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4

As Engrossed: H3/15/21

A Bill

HOUSE BILL 1518

5 By: Representative Penzo
6 By: Senator L. Eads
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE CREATION OF A
10 TRUST; TO AMEND THE LAW CONCERNING A POWER OF
11 ATTORNEY AS IT RELATES TO THE CREATION AND VALIDITY
12 OF A TRUST; AND FOR OTHER PURPOSES.
13
14

Subtitle

15 TO AMEND THE LAW CONCERNING THE CREATION
16 OF A TRUST; AND TO AMEND THE LAW
17 CONCERNING A POWER OF ATTORNEY AS IT
18 RELATES TO THE CREATION AND VALIDITY OF A
19 TRUST.
20
21
22

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
24

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

28 (1) create, amend, revoke, or terminate an inter vivos trust;
29

30 SECTION 2. Arkansas Code § 28-68-301 is amended to read as follows:
31 28-68-301. Statutory form power of attorney.

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

35 ARKANSAS STATUTORY FORM POWER OF ATTORNEY
36 IMPORTANT INFORMATION



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

7

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

10

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

15

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

18

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

23

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

27

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

30

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

34 DESIGNATION OF AGENT

35 I name the
36 (Name of Principal)

1 following person as my agent:

2

3 Name of Agent:

4 Agent's Address:

5 Agent's Telephone Number:

6 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

7 If my agent is unable or unwilling to act for me, I name as my successor
8 agent:

9

10 Name of Successor Agent:

11 Successor Agent's Address:

12 Successor Agent's Telephone Number:

13

14 If my successor agent is unable or unwilling to act for me, I name as my
15 second successor agent:

16

17 Name of Second Successor Agent:

18 Second Successor Agent's Address:

19 Second Successor Agent's Telephone Number:

20 GRANT OF GENERAL AUTHORITY

21 I grant my agent and any successor agent general authority to act for me with
22 respect to the following subjects as defined in the Uniform Power of Attorney
23 Act, Arkansas Code Title 28, Chapter 68:

24 (INITIAL each subject you want to include in the agent's
25 general authority. If you wish to grant general authority over all of the
26 subjects you may initial "All Preceding Subjects" instead of initialing each
27 subject.)

28

29 (___) Real Property

30 (___) Tangible Personal Property

31 (___) Stocks and Bonds

32 (___) Commodities and Options

33 (___) Banks and Other Financial Institutions

34 (___) Operation of Entity or Business

35 (___) Insurance and Annuities

36 (___) Estates, Trusts, and Other Beneficial Interests

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

7 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

14

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

25 LIMITATION ON AGENT'S AUTHORITY

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

30

31 SPECIAL INSTRUCTIONS (OPTIONAL)

32 You may give special instructions on the following lines:

33

34

35

36

1 This document was acknowledged before me on _____ ,

2 _____ (Date)

3 by _____ .

4 _____ (Name of Principal)

5

6 _____ (Seal, if any)

7 Signature of Notary

8

9 My commission expires:

10 IMPORTANT INFORMATION FOR AGENT

11 Agent's Duties

12

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

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

20 (2) act in good faith;

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

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

26 _____ (Principal's Name) by _____ (Your Signature) as Agent

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

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

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

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

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

35 (5) cooperate with any person that has authority to make health-
36 care decisions for the principal to do what you know the principal reasonably

1 expects or, if you do not know the principal's expectations, to act in the
2 principal's best interest; and

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

6

7 Termination of Agent's Authority

8

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

13 (1) death of the principal;

14 (2) the principal's revocation of the power of attorney or your
15 authority;

16 (3) the occurrence of a termination event stated in the power of
17 attorney;

18 (4) the purpose of the power of attorney is fully accomplished;

19 or

20 (5) if you are married to the principal, a legal action is filed
21 with a court to end your marriage, or for your legal separation, unless the
22 Special Instructions in this power of attorney state that such an action will
23 not terminate your authority.

24

25 Liability of Agent

26

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

32

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

35

36 SECTION 3. Arkansas Code § 28-73-401 is amended to read as follows:

1 28-73-401. Methods of creating trust.

2 A trust may be created by:

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

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

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

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

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

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

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

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

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

23 28-73-601. Capacity of settlor of revocable trust.

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

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

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

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

35
36 /s/Penzo