South Dakota | Statutory financial power of attorney

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Read the source statute

59-12-41. 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. The provisions of §§ 43-28-23 and 7-9-1 apply to any power of attorney that is to be recorded with the register of deeds.

SOUTH DAKOTA

STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in SDCL chapter 59-12.

This power of attorney does not authorize the agent to make health-care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a co-agent in the Special Instructions. Co-agents are required to have a majority to act unless you include otherwise in the Special Instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I _____ name the following person as my agent:

(Name of Principal)

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 SDCL chapter 59-12:

(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 (§ 59-12-26)

(___) Tangible Personal Property (§ 59-12-27)

(___) Stocks and Bonds (§ 59-12-28)

(___) Commodities and Options (§ 59-12-29)

(___) Banks and Other Financial Institutions (§ 59-12-30)

(___) Operation of Entity or Business (§ 59-12-31)

(___) Insurance and Annuities (§ 59-12-32)

(___) Estates, Trusts, and Other Beneficial Interests (§ 59-12-33)

(___) Claims and Litigation (§ 59-12-34)

(___) Personal and Family Maintenance (§ 59-12-35)

(___) Benefits from Governmental Programs or Civil or Military Service (§ 59-12-36)

(___) Retirement Plans (§ 59-12-37)

(___) Taxes (§ 59-12-38)

(___) All Preceding Subjects (§§ 59-12-26 through 59-12-38)

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.)

(___) Create an inter vivos trust or amend, revoke, or terminate a trust

(___) Make a gift, subject to the limitations of § 59-12-39 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

(___) Access the content of electronic communications

(___) Disclaim or refuse an interest in property, including a power of appointment

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

(INITIAL if you wish for the agent to have authority immediately and also during your later incapacity.)

(___) This power of attorney is effective immediately and shall not be affected by disability of the principal.

(INITIAL if you wish for the agent to only have authority upon your incapacity instead of immediately.)

(___) My agent(s) shall only have the authority to act upon my later incapacity.

(INITIAL if you wish for the agent to have authority immediately but not during your later incapacity.)

(___) This power of attorney is effective immediately but shall terminate upon my later incapacity.

You may give additional 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 CONSERVATOR AND/OR GUARDIAN (OPTIONAL)

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

Name of Nominee for conservator of my estate:

_____

Nominee's Address: _____

Nominee's Telephone Number: _____

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

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

_____ _____, 2____

Your Signature Date

_____

Your Name Printed

_____

Your Address

_____

Your Telephone Number

State of _____)

)SS.

County of_____)

This Statutory Form Power of Attorney document was acknowledged before me on

_____, 2____ by _____.

(Date) (Name of Principal)

_____ (Seal)

Signature of Notary Public

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 under POA dated (Date)

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 SDCL chapter 59-12. If you violate SDCL chapter 59-12 or act outside the authority granted, you may be liable for any damages caused by your violation.

In addition to civil liability, failure to comply with your duties and authority granted under this document could subject you to criminal prosecution for grand theft, embezzlement of property received in trust, among other criminal charges.

If the principal is 65 years of age or older, or an adult with a disability, you could also be prosecuted for elder abuse and financial exploitation.

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

Source: SL 2020, ch 214, § 41.