Powers of Attorney in Missouri

A Power of Attorney is an instrument that authorizes and allows an individual to act on behalf of another from a legal perspective. They are broken down into many different categories and functions, as follows:

A. Durability (“Magic Words” must be used)

B. Extent of Powers (General and comprehensive or Limited to specific matters)

C. Springing or Non-Springing—when does it go into effect.

D. Duration

E. Purpose

There are several different terms used to identify the parties in a Power of Attorney. For purposes of a Legal and Financial Power of Attorney we will use the term “Principal” for the person granting the Power, and “Attorney-in-Fact” for the person appointed. The term “agent” is also commonly used.

LEGAL AND FINANCIAL POWER OF ATTORNEY

This instrument may be used to authorize another to engage in transactions. These can range from writing of checks to selling real estate. They can be designed to accommodate a specific transaction, such as the sale of a home when a party is out of the country at the closing, or can be broad and general, and designed as a “just in case” document.

When used in conjunction with an estate plan they are the primary disability management tool when used with a will-based or beneficiary-
driven plan, or as a secondary, or backup tool in a trust-based plan.

While in theory DPA’s are an excellent tool for disability management, it is becoming more and more difficult to use them, particularly where the party relying on the document is not familiar with the situation. (See page 3 for the statute)

**HEALTH CARE POWER OF ATTORNEY**

A Health Care Power of Attorney is just what it says – it authorizes another to make Health Care Decisions when the principal cannot do so. It MUST be springing, unlike a legal and financial power of Attorney. (See page 16 for the statute)
404.700. Sections 404.700 to 404.735 may be cited as the "Durable Power of Attorney Law of Missouri".

(L. 1989 H.B. 145 § 1)

Definitions.

404.703. As used in sections 404.700 to 404.735 the following terms mean:

(1) "Attorney in fact", an individual or corporation appointed to act as agent of a principal in a written power of attorney;

(2) "Court", the circuit court including the probate division of the circuit court;

(3) "Disabled" or "incapacitated", a person who is wholly or partially disabled or incapacitated as defined in section 475.010, RSMo, or in a similar law of the place having jurisdiction of the person whose capacity is in question;

(4) "Durable power of attorney", a written power of attorney in which the authority of the attorney in fact does not terminate in the event the principal becomes disabled or incapacitated or in the event of later uncertainty as to whether the principal is dead or alive and which complies with subsection 1 of section 404.705 or is durable under the laws of any of the following places:

(a) The law of the place where executed;

(b) The law of the place of the residence of the principal when executed; or

(c) The law of a place designated in the written power of attorney if that place has a reasonable relationship to the purpose of the instrument;

(5) "Legal representative", a decedent's personal representative, a guardian of a person or the conservator of the estate of a person, whether denominated as general, limited or temporary, or a person legally authorized to perform substantially the same functions;

(6) "Person", an individual, corporation, or other legal entity;

(7) "Personal representative", a legal representative of a decedent's estate as defined in section 472.010, RSMo;

(8) "Power of attorney", a written power of attorney, either durable or not durable;

(9) "Principal's family", the principal's parent, grandparent, uncle, aunt, brother, sister, son, daughter, grandson, granddaughter and their descendants, whether of the whole blood or the half blood, or by adoption, and the principal's spouse, stepparent and stepchild;

(10) "Third person", any individual, corporation or legal entity that acts on a request from, contracts with, relies on or otherwise deals with an attorney in fact pursuant to authority granted by a principal in a power of attorney and includes a partnership, either general or limited, governmental agency, financial institution, issuer of securities, transfer agent, securities or commodities broker, real estate broker, title insurance company, insurance company, benefit plan, legal representative, custodian or trustee.


Durable power of attorney, procedure to create, requirements, effect, recording not required, exception—person appointed has no duty to exercise authority conferred, exception.
404.705. 1. The authority granted by a principal to an attorney in fact in a written power of attorney is not terminated in
the event the principal becomes wholly or partially disabled or incapacitated or in the event of later uncertainty as to
whether the principal is dead or alive if:

(1) The power of attorney is denominated a "Durable Power of Attorney";

(2) The power of attorney includes a provision that states in substance one of the following:

(a) "THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT
SHALL NOT TERMINATE IF I BECOME DISABLED OR INCAPACITATED OR IN THE EVENT OF LATER
UNCERTAINTY AS TO WHETHER I AM DEAD OR ALIVE"; or

(b) "THIS IS A DURABLE POWER OF ATTORNEY AND THE AUTHORITY OF MY ATTORNEY IN FACT,
WHEN EFFECTIVE, SHALL NOT TERMINATE OR BE VOID OR VOIDABLE IF I AM OR BECOME DISABLED
OR INCAPACITATED OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER I AM DEAD OR
ALIVE";

(3) The power of attorney is subscribed by the principal, and dated and acknowledged in the manner prescribed by law for
conveyances of real estate.

2. All acts done by an attorney in fact pursuant to a durable power of attorney shall inure to the benefit of and bind the
principal and the principal's successors in interest, notwithstanding any disability or incapacity of the principal or any
uncertainty as to whether the principal is dead or alive.

3. A durable power of attorney does not have to be recorded to be valid and binding between the principal and attorney in
fact or between the principal and third persons, except to the extent that recording may be required for transactions
affecting real estate under sections 442.360 and 442.370, RSMo.

4. A person who is appointed an attorney in fact under a durable power of attorney has no duty to exercise the authority
conferred in the power of attorney, whether or not the principal has become disabled or incapacitated, is missing or is held
in a foreign country, unless the attorney in fact has agreed expressly in writing to act for the principal in such
circumstances. An agreement to act on behalf of the principal is enforceable against the attorney in fact as a fiduciary
without regard to whether there is any consideration to support a contractual obligation to do so. Acting for the principal in
one or more transactions does not obligate an attorney in fact to act for the principal in subsequent transactions.


Principal may appoint multiple attorneys in fact--authority may be joint or several--qualifications--persons
disqualified.

404.707. 1. A principal may appoint more than one attorney in fact in one or more powers of attorney and may provide
that the authority conferred on two or more attorneys in fact shall or may be exercised either jointly or severally or in a
manner, with such priority and with respect to such subjects as is provided in the power of attorney.

