

HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 232

01/31/2013 Authored by Hilstrom, Lesch, Kelly, Hortman, Abeler and others
The bill was read for the first time and referred to the Committee on Civil Law

02/14/2013 Adoption of Report: Pass as Amended and re-referred to the Committee on Judiciary Finance and Policy

02/25/2013 Adoption of Report: Pass as Amended and Read Second Time

04/11/2013 Calendar for the Day
Read Third Time
Passed by the House and transmitted to the Senate

1.1 A bill for an act

1.2 relating to civil law; modifying the statutory short form power of attorney;

1.3 authorizing certain judicial relief; modifying gift transaction amount; amending

1.4 Minnesota Statutes 2012, sections 523.20; 523.23, subdivision 1, by adding

1.5 subdivisions; 523.24, subdivisions 8, 14; proposing coding for new law in

1.6 Minnesota Statutes, chapter 523.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2012, section 523.20, is amended to read:

1.9 **523.20 LIABILITY OF PARTIES REFUSING AUTHORITY OF**

1.10 **ATTORNEY-IN-FACT TO ACT ON PRINCIPAL'S BEHALF.**

1.11 Any party refusing to accept the authority of an attorney-in-fact to exercise a power

1.12 granted by a power of attorney which (1) is executed in conformity with section 523.23

1.13 or a form prepared under section 523.231; (2) contains an acknowledgement that the

1.14 attorney-in-fact has read and understood the notice required under section 523.23,

1.15 subdivision 1b, and a specimen signature of the attorney-in-fact authorized to act; (3) with

1.16 regard to the execution or delivery of any recordable instrument relating to real property, is

1.17 accompanied by affidavits that satisfy the provisions of section 523.17; (4) with regard to

1.18 any other transaction, is signed by the attorney-in-fact in a manner conforming to section

1.19 523.18; and (5) when applicable, is accompanied by an affidavit and any other document

1.20 required by section 523.16, is liable to the principal and to the principal's heirs, assigns,

1.21 and representative of the estate of the principal in the same manner as the party would be

1.22 liable had the party refused to accept the authority of the principal to act on the principal's

1.23 own behalf unless: (1) the party has actual notice of the revocation of the power of attorney

1.24 prior to the exercise of the power; (2) the duration of the power of attorney specified in the

1.25 power of attorney itself has expired; or (3) the party has actual knowledge of the death of

2.1 the principal or, if the power of attorney is not a durable power of attorney, actual notice of
 2.2 a judicial determination that the principal is legally incompetent. This provision does not
 2.3 negate any liability which a party would have to the principal or to the attorney-in-fact
 2.4 under any other form of power of attorney under the common law or otherwise.

2.5 Sec. 2. Minnesota Statutes 2012, section 523.23, subdivision 1, is amended to read:

2.6 Subdivision 1. **Form.** The following form may be used to create a power of attorney,
 2.7 and, when used, it must be construed in accordance with sections 523.23 and 523.24. The
 2.8 form must include the notices required under subdivisions 1a and 1b:

2.9 STATUTORY SHORT FORM POWER OF ATTORNEY
 2.10 MINNESOTA STATUTES, SECTION 523.23

2.11 ~~IMPORTANT NOTICE: The powers granted by this document are broad and~~
 2.12 ~~sweeping. They are defined in Minnesota Statutes, section 523.24. If you have any~~
 2.13 ~~questions about these powers, obtain competent advice. This power of attorney may be~~
 2.14 ~~revoked by you if you wish to do so. This power of attorney is automatically terminated~~
 2.15 ~~if it is to your spouse and proceedings are commenced for dissolution, legal separation,~~
 2.16 ~~or annulment of your marriage. This power of attorney authorizes, but does not require,~~
 2.17 ~~the attorney-in-fact to act for you.~~

2.18 Before completing and signing this form, the principal must read and initial the
 2.19 IMPORTANT NOTICE TO PRINCIPAL. Before acting on behalf of the principal, the
 2.20 attorney(s)-in-fact must sign this form acknowledging having read and understood the
 2.21 IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT.

