

# House Bill 2221

Sponsored by Representatives HOYLE, GILLIAM (at the request of Oregon Elder Abuse Prevention Work Group)  
(Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies laws regarding powers of attorney.

## A BILL FOR AN ACT

1  
2 Relating to powers of attorney; creating new provisions; and amending ORS 127.005, 127.015, 127.035  
3 and 127.045.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 7 to 9 of this 2015 Act are added to and made a part of ORS**  
6 **127.005 to 127.045.**

7 **SECTION 2. (1)(a) A power of attorney must be signed and dated by the principal, or by**  
8 **another person within range of the principal's sight or hearing at the principal's direction,**  
9 **on the date of execution of the power of attorney. If the power of attorney is signed at the**  
10 **principal's direction by another person, that person must sign, in addition to the name of the**  
11 **principal, that person's name and write the date of that person's signature.**

12 **(b) The signature of the principal by the principal or by another person at the principal's**  
13 **direction must be notarized for the power of attorney to be valid and effective.**

14 **(2)(a) A power of attorney must be witnessed by at least two adults. A witness must ei-**  
15 **ther observe the signing of the power of attorney, by the principal or by another person at**  
16 **the principal's direction in the presence of the witness, or hear the principal's acknowledg-**  
17 **ment of the signature on the power of attorney, of the principal or of another person at the**  
18 **principal's direction, in the presence of the witness.**

19 **(b) A witness may not be an agent designated under the power of attorney.**

20 **(3) By attesting a power of attorney under subsection (2) of this section, a witness de-**  
21 **clares the truth of the following:**

22 **(a) That the principal is known to the witness or has provided proof of identity;**

23 **(b) That the principal signed or acknowledged the principal's signature on the power of**  
24 **attorney in the witness's presence or, if another person signed the power of attorney at the**  
25 **principal's direction, that the other person signed the power of attorney, or the principal**  
26 **acknowledged the signature of the other person, in the witness's presence;**

27 **(c) That the principal appears to be of sound mind and not under duress, fraud or undue**  
28 **influence and has the ability to comprehend the nature of the power of attorney and the**  
29 **consequences of its execution; and**

30 **(d) That the witness is not an agent designated by the principal under the power of at-**  
31 **torney.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1       **(4) To execute a power of attorney, the principal must have the ability to comprehend**  
 2 **the nature of the power of attorney and the consequences of its execution.**

3       **(5) This section does not apply to powers of attorney for health care executed under ORS**  
 4 **127.505 to 127.660.**

5       **SECTION 3.** ORS 127.005 is amended to read:

6       127.005. (1) When a principal designates another person as an agent by a power of attorney in  
 7 writing **in accordance with section 2 of this 2015 Act**, and the power of attorney does not contain  
 8 words that otherwise delay or limit the period of time of its effectiveness:

9       (a) The power of attorney becomes effective when executed **in accordance with section 2 of**  
 10 **this 2015 Act** and remains in effect until the power is revoked by the principal **or by the terms**  
 11 **of the power of attorney, or until the authority of all agents under the power of attorney is**  
 12 **terminated as provided in ORS 127.015;**

13       (b) The powers of the agent are unaffected by the passage of time; and

14       (c) The powers of the agent are exercisable by the agent on behalf of the principal even though  
 15 the principal becomes financially incapable.

16       (2) The terms of a power of attorney may provide that the power of attorney will become ef-  
 17 fective at a specified future time, or will become effective upon the occurrence of a specified future  
 18 event or contingency such as the principal becoming financially incapable. If a power of attorney  
 19 becomes effective upon the occurrence of a specified future event or contingency, the power of at-  
 20 torney may designate a person or persons to determine whether the specified event or contingency  
 21 has occurred, and the manner in which the determination must be made. A person designated by a  
 22 power of attorney to determine whether the principal is financially incapable is the principal's per-  
 23 sonal representative for the purposes of ORS 192.553 to 192.581 and the federal Health Insurance  
 24 Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164.