2. Any person, other than a person who is disqualified from being appointed a guardian or conservator of the principal
under subsection 2 of section 475.055, RSMo, shall be qualified to be designated an attorney in fact under a durable power
of attorney.

3. The designation of a person not qualified to act as an attorney in fact for a principal under a durable power of attorney
subjects the person to removal as attorney in fact but does not affect the immunities of third persons nor relieve the
unqualified person of any duties or responsibilities to the principal or the principal's successors.

(L. 1989 H.B. 145 § 4)

Power of attorney with general powers.
© 2011 – Richard J. Herndon, Attorney at Law
404.710. 1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or not durable.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney.

3. If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section.

4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to his or her own person or property, including property owned jointly or by the entitites with another or others, as a nondisabled and nonincapacitated adult; and without limiting the foregoing has with respect to the subjects or purposes of the power complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact, and such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

5. An attorney in fact, who is granted general powers for all subjects and purposes or with respect to any express subjects or purposes, shall exercise the powers conferred according to the principal's instructions, in the principal's best interest, in good faith, prudently and in accordance with sections 404.712 and 404.714.

6. Any power of attorney, whether durable or not durable, and whether or not it grants general powers for all subjects and purposes or with respect to express subjects or purposes, shall be construed to grant power or authority to an attorney in fact to carry out any of the actions described in this subsection if the actions are expressly enumerated and authorized in
the power of attorney. Any power of attorney may grant power of authority to an attorney in fact to carry out any of the following actions if the actions are expressly authorized in the power of attorney:

(1) To execute, amend or revoke any trust agreement;

(2) To fund with the principal's assets any trust not created by the principal;

(3) To make or revoke a gift of the principal's property in trust or otherwise;

(4) To disclaim a gift or devise of property to or for the benefit of the principal;

(5) To create or change survivorship interests in the principal's property or in property in which the principal may have an interest; provided, however, that the inclusion of the authority set out in this paragraph shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled or incapacitated, and seeking to act in the principal's own behalf;

(6) To designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;

(7) To give or withhold consent to an autopsy or postmortem examination;

(8) To make a gift of, or decline to make a gift of, the principal's body parts under the Uniform Anatomical Gift Act;

(9) To nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney in fact may nominate himself as such;

(10) To give consent to or prohibit any type of health care, medical care, treatment or procedure to the extent authorized by sections 404.800 to 404.865; or

(11) To designate one or more substitute or successor or additional attorneys in fact.

7. No power of attorney, whether durable or not durable, and whether or not it delegates general powers, may delegate or grant power or authority to an attorney in fact to do or carry out any of the following actions for the principal:

(1) To make, publish, declare, amend or revoke a will for the principal;

(2) To make, execute, modify or revoke a living will declaration for the principal;

(3) To require the principal, against his or her will, to take any action or to refrain from taking any action; or

(4) To carry out any actions specifically forbidden by the principal while not under any disability or incapacity.

8. A third person may freely rely on, contract and deal with an attorney in fact delegated general powers with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly identifies the specific property, account, security, storage facility or matter as being within the scope of a subject or purpose contained in the power of attorney, and without regard to whether the power of attorney expressly authorizes the specific act, transaction or decision by the attorney in fact.

9. It is the policy of this state that an attorney in fact acting pursuant to the provisions of a power of attorney granting general powers shall be accorded the same rights and privileges with respect to the personal welfare, property and business interests of the principal, and if the power of attorney enumerates some express subjects or purposes, with respect to those subjects or purposes, as if the principal himself or herself were personally present and acting or seeking to act; and any
provision of law and any purported waiver, consent or agreement executed or granted by the principal to the contrary shall be void and unenforceable.

10. Sections 404.700 to 404.735 shall not be construed to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal; and any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.


Name in which acts are performed and property held--property and accounts of principal to be kept separate--how identified.

404.712. 1. An attorney in fact acting for the principal under a power of attorney shall clearly indicate his capacity and shall keep the principal's property and accounts separate and distinct from all other property and accounts in a manner to identify the property and accounts clearly as belonging to the principal.

2. An attorney in fact holding property for a principal complies with subsection 1 of this section if the property is held in the name of the principal, in the name of the attorney in fact as attorney in fact for the principal or in the name of the attorney in fact as personal custodian for the principal under the Missouri personal custodian law, uniform custodial trust law or similar law of any state.

(L. 1989 H.B. 145 § 6)

Duties of attorney in fact.

404.714. 1. An attorney in fact who elects to act under a power of attorney is under a duty to act in the interest of the principal and to avoid conflicts of interest that impair the ability of the attorney in fact so to act. A person who is appointed an attorney in fact under a power of attorney, either durable or not durable, who undertakes to exercise the authority conferred in the power of attorney, has a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest, as in the case of a trustee with respect to the trustee's beneficiary or beneficiaries; and in the absence of explicit authorization, the attorney in fact shall exercise a high degree of care in maintaining, without modification, any estate plan which the principal may have in place, including, but not limited to, arrangements made by the principal for disposition of assets at death through beneficiary designations, ownership by joint tenancy or tenancy by the entirety, trust arrangements or by will or codicil. Unless otherwise provided in the power of attorney or in a separate agreement between the principal and attorney in fact, an attorney in fact who elects to act shall exercise the authority granted in a power of attorney with that degree of care that would be observed by a prudent person dealing with the property and conducting the affairs of another, except that all investments made on or after August 28, 1998, shall be in accordance with the provisions of the Missouri prudent investor act, sections 469.900 to 469.913, RSMo. If the attorney in fact has special skills or was appointed attorney in fact on the basis of representations of special skills or expertise, the attorney in fact has a duty to use those skills in the principal's behalf.

2. On matters undertaken or to be undertaken in the principal's behalf and to the extent reasonably possible under the circumstances, an attorney in fact has a duty to keep in regular contact with the principal, to communicate with the principal and to obtain and follow the instructions of the principal.

