

HOUSE BILL No. 4486

March 23, 2011, Introduced by Rep. Switalski and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 5410 and 5501 (MCL 700.5410 and 700.5501).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5410. (1) The court may require a conservator to furnish
2 a bond. **IF THE COURT DETERMINES THAT THE VALUE OF CASH AND PROPERTY**
3 **THAT IS READILY CONVERTIBLE INTO CASH IN THE ESTATE AND IN THE**
4 **CONSERVATOR'S CONTROL EXCEEDS THE LIMIT FOR ADMINISTERING A**
5 **DECEDENT'S ESTATE UNDER SECTION 3982, ADJUSTED IN THE MANNER**
6 **PROVIDED UNDER SECTION 1210 FOR THE YEAR IN WHICH THE CONSERVATOR**
7 **IS APPOINTED, THE COURT SHALL REQUIRE THE CONSERVATOR TO FURNISH A**
8 **BOND, UNLESS 1 OR MORE OF THE FOLLOWING APPLY:**

9 (A) THE ESTATE CONTAINS NO PROPERTY READILY CONVERTIBLE TO
10 CASH AND THE CASH IS IN A RESTRICTED ACCOUNT WITH A FINANCIAL

1 INSTITUTION.

2 (B) THE CONSERVATOR HAS BEEN GRANTED TRUST POWERS UNDER
3 SECTION 4401 OF THE BANKING CODE OF 1999, 1999 PA 276, MCL
4 487.14401.

5 (C) THE COURT DETERMINES THAT REQUIRING A BOND WOULD IMPOSE A
6 FINANCIAL HARDSHIP ON THE ESTATE.

7 (D) THE COURT STATES ON THE RECORD THE REASONS WHY A BOND IS
8 NOT NECESSARY.

9 (2) A BOND FURNISHED UNDER THIS SECTION SHALL BE conditioned
10 upon faithful discharge of all duties of the **CONSERVATOR'S** trust
11 according to law, with sureties as the court specifies. Unless
12 otherwise directed, the bond shall be in the amount of the
13 aggregate capital value of the estate property in the conservator's
14 control plus 1 year's estimated income minus the value of
15 securities deposited under arrangements requiring a court order for
16 their removal and the value of land that the fiduciary, by express
17 limitation of power, lacks power to sell or convey without court
18 authorization. Instead of sureties on a bond, the court may accept
19 other security for the performance of the bond, including a pledge
20 of securities or a mortgage of land.

21 Sec. 5501. (1) A durable power of attorney is a power of
22 attorney by which a principal designates another as the principal's
23 attorney in fact in **A** writing ~~and the writing~~ **THAT** contains the
24 words "This power of attorney is not affected by the principal's
25 subsequent disability or incapacity, or by the lapse of time", or
26 "This power of attorney is effective upon the disability or
27 incapacity of the principal", or similar words showing the

1 principal's intent that the authority conferred is exercisable
2 notwithstanding the principal's subsequent disability or incapacity
3 and, unless the power states a termination time, notwithstanding
4 the lapse of time since the execution of the instrument.

5 (2) BEFORE EXERCISING AUTHORITY AS ATTORNEY IN FACT UNDER A
6 DURABLE POWER OF ATTORNEY, A PERSON SHALL SIGN AN ACCEPTANCE OF THE
7 DESIGNATION, ACKNOWLEDGING AND ACCEPTING ALL OF THE FOLLOWING
8 OBLIGATIONS, LIABILITIES, AND RIGHTS:

9 (A) TO ACT IN THE BEST INTEREST OF THE PRINCIPAL.

10 (B) TO KEEP THE PRINCIPAL INFORMED OF THE ATTORNEY IN FACT'S
11 ACTIONS AND ACCOUNT TO THE PRINCIPAL.

12 (C) TO NOT MAKE GIFTS OF THE PRINCIPAL'S PROPERTY UNLESS
13 SPECIFICALLY AUTHORIZED BY THE POWER OF ATTORNEY.

14 (D) TO BE PROSECUTED AND PUNISHED FOR ANY CRIMINAL ACTS.

15 (E) TO KEEP THE PRINCIPAL'S ASSETS IN AN ACCOUNT THAT DOES NOT
16 INCLUDE MONEY OF THE ATTORNEY IN FACT OR ANOTHER PERSON.

17 (F) TO ONLY USE THE PRINCIPAL'S PROPERTY AND INCOME FOR THE
18 BENEFIT OF THE PRINCIPAL, UNLESS OTHERWISE AUTHORIZED SPECIFICALLY
19 IN THE POWER OF ATTORNEY.

20 (G) IF REQUESTED, TO PROVIDE AN ACCOUNTING AT ANY TIME TO THE
21 PRINCIPAL, A FIDUCIARY APPOINTED ON BEHALF OF THE PRINCIPAL, OR THE
22 COURT.

23 (H) TO MAINTAIN SUFFICIENT RECORDS OF EVERY TRANSACTION AND BE
24 PREPARED TO DEFEND EACH ACTION.

25 (I) TO BE HELD FINANCIALLY RESPONSIBLE FOR ANY TRANSACTION
26 THAT IS NOT SPECIFICALLY AUTHORIZED IN THE POWER OF ATTORNEY.

27 (J) TO HIRE AN ADVISOR, ATTORNEY, ACCOUNTANT, OR OTHER

1 PROFESSIONAL AS REASONABLY REQUIRED TO COMPLY WITH THE ATTORNEY IN
2 FACT'S DUTIES AND TO PAY FOR THE PROFESSIONAL'S SERVICES FROM THE
3 ESTATE OF THE PRINCIPAL.

4 (K) UNLESS PROHIBITED BY THE POWER OF ATTORNEY, TO RECEIVE
5 REASONABLE COMPENSATION FOR THE ATTORNEY IN FACT'S SERVICES, WHICH
6 COMPENSATION MAY BE SUBJECT TO SCRUTINY BY THE COURT.

7 Enacting section 1. This amendatory act takes effect April 1,
8 2012.