearing; notice

Sec. 4. (a) A principal may nominate a guardian for consideration by the court if protective proceedings for the principal's person or estate are commenced. The court shall make an appointment in accordance with the principal's most recent nomination in a power of attorney except for good cause or disqualification.

(b) A guardian does not have power, duty, or liability with respect to property or personal health care decisions that are subject to a valid power of attorney. A guardian has no power to revoke or amend a valid power of attorney unless specifically directed to revoke or amend the power of attorney by a court order on behalf of the principal. A court may not enter an order to revoke or amend a power of attorney without a hearing. Notice of a hearing held under this section shall be given to the attorney in fact.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-5

Construction of power and instruction to attorney in fact; petition; notice of hearing

Sec. 5. Upon petition by an interested person, the court may construe a power of attorney and instruct the attorney in fact if the court finds that the principal lacks the capacity to control or revoke the power of attorney. Notice of a hearing on a petition under this subsection shall be given as the court directs.

As added by P.L.149-1991, SEC.2.

IC 30-5-3-6

Interpretation under the law of the jurisdiction indicated in the power of attorney

Sec. 6. The meaning and effect of a power of attorney are determined by the law of the jurisdiction indicated in the power of attorney. In the absence of an indication of jurisdiction, the meaning and effect of a power of attorney are determined by the law of the jurisdiction in which the power of attorney was executed.

As added by P.L.143-2009, SEC.25.

IC 30-5-3-7

Effect on the Electronic Signatures in Global and National Commerce Act

Sec. 7. This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.). However, this article does not:

(1) modify, limit, or supersede 15 U.S.C. 7001(c); or

(2) authorize the electronic delivery of a notice described in 15 U.S.C. 7003(b).

As added by P.L.143-2009, SEC.26.