3. If the principal is not available to communicate in person with the attorney in fact because:

   (1) The principal is missing under such circumstances that it is not known whether the principal is alive or dead; or

   (2) The principal is captured, interned, besieged or held hostage or prisoner in a foreign country;

the authority of the attorney in fact under a power of attorney, whether durable or not, shall not terminate and the attorney in fact may continue to exercise the authority conferred, faithfully and in the best interests of the principal, until the
principal returns or is publicly declared dead by a governmental agency, domestic or foreign, or is presumed dead because of continuous absence of five years as provided in section 472.290, RSMo 1986, or a similar law of the place of the last known domicile of the person whose absence is in question.

4. If, following execution of a power of attorney, the principal is absent or becomes wholly or partially disabled or incapacitated, or if there is a question with regard to the ability or capacity of the principal to give instructions to and supervise the acts and transactions of the attorney in fact, an attorney in fact exercising authority under a power of attorney, either durable or not durable, may consult with any person or persons previously designated by the principal for such purpose, and may also consult with and obtain information from the principal's spouse, physician, attorney, accountant, any member of the principal's family or other person, corporation or government agency with respect to matters to be undertaken in the principal's behalf and affecting the principal's personal affairs, welfare, family, property and business interests.

5. If, following execution of a durable power of attorney, a court appoints a legal representative for the principal, the attorney in fact shall follow the instructions of the court or of the legal representative, and shall communicate with and be accountable to the principal's guardian on matters affecting the principal's personal welfare and to the principal's conservator on matters affecting the principal's property and business interests, to the extent that the responsibilities of the guardian or conservator and the authority of the attorney in fact involve the same subject matter.

6. The authority of an attorney in fact, under a power of attorney that is not durable, is suspended during any period that the principal is disabled or incapacitated to the extent that the principal is unable to receive or evaluate information or to communicate decisions with respect to the subject of the power of attorney; and an attorney in fact exercising authority under a power of attorney that is not durable shall not act in the principal's behalf during any period that the attorney in fact knows the principal is so disabled or incapacitated.

7. An attorney in fact shall exercise authority granted by the principal in accordance with the instrument setting forth the power of attorney, any modification made therein by the principal or the principal's legal representative or a court, and the oral and written instructions of the principal, or the written instructions of the principal's legal representative or a court.

8. An attorney in fact may be instructed in a power of attorney that the authority granted shall not be exercised until, or shall terminate on, the happening of a future event, condition or contingency, as determined in a manner prescribed in the instrument.

9. On the death of the principal, the attorney in fact shall follow the instructions of the court, if any, having jurisdiction over the estate of the principal, or any part thereof, and shall communicate with and be accountable to the principal's personal representative, or if none, the principal's successors; and the attorney in fact shall promptly deliver to and put in the possession and control of the principal's personal representative or successors any property of the principal and copies of any records of the attorney in fact relating to transactions undertaken in the principal's behalf that are deemed by the personal representative or the court to be necessary or helpful in the administration of the decedent's estate.

10. If an attorney in fact has a property or contract interest in the subject of the power of attorney or the authority of the attorney in fact is otherwise coupled with an interest in a person other than the principal, this section does not impose any duties on the attorney in fact that would conflict or be inconsistent with that interest.


Modification and termination of power of attorney--liability between principal and attorney in fact.

404.717. 1. As between the principal and attorney in fact or successor attorney in fact, and any agents appointed by either of them, unless the power of attorney is coupled with an interest, the authority granted in a power of attorney shall be modified or terminated as follows:

(1) On the date shown in the power of attorney and in accordance with the express provisions of the power of attorney;
(2) When the principal, orally or in writing, or the principal's legal representative with approval of the court in writing informs the attorney in fact or successor that the power of attorney is modified or terminated, or when and under what circumstances it is modified or terminated;

(3) When a written notice of modification or termination of the power of attorney is filed by the principal or the principal's legal representative for record in the office of the recorder of deeds in the city or county of the principal's residence or, if the principal is a nonresident of the state, in the city or county of the residence of the attorney in fact last known to the principal, or in the city or county in which is located any property specifically referred to in the power of attorney;

(4) On the death of the principal, except that if the power of attorney grants authority under subdivision (7) or (8) of subsection 6 of section 404.710, the power of attorney and the authority of the attorney in fact shall continue for the limited purpose of carrying out the authority granted under either or both of said subdivisions for a reasonable length of time after the death of the principal;

(5) When the attorney in fact under a durable power of attorney is not qualified to act for the principal;

(6) On the filing of any action for divorce or dissolution of the marriage of the principal and the principal's attorney in fact who were married to each other at or subsequent to the time the power of attorney was created, unless the power of attorney provides otherwise.

2. Whenever any of the events described in subsection 1 of this section operate merely to terminate the authority of the particular person designated as the attorney in fact, rather than terminating the power of attorney, if the power of attorney designates a successor or contingent attorney in fact or prescribes a procedure whereby a successor or contingent attorney in fact may be designated, then the authority provided in the power of attorney shall extend to and vest in the successor or contingent attorney in fact in lieu of the attorney in fact whose power and authority was terminated under any of the circumstances referred to in subsection 1 of this section.

3. As between the principal and attorney in fact or successor, acts and transactions of the attorney in fact or successor undertaken in good faith, in accordance with section 404.714, and without actual knowledge of the death of the principal or without actual knowledge, or constructive knowledge pursuant to subdivision (3) of subsection 1 of this section, that the authority granted in the power of attorney has been suspended, modified or terminated, relieves the attorney in fact or successor from liability to the principal and the principal's successors in interest.

4. This section does not prohibit the principal, acting individually, and the person designated as the attorney in fact from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of sections 404.700 to 404.735, with the exception of those acts enumerated in subsection 7 of section 404.710.

5. As between the principal and any attorney in fact or successor, if the attorney in fact or successor undertakes to act, and if in respect to such act, the attorney in fact or successor acts in bad faith, fraudulently or otherwise dishonestly, or if the attorney in fact or successor intentionally acts after receiving actual notice that the power of attorney has been revoked or terminated, and thereby causes damage or loss to the principal or to the principal's successors in interest, such attorney in fact or successor shall be liable to the principal or to the principal's successors in interest, or both, for such damages, together with reasonable attorney's fees, and punitive damages as allowed by law.


Exemption of third persons from liability.