25       (3) If a power of attorney becomes effective upon the principal becoming financially incapable  
 26 and either the power of attorney does not designate a person or persons to make the determination  
 27 as to whether the principal is financially incapable or none of the designated persons is willing or  
 28 able to make the determination, a determination that the principal is financially incapable may be  
 29 made by any physician. The physician's determination must be made in writing.

30       (4) All acts done by an agent under a power of attorney during a period in which the principal  
 31 is financially incapable have the same effect, and inure to the benefit of and bind the principal, as  
 32 though the principal were not financially incapable.

33       (5) If a conservator is appointed for a principal, the agent shall account to the conservator,  
 34 rather than to the principal, for so long as the conservatorship lasts. The conservator has the same  
 35 power that the principal would have to revoke, suspend or terminate all or any part of the power  
 36 of attorney.

37       (6) This section does not apply to powers of attorney for health care executed under ORS  
 38 127.505 to 127.660 [and 127.995].

39       **SECTION 4.** ORS 127.015 is amended to read:

40       127.015. (1) **The authority of an agent under a power of attorney terminates when any of**  
 41 **the following occur:**

42       **(a) The principal dies.**

43       **(b) The principal or the court revokes the power of attorney.**

44       **(c) The agent dies, becomes incapacitated or resigns.**

45       **(d) The power of attorney by its terms provides that the power of attorney terminates.**

1       **(e) An action is filed for the dissolution or annulment of the principal’s marriage or**  
 2 **registered domestic partnership to the agent, or for the legal separation of the principal and**  
 3 **agent, unless the power of attorney otherwise provides.**

4       **(2) A court may order that a power of attorney is revoked upon appointment by the court**  
 5 **of a conservator for the principal.**

6       [(1)] **(3) The death of a principal who has executed a power of attorney in writing, or the oc-**  
 7 **currence of any other event that would otherwise terminate the authority of the agent, does not**  
 8 **revoke or terminate the authority of an agent who, without actual knowledge of the death of the**  
 9 **principal or other event, acts in good faith under the power of attorney. Any action so taken, unless**  
 10 **otherwise invalid or unenforceable, binds the principal and heirs, devisees and personal represen-**  
 11 **tatives of the principal.**

12       [(2)] **(4) An affidavit executed by an agent that states that the agent did not have, at the time**  
 13 **of doing an act under the power of attorney, actual knowledge of the revocation or termination of**  
 14 **the power of attorney by death or other event, is, in the absence of fraud, conclusive proof of the**  
 15 **nonrevocation or nontermination of the power at that time. If the exercise of the power requires**  
 16 **execution and delivery of any instrument that is recordable, the affidavit may also be recorded.**

17       [(3)] **(5) This section does not alter or affect any provision for revocation or termination con-**  
 18 **tained in the power of attorney.**

19       **SECTION 5.** ORS 127.035 is amended to read:

20       127.035. **(1) Any person who reasonably relies in good faith on the authority of an agent under**  
 21 **a power of attorney is not liable to any other person based on that reliance, and is not required to**  
 22 **ensure that assets of the principal that are paid or delivered to the agent are properly applied.**

23       **(2) Any person who has not received actual notice of revocation of a power of attorney is not**  
 24 **liable to any other person by reason of relying on a power of attorney that has been revoked.**

25       **(3) An agent that violates ORS 127.005 to 127.045 is liable to the principal or the**  
 26 **principal’s successors in interest for the amount required to:**

27       **(a) Restore the value of the principal’s property to what it would have been had the vio-**  
 28 **lation not occurred; and**

29       **(b) Reimburse the principal or the principal’s successors in interest for the attorney fees**  
 30 **and costs incurred by the principal or the successors in interest in asserting a claim against**  
 31 **the agent or appealing an adverse decision of the trial court, unless a court determines that**  
 32 **the principal or the successors in interest had no objectively reasonable basis for asserting**  
 33 **the claim or appealing the decision of the trial court.**

34       **SECTION 6.** ORS 127.045 is amended to read:

35       127.045. **(1) Unless otherwise provided in the power of attorney [document], an agent must use**  
 36 **the property of the principal for the benefit of the principal.**

