SENATE BILL NO. 438

INTRODUCED BY B. DEPRATU

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO POWERS OF ATTORNEY; CLARIFYING THE EFFECT OF A BROAD POWER OF ATTORNEY; AMENDING SECTIONS 72-31-223, 72-33-201, AND 72-33-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 72-31-223, MCA, is amended to read:

"**72-31-223. Construction of powers generally.** (1) By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1)(a) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2)(b) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3)(c) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4)(d) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5)(e) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6)(f) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7)(g) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8)(h) prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9)(i) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10)(j) in general, do any other lawful act with respect to the subject.

(2) A power of attorney that contains language that indicates that a broad power of attorney was intended to authorize the attorney-in-fact to act on behalf of the grantor in all matters affecting the grantor's business or property has the same force and effect of initialing line (N) on the statutory form of power of attorney, as prescribed in 72-31-201(1)."

Section 2. Section 72-33-201, MCA, is amended to read:

"72-33-201. Methods of creating trust. Subject to other provisions of this chapter, a trust may be created by any of the following methods:

(1) a declaration by the owner of property that the owner holds the property as trustee;

(2) a transfer of property by the owner or by the owner's agent or attorney-in-fact during the owner's lifetime to another person as trustee;

(3) a testamentary transfer of property by the owner to another person as trustee;

(4) an exercise of a power of appointment to another person as trustee; or

(5) an enforceable promise to create a trust."

Section 3. Section 72-33-208, MCA, is amended to read:

"72-33-208. Statute of frauds. A trust is not valid unless evidenced by one of the following methods:

(1) by a written instrument signed by the trustee, or by the trustee's agent if authorized in writing to do so;

(2) by a written instrument signed by the trustor, or by the trustor's agent or attorney-in-fact if authorized in writing to do so; or

(3) by operation of law."

NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to existing powers of attorney.

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