404.719. 1. A third person, who is acting in good faith, without liability to the principal or the principal's successors in interest, may rely and act on any power of attorney executed by the principal; and, with respect to the subjects and purposes encompassed by or separately expressed in the power of attorney, may rely and act on the instructions of or otherwise contract and deal with the principal's attorney in fact or successor attorney in fact and, in the absence of actual
knowledge, as defined in subsection 3 of this section, is not responsible for determining and has no duty to inquire as to any of the following:

1. The authenticity of a certified true copy of a power of attorney furnished by the principal's attorney in fact or successor;

2. The validity of the designation of the attorney in fact or successor;

3. Whether the attorney in fact or successor is qualified to act as an attorney in fact for the principal;

4. The propriety of any act of the attorney in fact or successor in the principal's behalf, including, but not limited to, whether or not an act taken or proposed to be taken by the attorney in fact, constitutes a breach of any duty or obligation owed to the principal, including, but not limited to, the obligation to the principal not to modify or alter the principal's estate plan or other provisions for distributions of assets at death, as provided in subsection 1 of section 404.714;

5. Whether any future event, condition or contingency making effective or terminating the authority conferred in a power of attorney has occurred;

6. Whether the principal is disabled or incapacitated or has been adjudicated disabled or incapacitated;

7. Whether the principal, the principal's legal representative or a court has given the attorney in fact any instructions or the content of any instructions, or whether the attorney in fact is following any instructions received;

8. Whether the authority granted in a power of attorney has been modified by the principal, a legal representative of the principal or a court;

9. Whether the authority of the attorney in fact has been terminated, except by an express provision in the power of attorney showing the date on which the power of attorney terminates;

10. Whether the power of attorney, or any modification or termination thereof, has been recorded, except as to transactions affecting real estate;

11. Whether the principal had legal capacity to execute the power of attorney at the time the power of attorney was executed;

12. Whether, at the time the principal executed the power of attorney, the principal was subjected to duress, undue influence or fraud, or the power of attorney was for any other reason void or voidable, if the power of attorney appears to be regular on its face;

13. Whether the principal is alive;

14. Whether the principal and attorney in fact were married at or subsequent to the time the power of attorney was created and whether the marriage has been dissolved; or

15. The truth or validity of any facts or statements made in an affidavit of the attorney in fact or successor with regard to the ability or capacity of the principal, the authority of the attorney in fact or successor under the power of attorney, the happening of any event or events vesting authority in any successor or contingent attorney in fact, the identity or authority of a person designated in the power of attorney to appoint a substitute or successor attorney in fact or that the principal is alive.

2. A third person, in good faith and without liability to the principal or the principal's successors in interest, even with knowledge that the principal is disabled or incapacitated, may rely and act on the instructions of or otherwise contract and deal with the principal's attorney in fact or successor attorney in fact acting pursuant to authority granted in a durable power of attorney.
3. A third person that conducts activities through employees shall not be charged under sections 404.700 to 404.735 with actual knowledge of any fact relating to a power of attorney, nor of a change in the authority of an attorney in fact, unless the information is received at a home office or a place where there is an employee with responsibility to act on the information, and the employee has a reasonable time in which to act on the information using the procedures and facilities that are available to the third person in the regular course of its operations.

4. A third person, when being requested to engage in transactions with a principal through the principal's attorney in fact, may require the attorney in fact to provide specimens of his or her signature and any other information reasonably necessary or appropriate in order to facilitate the actions of the third person in transacting business through the attorney in fact, may require the attorney in fact to indemnify the third person against forgery of the power of attorney, by bond or otherwise; provided, however, that if the power of attorney is durable as defined in subsection 1 of section 404.705 and if either the principal or the attorney in fact seeking to act is and has been a resident of this state for at least two years, and if the attorney in fact has executed in the name of the principal and delivered to the third person an indemnity agreement reasonably satisfactory in form to such third person, no such bond shall be required; and may prescribe the place and manner in which the third person will be given any notice respecting the principal's power of attorney and the time in which the third person has to comply with any notice.


 Liability as between principal and third person.

404.721. 1. As between the principal and third persons, the authority granted in a power of attorney shall terminate on the date of termination, if any, set out in the power of attorney or on the date when the third person acquires actual knowledge of the death of the principal or that the authority granted in the power of attorney has been suspended, modified or terminated.

2. As between the principal and third persons, the acts and transactions of an attorney in fact are binding on the principal and the principal's successors in interest in any situation in which a third person is entitled to rely under section 404.719.

3. This section does not prohibit the principal, acting individually, and a third person from entering into a written agreement that sets forth their duties and liabilities as between themselves and their successors, and which expands or limits the application of sections 404.700 to 404.735, except that no agreement shall limit or restrict the right of the principal to act with respect to the third person through an attorney in fact appointed in a durable power of attorney.

(L. 1989 H.B. 145 § 10)

Delegation of powers, successor attorneys in fact--court's powers, appointments for incapacitated or disabled persons.

404.723. 1. An attorney in fact or successor from time to time may revocably delegate any or all of the powers granted in a durable power of attorney to one or more qualified persons, subject to any directions or limitations of the principal expressed in the power of attorney, but the attorney in fact making the delegation shall remain responsible to the principal for the exercise or nonexercise of the powers delegated.

2. The principal in a durable power of attorney may revocably name one or more qualified persons as successor attorneys in fact to exercise the authority granted in the power of attorney in the order named in the event a prior named attorney in fact resigns, dies, becomes disabled or incapacitated, is not qualified to act or refuses to act; and the principal in a durable power of attorney may revocably grant a power to another person, designated by name, by office, or by function, including the initial and any successor attorney in fact, whereby there may be revocably named at any time one or more successor attorneys in fact.

3. A delegated or successor attorney in fact need not indicate his or her capacity as a delegated or successor attorney in fact.
4. If a wholly or partially incapacitated or wholly or partially disabled person has provided for personal care or property management in an unrevoked durable power of attorney which the court finds is reasonably adequate to provide guidance to the attorney in fact for the conduct of the principal's personal or business affairs, and there is no attorney in fact or successor designated in the durable power of attorney who is willing, able and available to act, the court in lieu of appointing a full or limited guardian or a full or a limited conservator may appoint any adult person or financial institution as successor attorney in fact to act pursuant to the incapacitated or disabled principal's durable power of attorney, with or without bond and with or without court supervision, upon such terms and conditions as the court may require. In lieu of or in addition to appointing a successor attorney in fact or a limited or full conservator for management of a disabled person's estate the court may appoint any adult person or financial institution to act as personal custodian of the disabled person's estate pursuant to section 404.510. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petitioner to be interested in the welfare of the principal; except that in the event of an emergency as determined by the court, the court may, without notice, enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than thirty days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.


