

58-657. Modification, termination or suspension of power of attorney; successor attorney; resignation of attorney. (a) As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

(1) On the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;

(2) when the principal, orally or in writing, or the principal's legal representative in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated; or

(3) when a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record in the office of the register of deeds in the county of the principal's residence or, if the principal is a nonresident of the state, in the county of the residence of the attorney in fact last known to the principal, or in the county in which is located any property specifically referred to in the power of attorney.

(b) As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be terminated as follows:

(1) On the death of the principal, except that if the power of attorney grants authority under subsection (f)(7), (f)(8) or (f)(13) of K.S.A. 58-654, and amendments thereto, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of such subsections for a reasonable length of time after the death of the principal;

(2) when the attorney in fact under a power of attorney is not qualified to act for the principal; or

(3) on the filing of any action for annulment, separate maintenance or divorce of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

(c) The authority of an attorney in fact, under a power of attorney that is nondurable, is suspended during any period that the principal is disabled to the extent that the principal is unable to receive or evaluate information or to communicate decisions with respect to the subject of the power of attorney. An attorney in fact exercising authority under a power of attorney that is nondurable shall not act in the principal's behalf during any period that the attorney in fact knows the principal is so disabled.

(d) Whenever any of the events described in subsection (a) operate merely to terminate the authority of the particular person designated as the attorney in fact, rather than terminating the power of attorney, if the power of attorney designates a successor or contingent attorney in fact or prescribes a procedure whereby a successor or contingent attorney in fact may be designated, then the authority provided in the power of attorney shall extend to and vest in the successor or contingent attorney in fact in lieu of the attorney in fact whose power and authority was terminated under any of the circumstances referred to in subsection (a).

(e) As between the principal and attorney in fact or successor, acts and transactions of the attorney in fact or successor undertaken in good faith, in accordance with K.S.A. 58-656, and amendments thereto, and without actual knowledge of the death of the principal or without actual knowledge, or constructive knowledge pursuant to subsection (a)(3), that the authority granted in the power of attorney has been suspended, modified or terminated, relieves the attorney in fact or successor from liability to the principal and the principal's successors in interest.

(f) This section does not prohibit the principal, acting individually, and the person designated as the attorney in fact from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of this act, with the exception of those acts enumerated in subsection (g) of K.S.A. 58-654, and amendments thereto.

(g) As between the principal and any attorney in fact or successor, if the attorney in fact or successor undertakes to act, and if in respect to such act, the attorney in fact or successor acts in bad faith, fraudulently or otherwise dishonestly, or if the attorney in fact or successor intentionally acts after receiving actual notice that the power of attorney has been revoked or terminated, and thereby causes damage or loss to the principal or to the principal's successors in interest, such attorney in fact or successor shall be liable to the principal or to the principal's successors in interest, or both, for such damages, together with reasonable attorney fees, and punitive damages as allowed by law.

(h) If a power of attorney does not provide the 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 disabled:

(1) To the conservator or guardian, if one has been appointed for the principal, any co-attorney in fact or successor attorney in fact, and the appointing court;

(2) to the successor attorney in fact, if one is named in the power of attorney document; or

(3) if there is no person described in subsections (h)(1) or (2), the notice may be given 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.

History: L. 2003, ch. 58, § 8; L. 2004, ch. 50, § 3; L. 2009, ch. 73, § 4; July 1.