

Minnesota Statutory Short Form Powers of Attorney

Does Minnesota Have a “Standard” Form Power of Attorney?

Minnesota has a statutory power of attorney form - known as a Minnesota Statutory Short Form Power of Attorney - which may be used by an adult principal to appoint one or more attorneys-in-fact to take certain actions on behalf of the principal.

However, the Minnesota Statutory Short Form Power of Attorney still has numerous performance options that should be reviewed together with legal counsel.

(i) Statutory Power of Attorney Form Effective as of January 1, 2014

A Minnesota Statutory Short Form Power of Attorney document has been adopted by the legislature for use after January 1, 2014 - which requires a separate acknowledgment by the principal of having received a specific warning notice regarding the effect of the document.

In addition, this Minnesota Statutory Short Form Power of Attorney document specifically notifies the principal that the form cannot be used to appoint a Health Care Agent to make medical decisions for the principal.

If the principal desires to appoint a health care agent to make medical decisions for the principal, he or she must do so pursuant to a health care directive authorized under Minnesota Statutes, Chapter 145C.

(ii) Outdated Power of Attorney Forms Executed After January 1, 2014

The execution of an outdated Minnesota Statutory Short Form Power of Attorney after January 1, 2014, will result in the adoption of a common law power of attorney - which may or may not be effective, depending on its acceptance by third parties.

(iii) Statutory Power of Attorney Forms Executed Prior to January 1, 2014

All Minnesota Statutory Short Form Power of Attorney documents properly executed prior to January 1, 2014, will continue to be effective as a Minnesota Statutory Short Form Power of Attorney.

Is the “Standard” Power of Attorney Form Exclusive?

The Minnesota Statutory Short Form Power of Attorney is not the only power of attorney document which is authorized in Minnesota.

Powers of attorney created pursuant to nonstatutory “common-law” can also be effective in Minnesota.

However, the effectiveness of a Minnesota common law power of attorney document may be limited if a third-party will not recognize its validity.

Third Party Liability

(i) Minnesota Statutory Short Form Power of Attorney

Any third party who refuses to accept the authority of an attorney-in-fact appointed pursuant to a duly executed Minnesota Statutory Short Form Power of Attorney which:

- (1) **contains a specimen signature** of the attorney-in-fact authorized to act, and
- (2) for a power of attorney executed on or after January 1, 2014, **contains an acknowledgment that the attorney-in-fact has read and understood the notice to the attorney-in-fact required under section 523.23;** and
- (3) when applicable, is accompanied by **legally sufficient affidavits that identify the non-revocation and continuing effect of the power of attorney,**

is liable to the principal and to the principal's heirs, assigns, and representative of the estate of the principal in the same manner as the third party would have been liable had such a party refused to accept the authority of the principal to act on the principal's own behalf, **unless:**

- (1) the party has **actual notice of the revocation** of the power of attorney prior to the exercise of the power,
- (2) **the duration of the power of attorney** stated in the power of attorney document **has expired,**
- (3) **the party has actual knowledge of the death of the principal,** or
- (4) if the power of attorney is not a durable power of attorney, **actual notice of a judicial determination that the principal is legally incompetent.**

With respect to a Minnesota Statutory Short Form Power of Attorney which is signed after January 1, 2014, the attorney-in-fact must have signed a written acknowledgment with respect to receiving notice of his or her duties and obligations under the Power of Attorney in order for the principal to receive the enforcement protections afforded a Minnesota Statutory Short Form Power of Attorney.

The acknowledgment requirement by the attorney-in-fact did not exist with respect to a Minnesota Statutory Short Form Power of Attorney executed prior to January 1, 2014.

Notwithstanding the above statutory imposition of liability on third parties who refuse to recognize the validity of a Minnesota Statutory Short Form Power of Attorney, certain large nationally chartered banks sometimes refuse to recognize the validity of a Minnesota Statutory Short Form Power of Attorney which was executed "*too long ago*".

While there is no statutory duration limitation on the validity of a Minnesota Statutory Short Form Power of Attorney, some third parties may impose their own duration limitation when determining the validity of powers of attorney presented to them for acceptance, and periodically require that an updated Minnesota Statutory Short Form Power of Attorney be executed by a principal before it will honor the validity of the principal's Power of Attorney.

Since it may not be cost effective to attempt to impose liability upon a large nationally chartered bank in federal court by reason of its breach of a statutory duty to recognize the validity of a Minnesota Statutory Short Form Power of Attorney, such claims are often abandoned.

Therefore, if a principal wants the greatest assurance that a Minnesota Statutory Short Form Power of Attorney executed by the principal will be accepted by the largest number of possible third parties, the principal should periodically execute a new Minnesota Statutory Short Form Power of Attorney document.