Compensation of attorney in fact.

404.725. Subject to the provisions of the power of attorney and any separate agreement, an attorney in fact is entitled to reasonable compensation for services rendered to the principal as attorney in fact and reimbursement for reasonable expenses incurred as a result of acting as attorney in fact for the principal.

(L. 1989 H.B. 145 § 12)

Accounting, determination of disability, modification and termination, limitation or removal of attorney in fact and limitations for principal to bring actions.

404.727. 1. The principal may petition the court for an accounting by the principal's attorney in fact or the legal representative of the attorney in fact. If the principal is disabled, incapacitated or deceased, a petition for accounting may be filed by the principal's legal representative, an adult member of the principal's family or any person interested in the welfare of the principal.

2. Any requirement for an accounting may be waived or an accounting may be approved by the court without hearing, if the accounting is waived or approved by a principal who is not disabled, or by a principal whose legal capacity has been restored, or by all creditors and distributees of a deceased principal's estate whose claims or distributions theretofore have not been satisfied in full. The approval or waiver shall be in writing, signed by the affected persons and filed with the court.

3. For the purposes of subsection 2 of this section, a legal representative or a person providing services to the principal's estate shall not be considered a creditor of the principal's estate; and no express approval or waiver shall be required from the legal representative of a disabled or incapacitated principal if the principal's legal capacity has been restored, or from the personal representative of a deceased principal's estate, or from any other person entitled to compensation or expense for services rendered to a disabled, incapacitated or deceased principal's estate, unless the principal or the principal's estate is unable to pay in full the compensation and expense to which the person rendering the services may be entitled.

4. The principal, the principal's attorney in fact, an adult member of the principal's family or any person interested in the welfare of the principal may petition the probate division of the circuit court in the county or city where the principal is then residing to determine and declare whether a principal, who has executed a power of attorney, is a disabled or incapacitated person.
5. If the principal is a disabled or incapacitated person, on petition of the principal's legal representative, an adult member of the principal's family or any interested person, including a person interested in the welfare of the principal, for good cause shown the court, may:

(1) Order the attorney in fact to exercise or refrain from exercising authority in a durable power of attorney in a particular manner or for a particular purpose;

(2) Modify the authority of an attorney in fact under a durable power of attorney;

(3) Declare suspended a power of attorney that is not durable;

(4) Terminate a durable power of attorney;

(5) Remove the attorney in fact under a durable power of attorney;

(6) Confirm the authority of an attorney in fact or a successor attorney in fact to act under a durable power of attorney; and

(7) Issue such other orders as the court finds will be in the best interest of the disabled or incapacitated principal, including appointment of a guardian or conservator for the principal.

6. If, after notice and hearing, the court determines that there has been a prima facie showing that the principal is a disabled or incapacitated person and that the attorney in fact has breached his fiduciary duty to the principal or that there is a reasonable likelihood that he may do so in the immediate future, the court may, in its discretion, issue an order that some or all of the authority granted by the power of attorney be suspended or modified, and that a different attorney in fact be authorized to exercise some or all of the powers granted by the power of attorney. Such attorney in fact may be designated by the court. The court may require any person petitioning for any such order to file a bond in such amount and with such sureties as required by the court to indemnify either the attorney in fact who has been acting on behalf of the principal or the principal and the principal's successors in interest for the expenses, including attorney's fees, incurred by any such persons with respect to such proceeding. The court may, after hearing, allow payment or enter judgment for any such amount in the manner as provided by subsection 6 of section 404.731. None of the actions described in this subsection shall be taken by the court until after hearing upon reasonable notice to all persons identified in a verified statement supplied by the petitioner who is requesting such action identifying the immediate relatives of the principal and any other persons known to the petition to be interested in the welfare of the principal; except that in the event of an emergency as determined by the court, the court may, without notice, enter such temporary order as seems proper to the court, but no such temporary order shall be effective for more than thirty days unless extended by the court after hearing on reasonable notice to the persons identified as herein provided.

7. If a power of attorney is suspended or terminated by the court or the attorney in fact is removed by the court, the court may require an accounting from the attorney in fact and order delivery of any property belonging to the principal and copies of any necessary records of the attorney in fact concerning the principal's property and affairs to a successor attorney in fact or the principal's legal representative.

8. In a proceeding under sections 404.700 to 404.735 or in any other proceeding, or upon petition of an attorney in fact or successor, the court may:

(1) Require or permit an attorney in fact under a durable power of attorney to account;

(2) Authorize the attorney in fact under a durable power of attorney to enter into any transaction, or approve, ratify, confirm and validate any transaction entered into by the attorney in fact that the court finds is, was or will be beneficial to the principal and which the court has power to authorize for a guardian or conservator under chapter 475, RSMo; and

(3) Relieve the attorney in fact of any obligation to exercise authority for a disabled or incapacitated principal under a durable power of attorney.
9. Unless previously barred by adjudication, consent or limitation, any cause of action against an attorney in fact or successor for breach of duty to the principal shall be barred as to any principal who has received an account or other statement fully disclosing the matter unless a proceeding to assert the cause of action is commenced within two years after receipt of the account or statement by him or, if the principal is a disabled or incapacitated person, by a guardian or conservator of his estate; provided that, if a disabled or incapacitated person has no guardian or conservator of his estate at the time an account or statement is presented, then the cause of action shall not be barred until one year after the removal of the principal's disability or incapacity, one year after the appointment of a conservator for the principal, or one year after the death of the principal. The cause of action thus barred does not include any action to recover from an attorney in fact or successor for fraud, misrepresentation or concealment related to the settlement of any transaction involving the agency relationship of the attorney in fact with the principal.


Scope and application of law—application of law to nondurable powers of attorney.