37       **(2) An agent shall cooperate, with any person that has authority to make health care**  
 38 **decisions for the principal pursuant to an advance directive executed by the principal in ac-**  
 39 **cordance with ORS 127.505 to 127.660 or a declaration for mental health treatment executed**  
 40 **by the principal in accordance with ORS 127.700 to 127.737, to carry out the principal’s rea-**  
 41 **sonable expectations to the extent actually known by the agent. If the agent does not know**  
 42 **the reasonable expectations of the principal, the agent shall act in the principal’s best in-**  
 43 **terest. The determination of the best interest of the principal must be based upon a standard**  
 44 **that is reasonable for an agent acting in the circumstances in which the determination must**  
 45 **be made.**

1       **SECTION 7. (1) An agent shall keep a record of all receipts, disbursements and trans-**  
2 **actions conducted on behalf of the principal.**

3       **(2)(a) Except as otherwise provided in the power of attorney, an agent is not required to**  
4 **disclose receipts, disbursements or transactions conducted on behalf of the principal unless**  
5 **the disclosure is ordered by a court or requested by:**

6       **(A) The principal;**

7       **(B) A guardian or conservator or another fiduciary acting for the principal;**

8       **(C) A government agency that has authority to protect the welfare of the principal;**

9       **(D) The principal's caregiver;**

10       **(E) The principal's spouse, domestic partner, parent, child or sibling; or**

11       **(F) Upon the death of the principal, the personal representative or persons entitled to**  
12 **an accounting under ORS 116.093.**

13       **(b) If a request for disclosure is made pursuant to paragraph (a) of this subsection,**  
14 **within 30 days the agent shall comply with the request or provide written substantiation as**  
15 **to why additional time is needed, in which case the agent shall comply with the request**  
16 **within an additional 30 days.**

17       **(c) A single requesting individual or entity described in paragraph (a) of this subsection**  
18 **may not make a request for disclosure under this subsection more than once a year, except**  
19 **as ordered by a court.**

20       **SECTION 8. (1) The following persons may petition a court to construe or determine the**  
21 **validity of a power of attorney or review an agent's conduct and grant appropriate relief:**

22       **(a) The principal or the agent;**

23       **(b) A guardian, conservator or other fiduciary acting for the principal;**

24       **(c) A person authorized to make health care decisions or mental health treatment deci-**  
25 **sions for the principal;**

26       **(d) The principal's spouse, domestic partner, parent, sibling, or descendant;**

27       **(e) A government agency that has authority to protect the welfare of the principal;**

28       **(f) The principal's caregiver or another person that demonstrates sufficient interest in**  
29 **the principal's welfare;**

30       **(g) A person asked to accept the power of attorney; and**

31       **(h) Another person authorized by the court.**

32       **(2) The court, in making a determination that a power of attorney is valid, must make**  
33 **findings of fact that the requirements of section 2 of this 2015 Act have been met.**

34       **SECTION 9. (1) Unless the power of attorney provides a different method for an agent's**  
35 **resignation, an agent may resign by giving notice to the principal, if the principal is not in-**  
36 **capacitated.**

37       **(2) If the principal is incapacitated, unless the power of attorney provides a different**  
38 **method for an agent's resignation, an agent may resign by giving notice to any conservator**  
39 **or guardian appointed for the principal, and to any coagent or successor agent designated in**  
40 **the power of attorney. If a conservator or guardian has not been appointed and a coagent**  
41 **or successor agent has not been designated under the power of attorney, an agent may re-**  
42 **sign by giving notice to:**

43       **(a) The principal's primary caregiver;**

44       **(b) The principal's current attorney, if any; or**

45       **(c) A government agency that has authority to protect the welfare of the principal.**

1        **SECTION 10.** Sections 2 and 7 to 9 of this 2015 Act and the amendments to ORS 127.005,  
2        127.015, 127.035 and 127.045 by sections 3 to 6 of this 2015 Act apply to powers of attorney  
3        executed on or after the effective date of this 2015 Act.

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