(ii) Minnesota Common Law Powers of Attorney

A third party who refuses to accept the validity of a **nonstatutory common-law form** of a Minnesota power of attorney does not have any **statutory liability** to the principal's heirs, assigns, or representative of the estate of the principal by refusing to recognize the validity of such a power of attorney - although perhaps some liability may be imposed upon the third party pursuant to non-statutory common law.

Benefits of Using a Minnesota Statutory Short Form Power of Attorney

The Minnesota Statutory Short Form Power of Attorney has the benefit of being:

- typically shorter than a Minnesota Common Law Power of Attorney,
and
- easily recognizable by Minnesota-based third parties.

In addition, the above identified statutory liabilities may be imposed upon third-parties who refuse to recognize the validity of the authority created by the Minnesota Statutory Short Form Power of Attorney.

Because it is relatively short, and somewhat standard, a Minnesota Statutory Short Form Power of Attorney is generally less costly to prepare than a common-law power of attorney.

Do-it-Yourself Minnesota Statutory Short Form Power of Attorney

While “*fill in the blank*” Minnesota Statutory Short Form Power of Attorney forms can either be downloaded, or otherwise obtained from many sources - including perhaps *LegalDoom.com* :) - the preparation of such documents is best left to licensed attorneys, who can not only *fill in the blanks* properly, but also provide appropriate counsel regarding the legal effect, and perhaps the tax consequences, of the execution and delivery of a Minnesota Statutory Short Form Power of Attorney.

There is much that can go wrong when an executed Minnesota Statutory Short Form Power of Attorney:

- ◆ grants improper powers to certain attorneys-in-fact,
or
- ◆ was drafted without the benefit of certain available statutory protections.

What Could Go Wrong - the Form is so Simple?

While the Minnesota Statutory Short Form Power of Attorney form may appear to be simple and self explanatory, preparing one is not a job for the do-it-yourselfer, particularly with respect to the Minnesota Statutory Short Form Power of Attorney document required to be used after January 1, 2014.

(i) Legal Description

If a Minnesota Statutory Short Form Power of Attorney uses a street address instead of a legal description with respect to a purported limitation on the authority of the attorney-in-fact to exercise powers of the principal over real estate, such a limitation makes the document ineffective for all real estate transactions.

It's also possible that if an improper or incomplete legal description was listed on the Minnesota Statutory Short Form Power of Attorney, the document may also be ineffective for all real estate transactions.

Since real property legal description mistakes can reasonably be anticipated to be made by someone who is not a licensed Minnesota attorney, it is always prudent, and usually cost effective, to have a Minnesota Statutory Short Form Power of Attorney prepared by a licensed Minnesota attorney.

(ii) Recording

If a Minnesota Statutory Short Form Power of Attorney document is not properly acknowledged, or fails to include a draftsman's statement, it will not be recordable in the county real estate records, and thus will not allow a deed to be executed by an attorney-in-fact on behalf of the principal.

(iii) Capacity

If a Minnesota Statutory Short Form Power of Attorney document does not specify that it is to continue in event of the incapacity of the principal, its effectiveness is greatly reduced, and may not be usable just when it is needed most.

(iv) Necessity of a Conservator

If the Minnesota Statutory Short Form Power of Attorney is ineffective for a proposed real estate transaction, and the principal no longer has capacity to execute a deed to the proposed transferee, a Conservatorship proceeding may be necessary in order to transfer the real estate - which would involve a sizable expense.

I have been involved in a Conservatorship proceeding where a purported Minnesota Statutory Short Form Power of Attorney document:

- ◆ was improperly prepared by someone other than a licensed attorney,
and
- ◆ thus not effective to allow the attorney-in-fact to convey real property belonging to the principal to purchaser.

It would have been much less expensive had the principal hired an attorney to properly prepare a Minnesota Statutory Short Form Power of Attorney.

(v) Accountability by the Attorney-in-fact

The issue of accountability by the attorney-in-fact to the principal, and perhaps to other family members as well, is a subject which should be properly addressed in the Minnesota Statutory Short Form Power of Attorney by the principal - after discussions with a Minnesota licensed attorney.

(vi) Criminal Behavior

In addition to drafting or execution issues which might make the Minnesota Statutory Short Form Power of Attorney ineffective, Minnesota County attorneys have had to prosecute several attorneys-in-fact who misused their authority under a Minnesota Statutory Short Form Power of Attorney for their own improper financial benefit.

Conclusion

Please contact Minnesota Attorney Gary C. Dahle for assistance with the preparation, or enforcement, of any Minnesota Statutory Short Form Power of Attorney.

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