404.730. 1. Sections 404.700 to 404.735 apply to the acts and transactions in this state of attorneys in fact under powers of attorney executed in this state or by residents of this state; and also apply to acts and transactions of attorneys in fact in this state or outside this state under powers of attorney that refer to the durable power of attorney law of Missouri in the instrument creating the power of attorney, if any of the following conditions are met:

(1) The principal or attorney in fact was a resident of this state at the time the power of attorney was executed;

(2) The powers and authority conferred relate to property, acts or transactions in this state;

(3) The acts and transactions of the attorney in fact or successor occurred or were to occur in this state;

(4) The power of attorney was executed in this state; or

(5) There is otherwise a reasonable relationship between this state and the subject matters of the power of attorney.

The power of attorney so created remains subject to sections 404.700 to 404.735 despite a subsequent change in residence of the principal or the attorney in fact and any successor, or the removal from this state of property which was the subject of the power of attorney.

2. A person who acts as an attorney in fact or successor pursuant to a power of attorney governed by sections 404.700 to 404.735 is subject to personal jurisdiction in this state with respect to matters relating to acts and transactions of the attorney in fact or successor performed in this state, performed for a resident of this state or affecting property in this state.

3. Sections 404.700 to 404.735 shall not be construed as providing an exclusive method for creating powers of attorney that are in fact durable or that may be durable as to one or more acts by reason of the fact that the attorney in fact or other person has a property or contract interest in the authority conferred.

4. Sections 404.700 to 404.735 shall not be construed to apply to powers of attorney that are not durable except where specifically so stated; and sections 404.700 to 404.735, insofar as they apply to powers of attorney that are not durable, are intended to be declaratory of existing law.

5. A durable power of attorney that purports to have been made under the provisions of the uniform durable power of attorney act or a substantially similar law of another state is governed by the law of the designated state and, if durable where executed, is durable and may be carried out and enforced in this state.

6. A power of attorney, whether durable or not, executed by a resident of another state, may authorize the carrying out in this state of all acts permitted to be delegated to an agent by the laws of the state of the residence of the principal, the laws of the state where the power of attorney is executed, or the laws of this state, whichever law is most favorable toward authorizing such delegation, and is durable if so designated either under the laws of this state, under the laws of the state of residence of the principal, or under the laws of the state where the power of attorney is executed.
Jurisdiction of probate division of circuit court—guardian or conservator ad litem appointed, when.

404.731. 1. The probate division of the circuit court may hear and determine all matters pertaining to acts and transactions of an attorney in fact performed or undertaken under a power of attorney on behalf of a principal who is disabled or incapacitated, or who has become deceased.

2. The provisions of chapter 472, RSMo, apply to judicial proceedings involving powers of attorney to the extent that they apply to judicial proceedings involving trusts and are not inconsistent with sections 404.700 to 404.735.

3. If the probate division of the circuit court appoints a guardian or conservator for a principal who has appointed an attorney in fact under a durable power of attorney, after notice and hearing, the court may specify in an order the powers, duties and responsibilities of the principal's legal representative and any attorney in fact appointed under a durable power of attorney and the manner in which they shall coordinate the exercise of their respective powers and duties for and on behalf of the principal.

4. Upon filing of a petition under sections 404.700 to 404.735, the court shall issue an order to such persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, shall proceed to grant such relief as the court finds to be in the best interest of the principal.

5. Notwithstanding any other provision of law, if it is suggested in a petition filed by the principal, a creditor, a person interested in the welfare of the principal, or other interested person, including a member of the principal's family who may have a property right or claim against or an expectancy, reversionary or other interest in the estate of the principal, or if it affirmatively appears to the court that the principal is disabled or incapacitated and there is a possible conflict of interest between the principal and the attorney in fact, the court may appoint a guardian or conservator ad litem to represent the principal in any proceeding to adjudicate any right affected by the possible conflict of interest. The guardian or conservator ad litem shall have only such authority as is provided in the order of appointment and shall serve until discharged by the court.

6. If a court appoints a guardian or conservator ad litem for the principal, the court may, by order entered in the proceeding, provide reasonable compensation and reimbursement for expenses for the guardian or conservator ad litem and, in appropriate cases, allow the payment out of the estate of the principal or enter a judgment for the amount as costs against some other person who is a party to the proceeding and whose conduct is determined by the court as giving rise to the necessity for the appointment of the guardian or conservator ad litem.

Repeal of sections 486.550 to 486.595 does not affect validity of existing durable powers of attorney.

404.735. 1. The repeal of the Missouri durable power of attorney law, sections 486.550 to 486.595, RSMo, shall not affect the validity of durable powers of attorney created under that law, the validity of the acts and transactions of attorneys in fact under authority granted in durable powers of attorney executed under that law, or the duties of attorneys in fact under durable powers of attorney executed under that law.

2. The provisions of sections 404.700 and 404.703, subsections 2, 3 and 4 of section 404.705, and sections 404.707 to 404.735 henceforth apply to durable powers of attorney executed before August 28, 1989, insofar as the application of sections 404.700 to 404.735 does not impair constitutionally vested rights.

3. A power of attorney that complies with the provisions of subsection 1 of section 404.705 and that was executed before August 28, 1989, is durable and valid after August 28, 1989.

4. A durable power of attorney executed under prior law need not be recorded as provided in that law to be effective and durable except as to conveyances of real estate; and the appointment of a legal representative for the principal or the
principal's estate shall not require an accounting by an attorney in fact acting under a power of attorney executed under prior law, unless ordered by a court pursuant to a petition to the court under section 404.727.

5. Compliance with the provisions of subsection 1 of section 404.705 is not required for durability of a power of attorney executed prior to January 1, 1990, if the form of the power of attorney was sufficient for durability under subdivision (2) of section 486.555, RSMo 1986.

(L. 1989 H.B. 145 § 16)

Exceptions to amendments of durable power of attorney law enacted in 1997.

404.737. The amendments to the durable power of attorney law of Missouri enacted in 1997 are effective August 28, 1997, and shall apply, except that, as to powers of attorney executed prior to January 1, 1999, the laws in effect prior to August 28, 1997, shall apply if such prior laws shall be more favorable to construing said powers of attorney to:

(1) Be durable; or

(2) Grant a power sought to be exercised by the attorney-in-fact.

