

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 510

Short Title: Enforcement of Power of Attorney. (Public)

Sponsors: Representatives Stam and Martin (Primary Sponsors).

Referred to: Judiciary I.

March 7, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ENCOURAGE THIRD PARTIES TO ACCEPT THE AUTHORITY
3 GRANTED UNDER POWERS OF ATTORNEY.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 32A of the General Statutes is amended by adding a
6 new Article to read:

7 "Article 5.

8 "Enforcement of Power of Attorney.

9 "**§ 32A-35. Reliance on power of attorney.**

10 (a) Any third party that acts in good-faith reliance based on a writing that on its
11 face is duly acknowledged and regular, and that purports to confer a power of attorney,
12 durable or otherwise, shall be protected to the full extent of the powers granted in that
13 writing, unless the third party has actual knowledge that the writing is not a valid power
14 of attorney, whether or not the third party demands or receives an affidavit under
15 subsection (b) of this section. A third party that conducts activities through employees
16 or other agents has actual knowledge of a fact involving a power of attorney only from
17 the time the information was received by an employee or agent having the authority to
18 approve the power of attorney presented. No third party so dealing with a person named
19 as attorney-in-fact in that writing is responsible for the misapplication of any money or
20 other property paid or transferred as directed by the attorney-in-fact and pursuant to that
21 writing.

22 (b) Any third party may, prior to acceptance of the authority of the
23 attorney-in-fact or at any other time, request an affidavit executed by the
24 attorney-in-fact under a power of attorney, whether durable or otherwise, to the effect
25 that the attorney-in-fact did not have, at the time of the presentation of the writing to the
26 third party, actual knowledge of either (i) the revocation of the power pursuant to the
27 provisions of G.S. 32A-13(a) or (b); or (ii) facts that would cause the attorney-in-fact to
28 question the authenticity or validity of the power of attorney. An affidavit meeting the
29 requirements of this subsection shall be conclusive proof to the requesting third party of

(i) the nonrevocation; and (ii) the authenticity and validity of the power of attorney as of the date of the affidavit. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit when authenticated shall likewise be recordable. An affidavit in the form described in subsection (d) of this section shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.

(c) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

(d) Example of Affidavit of Attorney-in-Fact.

STATE OF _____

COUNTY OF _____

The undersigned does hereby state and affirm the following:

- (1) The undersigned is the person named as Attorney-in-Fact in the Power of Attorney executed by _____ ("Principal") on [date] _____, _____ (the "Power of Attorney").
- (2) The Power of Attorney is currently exercisable by the undersigned.
- (3) The undersigned has no actual knowledge that:
 - a. The Principal is deceased;
 - b. The Power of Attorney has been revoked or terminated, partially or otherwise;
 - c. The Principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the Power of Attorney was executed; and
 - d. The Power of Attorney was not properly executed and is not a legal, valid power of attorney.
- (4) The undersigned agrees not to exercise any powers granted under the Power of Attorney if the undersigned becomes aware that the Principal is deceased or has revoked such powers.

This is the ___ day of _____.

[Signature]

[Acknowledgement]

"§ 32A-36. Penalty for unreasonable refusal to recognize power.

(a) A third party dealing with an attorney-in-fact who unreasonably refuses to accept a power of attorney is liable for reasonable attorney fees and costs incurred in any action or proceeding necessary to confirm the validity of a power of attorney or to implement a power of attorney, shall be subject to an injunction requiring acceptance of the valid power of attorney, and shall be subject to any other remedy available under applicable law. The failure of a third party to accept a power of attorney within five business days after the initial presentment of the power of attorney shall not be deemed to be an unreasonable refusal.

1 (b) Acceptance of a power of attorney shall mean (i) acknowledging the validity
2 and authenticity of the document; and (ii) allowing the attorney-in-fact to conduct
3 business in accordance with the terms of the document.

4 **"§ 32A-37. Protection for third parties.**

5 (a) A third party is not required to honor the attorney-in-fact's authority or to
6 conduct business with the attorney-in-fact if the third party is not required to conduct
7 business with the principal in the same circumstances.

8 (b) Without limiting the generality of subsection (a) of this section, nothing in
9 this Article requires a third party (i) to engage in any transaction with an attorney-in-fact
10 if the attorney-in-fact has previously breached any agreement with the third party,
11 whether in an individual or fiduciary capacity; or (ii) to open an account for a principal
12 at the request of an attorney-in-fact if the principal is not currently a customer of the
13 third party, or to make a loan to the principal at the request of the attorney-in-fact.

14 (c) Any third party that has reasonable cause to question the authenticity or
15 validity of a power of attorney may refuse to accept the authority granted by that
16 document.

17 (d) Any third party that promptly requests, and does not within a reasonable time
18 receive, an affidavit as described in G.S. 32A-35(b), is not deemed under G.S. 32A-36
19 to have unreasonably refused to accept a power of attorney.

20 (e) In addition to its refusal to accept a power of attorney, a third party may
21 promptly initiate a special proceeding in accordance with the procedures of Article 33
22 of Chapter 1 of the General Statutes to request a determination of the validity of the
23 power of attorney. If the decision in that special proceeding is that the third party had
24 reasonable cause to refuse to accept the power of attorney, and that the attorney-in-fact
25 willfully misrepresented the authenticity or validity of the power of attorney, the
26 attorney-in-fact, and not the principal, is liable for reasonable attorney fees and costs
27 incurred in that action.

28 (f) Nothing in this Article requires a third party that accepts a power of attorney
29 to permit an attorney-in-fact to conduct business not authorized by the terms of the
30 power of attorney."

31 **SECTION 2.** This act becomes effective October 1, 2005, but applies to
32 powers of attorney created before and after that date.