2.22 PRINCIPAL (Name and Address of Person Granting the Power)

2.23
 2.24
 2.25

2.26
 2.27 ATTORNEY(S)-IN-FACT
 2.28 (Name and Address)

SUCCESSOR
 ATTORNEY(S)-IN-FACT
 (Optional) To act if any named
 attorney-in-fact dies, resigns, or is
 otherwise unable to serve.

2.31 (Name and Address)
 2.32 First Successor
 2.33
 2.34
 2.35 Second Successor
 2.36

- 4.1 (M) records, reports, and statements;
- 4.2 (N) all of the powers listed in (A) through (M) above and all other matters,₂
- 4.3 other than medical decisions governed by a health care directive which are
- 4.4 governed by Minnesota Statutes, chapter 145C.

4.5 SECOND: (You must indicate below whether or not this power of attorney will be
 4.6 effective if you become incapacitated or incompetent. Make a check or "x" on the line in
 4.7 front of the statement that expresses your intent.)

4.8 This power of attorney shall continue to be effective if I become incapacitated or
 4.9 incompetent.

4.10 This power of attorney shall not be effective if I become incapacitated or
 4.11 incompetent.

4.12 ~~THIRD: (You must indicate below whether or not this power of attorney authorizes~~
 4.13 ~~the attorney-in-fact to transfer your property to the attorney-in-fact. Make a check or "x"~~
 4.14 ~~on the line in front of the statement that expresses your intent.)~~

4.15 ~~..... This power of attorney authorizes the attorney-in-fact to transfer my property~~
 4.16 ~~to the attorney-in-fact.~~

4.17 ~~..... This power of attorney does not authorize the attorney-in-fact to transfer my~~
 4.18 ~~property to the attorney-in-fact.~~

4.19 THIRD: My attorney(s)-in-fact MAY NOT make gifts to the attorney(s)-in-fact, or
 4.20 anyone the attorney(s)-in-fact are legally obligated to support, UNLESS I have made a
 4.21 check or an "x" on the line in front of the second statement below and I have written in the
 4.22 name(s) of the attorney(s)-in-fact. The second option allows you to limit the gifting power
 4.23 to only the attorney(s)-in-fact you name in the statement.

4.24 Minnesota Statutes, section 523.24, subdivision 8, clause (2), limits the annual
 4.25 gift(s) made to my attorney(s)-in-fact, or to anyone the attorney(s)-in-fact are legally
 4.26 obligated to support, to an amount, in the aggregate, that does not exceed the federal
 4.27 annual gift tax exclusion amount in the year of the gift.

4.28 I do not authorize any of my attorney(s)-in-fact to make gifts to themselves or to
 4.29 anyone the attorney-in-fact has a legal obligation to support.

4.30 I authorize (write
 4.31 in name(s)), as my attorney(s)-in-fact, to make gifts to the attorney(s)-in-fact or
 4.32 anyone the attorney(s)-in-fact has a legal obligation to support.

4.33 FOURTH: (You may indicate below whether or not the attorney-in-fact is required
 4.34 to make an accounting. Make a check or "x" on the line in front of the statement that
 4.35 expresses your intent.)

4.36 My attorney-in-fact need not render an accounting unless I request it or the
 4.37 accounting is otherwise required by Minnesota Statutes, section 523.21.

4.38 My attorney-in-fact must render

4.39 (Monthly, Quarterly, Annual)

5.1 accountings to me or

5.2 (Name and Address)

5.3 during my lifetime, and a final accounting to the personal representative of my

5.4 estate, if any is appointed, after my death.

5.5 In Witness Whereof I have hereunto signed my name this day of,

5.6

5.7 (Signature of Principal)

5.8 (Acknowledgment of Principal)

5.9 STATE OF MINNESOTA)

5.10) ss.