(L. 1998 H.B. 1103 § 404.734 merged with S.B. 537)

404.800. Sections 404.800 to 404.865 may be cited as the "Durable Power of Attorney for Health Care Act".

(L. 1991 S.B. 148)

Definitions.

404.805. 1. As used in sections 404.800 to 404.865, the following terms mean:

(1) "Certification", a written instrument or a written entry in a medical record;

(2) "Incapacitated", a person who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness or disease is likely to occur;

(3) "Patient", the principal of a durable power of attorney for health care under sections 404.800 to 404.865.

2. The definitions of section 404.703 shall apply to sections 404.800 to 404.865 except as modified by this section.

(L. 1991 S.B. 148)

Applicability of general law.

404.810. Section 404.710, section 404.714, section 404.705, subsections 1 and 2 of section 404.707, section 404.717, subsection 1 and 2 of section 404.723, section 404.727, and section 404.731 shall apply to powers granted under sections 404.800 to 404.865. No other provisions of sections 404.700 to 404.735 shall apply to the durable power of attorney for health care act unless specifically incorporated by reference therein.

(L. 1991 S.B. 148)

Physician, health care facility, not to serve as attorney in fact--exceptions.
404.815. Notwithstanding any other provision of law to the contrary, an attending physician or an employee of the attending physician, or an owner, operator or employee of a health care facility in which the patient is a resident, shall not serve as an attorney in fact unless:

(1) The patient and attorney in fact are related by affinity or consanguinity within the second degree;

(2) The patient and attorney in fact are members of the same community of persons who are bound by vows to a religious life and who conduct or assist in the conducting of religious services and actually and regularly engage in religious, benevolent, charitable, or educational ministry, or the performance of health care services.

(L. 1991 S.B. 148)

**Withdrawing or withholding treatment, specific authority required—restrictions.**

404.820. 1. If a patient wishes to confer on an attorney in fact the authority to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration, the patient shall specifically grant such authority in the power of attorney. This limitation shall not be construed to require that artificially supplied nutrition and hydration be continued when, in the medical judgment of the attending physician, the patient cannot tolerate it.

2. Notwithstanding any other provision of sections 404.800 to 404.865 to the contrary, no attorney in fact may, with the intent of causing the death of the patient, authorize the withdrawal of nutrition or hydration which the patient may ingest through natural means.

3. Attorneys in fact shall consider appropriate measures in accord with current standards of medical practice to provide comfort to the patient.

4. Before an attorney in fact or physician may authorize the withdrawal of nutrition or hydration which the patient may ingest through artificial means, the physician must:

   (1) Attempt to explain to the patient the intention to withdraw nutrition and hydration and the consequences for the patient and to provide the opportunity for the patient to refuse the withdrawal of nutrition and hydration; or

   (2) Insert in the patient's file a certification that the patient is comatose or consistently in a condition which makes it impossible for the patient to understand the intention to withdraw nutrition and hydration and the consequences to the patient.

(L. 1991 S.B. 148)

**Health care decisions, attorney in fact to consider medical diagnosis.**

404.822. In making any health care decision in accordance with sections 404.800 to 404.865, the attorney in fact shall seek and consider information concerning the patient's medical diagnosis, the patient's prognosis and the benefits and burdens of the treatment to the patient. In withdrawing treatment, which withdrawal will allow the preexisting condition to run its natural course, the attorney in fact shall seek evidence of the medical diagnosis and the prognosis and the benefit and burden of the treatment to the patient to the extent possible within prevailing medical standards.

(L. 1991 S.B. 148)

**Examination of patient required, content.**

404.825. Unless the patient expressly authorizes otherwise in the power of attorney, the powers and duties of the attorney in fact to make health care decisions shall commence upon a certification by two licensed physicians based upon an examination of the patient that the patient is incapacitated and will continue to be incapacitated for the period of time during which treatment decisions will be required and the powers and duties shall cease upon certification that the patient is no longer incapacitated. One of the certifying physicians may be the patient's attending physician. The certification shall
be made according to accepted medical standards. The determination of incapacity shall be periodically reviewed by the attending physician. The certification shall be incorporated into the medical records and shall set forth the facts upon which the determination of incapacity is based and the expected duration of the incapacity. Other provisions of this section to the contrary notwithstanding, certification of incapacity by at least one physician is required.

(L. 1991 S.B. 148)

Physician, health care facility, may refuse decision of attorney in fact, when--transfer from facility allowed.

404.830. 1. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the individual's religious beliefs, or sincerely held moral convictions.

2. No hospital, nursing facility, residential care facility, or other health care facility shall be required to honor a health care decision of an attorney in fact if that decision is contrary to the hospital's or facility's institutional policy based on religious beliefs or sincerely held moral convictions unless the hospital or facility received a copy of the durable power of attorney for health care prior to commencing the current series of treatments or current confinement.

3. Any health care provider or facility which, pursuant to subsection 1 or 2 of this section, refuses to honor a health care decision of an attorney in fact shall not impede the attorney in fact from transferring the patient to another health care provider or facility.

(L. 1991 S.B. 148)

Execution of durable power of attorney not to be required.

404.835. 1. It shall be unlawful for a physician, nurse or other individual who is a health care provider or an employee of a health care facility, hospital, nursing facility, residential care facility or other health care facility to require an individual to execute a durable power of attorney for health care as a condition for the provision of health care services or admission to a health care facility.

2. It shall be unlawful for an insurance company authorized to transact health insurance business in this state, nonprofit health care service plan, health maintenance organization, or other similar person or entity who contracts or agrees to the provision of health care benefits to require an individual to execute a durable power of attorney for health care as a condition to being insured or to receive benefits for health care services.

(L. 1991 S.B. 148)

Medical records to include durable power of attorney, when--effect.

404.840. 1. A copy of a power of attorney for health care decisions shall be made a part of the patient's medical record when the existence of the power of attorney becomes known to the patient's health care provider and prior to the provider's taking any action pursuant to the decision of the attorney in fact.

