IC 30-5-4

Chapter 4. Creation of a Power of Attorney

IC 30-5-4-1

Validity of power; conditions

Sec. 1. To be valid, a power of attorney must meet the following conditions:

(1) Be in writing.

(2) Name an attorney in fact.

(3) Give the attorney in fact the power to act on behalf of the principal.

(4) Be signed by the principal or at the principal's direction in the presence of a notary public.

(5) In the case of a power of attorney signed at the direction of the principal, the notary must state that the individual who signed the power of attorney on behalf of the principal did so at the principal's direction.

As added by P.L.149-1991, SEC.2. Amended by P.L.101-2008, SEC.9.

IC 30-5-4-2

Time power becomes effective; incapacity of the principal

Sec. 2. (a) Except as provided in subsection (b), a power of attorney is effective on the date the power of attorney is signed in accordance with section 1(4) of this chapter.

(b) A power of attorney may:

(1) specify the date on which the power will become effective; or

(2) become effective upon the occurrence of an event.

(c) If a power of attorney becomes effective upon the principal's incapacity and:

(1) the principal has not authorized a person to determine whether the principal is incapacitated; or

(2) the person authorized is unable or unwilling to make the determination;

the power of attorney becomes effective upon a determination that the principal is incapacitated that is set forth in a writing or other record by a physician, licensed psychologist, or judge.

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may:

(1) act as the principal's personal representative under the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 201 et seq.) and any rules or regulations issued under that act; and

(2) obtain access to the principal's health care information and communicate with the principal's health care provider.

As added by P.L.149-1991, SEC.2. Amended by P.L.101-2008, SEC.10; P.L.143-2009, SEC.27.

IC 30-5-4-3

More than one attorney in fact; independent actions; failure or cessation of service

Sec. 3. (a) Except as otherwise stated in the power of attorney, if more than one (1) attorney in fact is named, each attorney in fact may act independently of the other attorney in fact in the exercise of a power or duty.

(b) Except as otherwise stated in the power of attorney, if:

(1) more than one (1) attorney in fact is named; and

(2) one (1) attorney in fact fails to serve or ceases to serve;

the remaining attorney in fact may continue to act under the power of attorney without a successor for the attorney in fact who failed to serve or ceased to serve.

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

IC 30-5-4-4

Failure or cessation of service; circumstances; successor attorney in fact; powers

Sec. 4. (a) Except as stated otherwise in the power of attorney, an attorney in fact fails to serve or ceases to serve when:

(1) the attorney in fact dies;

(2) the attorney in fact resigns;

(3) the attorney in fact is adjudged incapacitated by a court;

(4) the attorney in fact cannot be located upon reasonable inquiry;

(5) the attorney in fact, if at one time the principal's spouse, legally is no longer the principal's spouse; or

(6) a physician familiar with the condition of the current attorney in fact certifies in writing to the immediate successor attorney in fact that the current attorney in fact is unable to transact a significant part of the business required under the power of attorney.

(b) Except as stated otherwise in the power of attorney, if the replaced attorney in fact reappears or is subsequently able to transact business, the successor attorney in fact shall remain as the attorney in fact.

(c) Except as otherwise stated in the power of attorney, an attorney in fact designated as a successor has the powers granted under the power of attorney to the original attorney in fact.

(d) Unless a power of attorney provides a different method for an attorney in fact's resignation, an attorney in fact may resign by giving notice to the principal and, if the principal is incapacitated:

(1) to:

(A) the principal's guardian, if a guardian has been appointed for the principal; and

(B) a co-attorney in fact or successor attorney in fact; or

(2) if there is no person described in subdivision (1), to:

(A) the principal's caregiver;

(B) another person reasonably believed by the attorney in fact to have sufficient interest in the principal's welfare; or

(C) a governmental agency having authority to protect the

welfare of the principal.

As added by P.L.149-1991, SEC.2. Amended by P.L.143-2009, SEC.28; P.L.6-2010, SEC.21.

IC 30-5-4-5

Reimbursement of expenses; fee for services

Sec. 5. (a) Except as stated otherwise in the power of attorney, an attorney in fact is entitled to reimbursement of all reasonable expenses advanced by the attorney in fact on behalf of the principal.

(b) Except as otherwise stated in the power of attorney, an attorney in fact is entitled to a reasonable fee for services rendered. The attorney in fact shall, not later than twelve (12) months after the date the service is rendered, notify the principal in writing of the amount claimed as compensation for rendering the service.

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