

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 137

S. P. 57

In Senate, January 9, 1975

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Collins of Knox.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT Concerning Continuation of a Power of Attorney upon Death or Disability.

Be it enacted by the People of the State of Maine, as follows:

18 MRSA, c. 507 is enacted to read:

CHAPTER 507

DURATION OF POWER OF ATTORNEY

§ 4201. When power of attorney is not affected by disability

Whenever a principal designates another his attorney-in-fact or agent by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," or "This power of attorney shall become effective upon the disability of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding his disability, the authority of the attorney-in-fact or agent is exercisable by him as provided in the power on behalf of the principal notwithstanding later disability or incapacity of the principal at law or later uncertainty as to whether the principal is dead or alive. All acts done by the attorney-in-fact or agent pursuant to the power during any period of disability or incompetence or uncertainty as to whether the principal is dead or alive have the same effect and inure to the benefit of and bind the principal or his heirs, devisees and personal representatives as if the principal were alive, competent and not disabled. If a conservator or guardian thereafter is appointed for the principal, the attorney-in-fact or agent, during the continuance of the appointment, shall account to the conservator or guardian rather than the principal. The conservator or guardian

has the same power the principal would have had if he were not disabled or incompetent to revoke, suspend, or terminate all or any part of the power of attorney or agency.

§ 4202. Other powers of attorney are not revoked until notice of death or disability

1. Power of attorney not revoked. The death, disability or incompetence of any principal who has executed a power of attorney in writing, other than a power as described by section 4201, does not revoke or terminate the agency as to the attorney-in-fact, agent or other person who, without actual knowledge of the death, disability or incompetence of the principal, acts in good faith under the power of attorney or agency. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his heirs, devisees and personal representatives.

2. Affidavit. An affidavit executed by the attorney-in-fact or agent stating that he did not have, at the time of doing an act pursuant to the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death, disability or incompetence, is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power at that time. If the exercise of the power requires execution and delivery of any instrument which is recordable, the affidavit when authenticated for record is likewise recordable.

3. Construction of this section. This section shall not be construed to alter or affect any provision for revocation or termination contained in the power of attorney.

STATEMENT OF FACT

Section 4201 permits a competent person to execute a power of attorney which will become or remain effective in the event he should later become disabled. If the court should subsequently appoint a conservator or guardian, the latter may either permit the attorney-in-fact to continue to act or revoke the power of attorney.

Section 4202 adopts the civil law rule that powers of attorney are not revoked on death or disability until the attorney-in-fact has actual knowledge of the death or disability. Provision is made for proving lack of knowledge by affidavit and the recordation of the affidavit to protect transactions that might otherwise be invalidated at common law.