5.11 COUNTY OF)

5.12 The foregoing instrument was acknowledged before me this day of,,

5.13 by

5.14 (Insert Name of Principal)

5.15

5.16 (Signature of Notary Public or

5.17 other Official)

5.18 Acknowledgement of notice to attorney(s)-in-fact and specimen signature of

5.19 attorney(s)-in-fact.

5.20 By signing below, I acknowledge I have read and understand the IMPORTANT

5.21 NOTICE TO ATTORNEY(S)-IN-FACT required by Minnesota Statutes, section 523.23,

5.22 subdivision 1b, and understand and accept the scope of any limitations to the powers and

5.23 duties delegated to me by this instrument.

5.24 (Notarization not required)

5.25

5.26

5.27 Specimen Signature of

5.28 This instrument was drafted by: Attorney(s)-in-Fact

5.29 (Notarization not required)

5.30

5.31

5.32

5.33

5.34 Sec. 3. Minnesota Statutes 2012, section 523.23, is amended by adding a subdivision

5.35 to read:

5.36 Subd. 1a. Notice to principal. The following verbatim notice must be included as

5.37 part of this statutory short form power of attorney:

6.1 STATUTORY SHORT FORM POWER OF ATTORNEY
6.2 MINNESOTA STATUTES, SECTION 523.23
6.3 IMPORTANT NOTICE TO THE PRINCIPAL

6.4 READ THIS NOTICE CAREFULLY. The power of attorney form that you will be
6.5 signing is a legal document. It is governed by Minnesota Statutes, chapter 523. If there is
6.6 anything about this form that you do not understand, you should seek legal advice.

6.7 PURPOSE: The purpose of the power of attorney is for you, the principal, to give
6.8 broad and sweeping powers to your attorney(s)-in-fact, who is the person you designate to
6.9 handle your financial affairs. Any action taken by your attorney(s)-in-fact pursuant to the
6.10 powers you designate in this power of attorney form binds you, your heirs and assigns, and
6.11 the representative of your estate in the same manner as though you took the action yourself.

6.12 POWERS GIVEN: You will be granting the attorney(s)-in-fact power to enter into
6.13 transactions relating to any of your real or personal property, even without your consent or
6.14 any advance notice to you. The powers granted to the attorney(s)-in-fact are broad and
6.15 not supervised. THIS POWER OF ATTORNEY DOES NOT GRANT ANY POWERS
6.16 TO MAKE MEDICAL DECISIONS FOR YOU. TO GIVE SOMEONE THOSE
6.17 POWERS, YOU MUST USE A HEALTH CARE DIRECTIVE THAT COMPLIES WITH
6.18 MINNESOTA STATUTES, CHAPTER 145C.

6.19 DUTIES OF YOUR ATTORNEY(S)-IN-FACT: Your attorney(s)-in-fact must
6.20 keep complete records of all transactions entered into on your behalf. You may request
6.21 that your attorney(s)-in-fact provide you or someone else that you designate a periodic
6.22 accounting, which is a written statement that gives reasonable notice of all transactions
6.23 entered into on your behalf. Your attorney(s)-in-fact must also render an accounting if the
6.24 attorney(s)-in-fact reimburses himself or herself for any expenditure made on behalf of you.

6.25 An attorney-in-fact is personally liable to any person, including you, who is injured
6.26 by an action taken by the attorney-in-fact in bad faith under the power of attorney or by
6.27 the failure of an attorney-in-fact to account when the attorney-in-fact has a duty to account
6.28 under this section. The attorney(s)-in-fact must act with your interests utmost in mind.

