

1 State of Arkansas
2 93rd General Assembly
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4

A Bill

HOUSE BILL 1518

5 By: Representative Penzo
6

For An Act To Be Entitled

8 AN ACT TO AMEND THE LAW CONCERNING THE CREATION OF A
9 TRUST; TO AMEND THE LAW CONCERNING A POWER OF
10 ATTORNEY AS IT RELATES TO THE CREATION AND VALIDITY
11 OF A TRUST; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 TO AMEND THE LAW CONCERNING THE CREATION
15 OF A TRUST; AND TO AMEND THE LAW
16 CONCERNING A POWER OF ATTORNEY AS IT
17 RELATES TO THE CREATION AND VALIDITY OF A
18 TRUST.
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21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

27 (1) create, amend, revoke, or terminate an inter vivos trust;
28

29 SECTION 2. Arkansas Code § 28-68-301 is amended to read as follows:
30 28-68-301. Statutory form power of attorney.

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

34 ARKANSAS STATUTORY FORM POWER OF ATTORNEY
35 IMPORTANT INFORMATION

36 This power of attorney authorizes another person (your agent) to make



1 decisions concerning your property for you (the principal). Your agent will
 2 be able to make decisions and act with respect to your property (including
 3 your money) whether or not you are able to act for yourself. The meaning of
 4 authority over subjects listed on this form is explained in the Uniform Power
 5 of Attorney Act, Arkansas Code Title 28, Chapter 68.

6
 7 This power of attorney does not authorize the agent to make ~~health-care~~
 8 healthcare decisions for you.

9
 10 You should select someone you trust to serve as your agent. Unless you
 11 specify otherwise, generally the agent's authority will continue until you
 12 die or revoke the power of attorney or the agent resigns or is unable to act
 13 for you.

14
 15 Your agent is entitled to reasonable compensation unless you state otherwise
 16 in the Special Instructions.

17
 18 This form provides for designation of one agent. If you wish to name more
 19 than one agent you may name a coagent in the Special Instructions. Coagents
 20 are not required to act together unless you include that requirement in the
 21 Special Instructions.

22
 23 If your agent is unable or unwilling to act for you, your power of attorney
 24 will end unless you have named a successor agent. You may also name a second
 25 successor agent.

26
 27 This power of attorney becomes effective immediately unless you state
 28 otherwise in the Special Instructions.

29
 30 If you have questions about the power of attorney or the authority you are
 31 granting to your agent, you should seek legal advice before signing this
 32 form.

33 DESIGNATION OF AGENT

34 I name the
 35 (Name of Principal)
 36 following person as my agent:

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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

- 1 () Personal and Family Maintenance
- 2 () Benefits from Governmental Programs or Civil or Military Service
- 3 () Retirement Plans
- 4 () Taxes
- 5 () All Preceding Subjects

6 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

- 13
- 14 () ~~Amend, Create, amend~~, revoke, or terminate an inter vivos trust
- 15 () Make a gift, subject to the limitations of § 28-68-217 of the Uniform
16 Power of Attorney Act and any special instructions in this power of attorney
- 17 () Create or change rights of survivorship
- 18 () Create or change a beneficiary designation
- 19 () Authorize another person to exercise the authority granted under this
20 power of attorney
- 21 () Waive the principal's right to be a beneficiary of a joint and survivor
22 annuity, including a survivor benefit under a retirement plan
- 23 () Exercise fiduciary powers that the principal has authority to delegate

24 LIMITATION ON AGENT'S AUTHORITY

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

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30 SPECIAL INSTRUCTIONS (OPTIONAL)

31 You may give special instructions on the following lines:

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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 ,

1 (Date)

2 by .

3 (Name of Principal)

4

5 (Seal, if any)

6 Signature of Notary

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8 My commission expires:

9 IMPORTANT INFORMATION FOR AGENT

10 Agent's Duties

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

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

19 (2) act in good faith;

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

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

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

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

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

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

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

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

34 (5) cooperate with any person that has authority to make health-
35 care decisions for the principal to do what you know the principal reasonably
36 expects or, if you do not know the principal's expectations, to act in the

1 principal's best interest; and

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

5
 6 Termination of Agent's Authority

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

- 12 (1) death of the principal;
- 13 (2) the principal's revocation of the power of attorney or your
 14 authority;
- 15 (3) the occurrence of a termination event stated in the power of
 16 attorney;
- 17 (4) the purpose of the power of attorney is fully accomplished;
- 18 or
- 19 (5) if you are married to the principal, a legal action is filed
 20 with a court to end your marriage, or for your legal separation, unless the
 21 Special Instructions in this power of attorney state that such an action will
 22 not terminate your authority.

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 24 Liability of Agent

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

31
 32 If there is anything about this document or your duties that you do not
 33 understand, you should seek legal advice.

34
 35 SECTION 3. Arkansas Code § 28-73-401 is amended to read as follows:
 36 28-73-401. Methods of creating trust.

1 A trust may be created by:

2 (1) transfer of property to another person as trustee during the
 3 settlor's lifetime or by will or other disposition taking effect upon the
 4 settlor's death;

5 (2) declaration by the owner of property that the owner holds
 6 identifiable property as trustee; ~~or~~

7 (3) exercise of a power of appointment in favor of a trustee; or

8 (4) an agent under a power of attorney that expressly grants the
 9 agent the authority to create a trust.

10
 11 SECTION 4. Arkansas Code § 28-73-402, concerning the requirements for
 12 the creation of a trust under the Arkansas Trust Code, is amended to add an
 13 additional subsection to read as follows:

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

16 (1) Trust is created by an agent under a power of attorney
 17 executed by the settlor as described in § 28-73-401(4); and

18 (2) Settlor had the capacity to create a trust at the time he or
 19 she executed the power of attorney.

20
 21 SECTION 5. Arkansas Code § 28-73-601 is amended to read as follows:

22 28-73-601. Capacity of settlor of revocable trust.

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

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

30 (1) Power of attorney expressly grants the agent the authority
 31 to perform the action; and

32 (2) Settlor had the capacity to take the action at the time the
 33 power or attorney was executed.