6.29 TERMINATION: If you choose, your attorney(s)-in-fact may exercise these powers
6.30 throughout your lifetime, both before and after you become incapacitated. However, a
6.31 court can take away the powers of your attorney(s)-in-fact because of improper acts.
6.32 You may also revoke this power of attorney if you wish. This power of attorney is
6.33 automatically terminated if the power is granted to your spouse and proceedings are
6.34 commenced for dissolution, legal separation, or annulment of your marriage.

6.35 This power of attorney authorizes, but does not require, the attorney(s)-in-fact to
6.36 act for you. You are not required to sign this power of attorney, but it will not take effect

7.1 without your signature. You should not sign this power of attorney if you do not understand
 7.2 everything in it, and what your attorney(s)-in-fact will be able to do if you do sign it.

7.3 Please place your initials on the following line indicating you have read this
 7.4 IMPORTANT NOTICE TO THE PRINCIPAL:

7.5 Sec. 4. Minnesota Statutes 2012, section 523.23, is amended by adding a subdivision
 7.6 to read:

7.7 Subd. 1b. **Notice to attorney(s)-in-fact.** The following verbatim notice must be
 7.8 included as a part of this statutory short form power of attorney:

7.9 STATUTORY SHORT FORM POWER OF ATTORNEY
 7.10 MINNESOTA STATUTES, SECTION 523.23
 7.11 IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT

7.12 (This notice is incorporated by reference and is included as part of the statutory short
 7.13 form power of attorney.)

7.14 You have been nominated by the principal to act as attorney-in-fact. You are under
 7.15 no duty to exercise the authority granted by the power of attorney. However, when you do
 7.16 exercise any power conferred by the power of attorney, you must:

- 7.17 (1) act with the interests of the principal utmost in mind;
- 7.18 (2) exercise the power in the same manner as an ordinarily prudent person of
 7.19 discretion and intelligence would exercise in the management of the person's own affairs;
- 7.20 (3) render accountings as directed by the principal or whenever you reimburse
 7.21 yourself for expenditures made on behalf of the principal;
- 7.22 (4) act in good faith for the best interests of the principal, using due care,
 7.23 competence, and diligence;
- 7.24 (5) cease acting on behalf of the principal if you learn of any event that terminates
 7.25 this power of attorney or terminates your authority under this power of attorney, such
 7.26 as revocation by the principal of the power of attorney, the death of the principal, or
 7.27 the commencement of proceedings for dissolution, separation, or annulment of your
 7.28 marriage to the principal;

7.29 (6) disclose your identity as an attorney-in-fact whenever you act for the principal
 7.30 by signing in substantially the following manner:

7.31 Signature by a person as "attorney-in-fact for (name of the principal)" or "(name of
 7.32 the principal) by (name of the attorney-in-fact) the principal's attorney-in-fact"

7.33 (7) acknowledge you have read and understood this IMPORTANT NOTICE TO
 7.34 THE ATTORNEY(S)-IN-FACT by signing the power of attorney form.

8.1 You are personally liable to any person, including the principal, who is injured by
8.2 an action taken by you in bad faith under the power of attorney or by your failure to
8.3 account when the duty to account has arisen.

8.4 The meaning of the powers granted to you is contained in Minnesota Statutes,
8.5 chapter 523. If there is anything about this document or your duties that you do not
8.6 understand, you should seek legal advice from an attorney.

8.7 Sec. 5. Minnesota Statutes 2012, section 523.24, subdivision 8, is amended to read:

8.8 Subd. 8. **Gift transactions.** In the statutory short form power of attorney, the
8.9 language conferring general authority with respect to gift transactions, means that the
8.10 principal authorizes the attorney-in-fact:

8.11 (1) to make gifts to organizations, whether charitable or otherwise, to which the
8.12 principal has made gifts, and to satisfy pledges made to organizations by the principal;

8.13 (2) to make gifts on behalf of the principal to the principal's spouse, children, and
8.14 other descendants or the spouse of any child or other descendant, and, if authorized by
8.15 the principal in part Third, to the attorney-in-fact, either outright or in trust, for purposes
8.16 which the attorney-in-fact deems to be in the best interest of the principal, specifically
8.17 including minimization of income, estate, inheritance, or gift taxes, provided that,
8.18 notwithstanding that the principal in part Third may have authorized the attorney-in-fact
8.19 to transfer the principal's property to the attorney-in-fact, no attorney-in-fact nor anyone
8.20 the attorney-in-fact has a legal obligation to support may be the recipient of any gifts in
8.21 any one calendar year which, in the aggregate, exceed \$10,000 ~~in value~~ the federal annual
8.22 gift tax exclusion amount in the year of the gift to each recipient;

8.23 (3) to prepare, execute, consent to on behalf of the principal, and file any return,
8.24 report, declaration, or other document required by the laws of the United States, any state
8.25 or subdivision of a state, or any foreign government, which the attorney-in-fact deems to be
8.26 desirable or necessary with respect to any gift made under the authority of this subdivision;

8.27 (4) to execute, acknowledge, seal, and deliver any deed, assignment, agreement,
8.28 authorization, check, or other instrument which the attorney-in-fact deems useful for the
8.29 accomplishment of any of the purposes enumerated in this subdivision;

8.30 (5) to prosecute, defend, submit to arbitration, settle, and propose or accept a
8.31 compromise with respect to any claim existing in favor of or against the principal based
8.32 on or involving any gift transaction or to intervene in any related action or proceeding;

8.33 (6) to hire, discharge, and compensate any attorney, accountant, expert witness, or
8.34 other assistant when the attorney-in-fact deems that action to be desirable for the proper

9.1 execution by the attorney-in-fact of any of the powers described in this subdivision, and
9.2 for the keeping of needed records; and

9.3 (7) in general, and in addition to but not in contravention of all the specific acts
9.4 listed in this subdivision, to do any other acts which the attorney-in-fact deems desirable
9.5 or necessary to complete any gift on behalf of the principal.

9.6 All powers described in this subdivision are exercisable equally with respect to a gift
9.7 of any property in which the principal is interested at the giving of the power of attorney
9.8 or becomes interested after that time, and whether located in the state of Minnesota or
9.9 elsewhere.

9.10 Sec. 6. Minnesota Statutes 2012, section 523.24, subdivision 14, is amended to read:

9.11 Subd. 14. **All other matters.** In a statutory short form power of attorney, the
9.12 language conferring general authority with respect to all other matters, means that the
9.13 principal authorizes the attorney-in-fact to act as an alter ego of the principal with respect
9.14 to any and all possible matters ~~and affairs affecting property owned by~~ affecting the affairs
9.15 of the principal which are not enumerated in subdivisions 1 to 13, and which the principal
9.16 can do through an agent. The language conferring general authority does not include any
9.17 powers to make medical decisions for the principal.

9.18 Sec. 7. **[523.26] JUDICIAL RELIEF.**

9.19 The principal or any interested person, as defined in section 524.5-102, subdivision
9.20 7, may petition the court for a protective order directing the attorney(s)-in-fact to provide
9.21 an accounting, on a schedule directed by the court, or for any other relief as provided in
9.22 sections 524.5-401 to 524.5-502. The principal or a person named by the principal in the
9.23 power of attorney to receive accountings is entitled to recover reasonable attorney fees
9.24 and costs if the court finds that the attorney(s)-in-fact failed to render an accounting to the
9.25 principal or any person named by the principal in the power of attorney form to receive
9.26 accountings after the duty to render an accounting arose.

9.27 Sec. 8. **EFFECTIVE DATE.**

9.28 Sections 1 to 6 are effective August 1, 2013, and apply to powers of attorney
9.29 executed on or after January 1, 2014. Section 7 is effective August 1, 2013, and applies
9.30 to powers of attorney executed before, on, or after that date. Nothing shall invalidate or
9.31 impair any power of attorney executed before the effective date.