2. Except to the extent the right is limited by the power of attorney or any federal law, an attorney in fact designated to make health care decisions has the same right as the patient to receive information regarding the proposed health care, to receive and review medical records and to consent to the disclosure of medical records. However, the right to access to medical records is not a waiver of any evidentiary privilege.

(L. 1991 S.B. 148)

Death resulting from withholding treatment, not to be suicide or homicide, when.
404.845. 1. Nothing contained in sections 404.800 to 404.865 shall revoke, amend or limit the operation of chapter 565, RSMo.  

2. If the patient's death results from withholding or withdrawing life-sustaining treatment in accordance with the terms of the durable power of attorney for health care act, the death shall not constitute a suicide or homicide for any purpose under any statute or other rule of law and shall not impair or invalidate any insurance, annuity or other type of contract that is conditioned on the life or death of the patient, any term of the contract to the contrary notwithstanding.  

(L. 1991 S.B. 148)  

Prior durable power of attorney remains valid, when.  

404.847. Nothing contained in sections 404.800 to 404.865 shall be construed to invalidate any durable power of attorney executed prior to August 28, 1991, which permits an attorney in fact to make health care decisions for the principal. The provisions of sections 404.710 and 404.820 henceforth apply to durable powers of attorney for health care executed prior to August 28, 1991. In the absence of a specific writing, decisions regarding nutrition and hydration must be made in accordance with state and federal law.  

(L. 1991 S.B. 148)  

Revocation, procedure, effect.  

404.850. 1. A power of attorney for health care may be revoked at any time and in any manner by which the patient is able to communicate the intent to revoke. Revocation shall be effective upon communication of such revocation by the patient to the attorney in fact or to the attending physician or health care provider.  

2. Upon learning of the revocation of a power of attorney for health care, the attending physician or other health care provider shall cause the revocation to be made a part of the patient's medical records.  

3. Unless the power of attorney provides otherwise, execution by the patient of a valid power of attorney for health care revokes any prior power of attorney for health care.  

(L. 1991 S.B. 148)  

Liability, immunity from, when.  

404.855. A third person, if acting in good faith, may rely and act on the instruction of and deal with the attorney in fact acting pursuant to the authority granted in a power of attorney for health care without liability to the patient or the patient's successors in interest.  

(L. 1991 S.B. 148)  

Delegation of decision-making authority by attorney in fact prohibited, when.  

404.865. Notwithstanding the provisions of subsection 1 of section 404.723, an attorney in fact shall not be authorized to delegate such health care decision-making power to another person unless explicitly authorized by the patient in the durable power of attorney for health care to make such delegation.  

(L. 1991 S.B. 148)  

Handicapped or disabled, discrimination against not allowed.
404.870. Nothing in sections 404.710 to 404.865 shall be construed to authorize, approve or condone discrimination against the handicapped or the disabled in the exercise of the authority of a durable power of attorney for health care. Decisions based on factors listed in section 404.822 shall not be considered discriminatory.

(L. 1991 S.B. 148 § 1)

Refusal to honor health care decision, discrimination prohibited, when.

404.872. No physician, nurse, or other individual who is a health care provider or an employee of a health care facility shall be discharged or otherwise discriminated against in his employment or employment application for refusing to honor a health care decision withholding or withdrawing life-sustaining treatment if such refusal is based upon the individual's religious beliefs, or sincerely held moral convictions.

(L. 1992 S.B. 573 & 634 § 7)
Definitions.

459.010. As used in sections 459.010 to 459.055, the following terms mean:

(1) "Attending physician", the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient;

(2) "Competent person", a person eighteen years of age or older of sound mind who is able to receive and evaluate information and to communicate a decision;

(3) "Death-prolonging procedure", any medical procedure or intervention which, when applied to a patient, would serve only to prolong artificially the dying process and where, in the judgment of the attending physician pursuant to usual and customary medical standards, death will occur within a short time whether or not such procedure or intervention is utilized. Death-prolonging procedure shall not include the administration of medication or the performance of medical procedure deemed necessary to provide comfort, care or to alleviate pain nor the performance of any procedure to provide nutrition or hydration;

(4) "Declaration", a document executed in accordance with the requirements of section 459.015;

(5) "Physician", a person licensed to practice medicine and surgery by the state board of registration for the healing arts;

(6) "Terminal condition", an incurable or irreversible condition which, in the opinion of the attending physician, is such that death will occur within a short time regardless of the application of medical procedures.

(L. 1985 S.B. 51 § 1)

(1988) A guardian may not order termination of nutrition and hydration from incompetent ward who is neither dead nor terminally ill although ward is in persistent vegetative state. Cruzan, by Cruzan v. Harmon, 760 S.W.2d 408 (Mo.banc).

(1990) United States Constitution does not prohibit Missouri from requiring that evidence of an incompetent's wishes as to the withdrawal of life-sustaining treatment be proven by clear and convincing evidence. Cruzan v. Director, Mo. Dept. of Health, 110 S. Ct. 2841.

Declaration, who may execute requirements of declaration--form--witnesses required, when--notice to physician--filed--where.

459.015. 1. Any competent person may execute a declaration directing the withholding or withdrawal of death-prolonging procedures. The declaration made pursuant to sections 459.010 to 459.055 shall be:

(1) In writing;

(2) Signed by the person making the declaration, or by another person in the declarant's presence and by the declarant's expressed direction;
(3) Dated; and

(4) If not wholly in the declarant's handwriting, signed in the presence of two or more witnesses at least eighteen years of age neither of whom shall be the person who signed the declaration on behalf of and at the direction of the person making the declaration.

2. It shall be the responsibility of the declarant to provide for notification to his attending physician of the existence of the declaration. Upon the request of the patient, the declaration shall be placed in the declarant's medical records as maintained by his attending physician and the medical records of any health facility of which he is a patient.

3. The declaration may be in the following form, but it shall not be necessary to use this sample form. In addition, the declaration may include other specific directions. Should any of the other specific directions be held to be invalid, such invalidity shall not affect other directions of the declaration which can be given effect without the invalid declaration, and to this end the directions in the declaration are severable.

DECLARATION

I have the primary right to make my own decisions concerning treatment that might unduly prolong the dying process. By this declaration I express to my physician, family and friends my intent. If I should have a terminal condition it is my desire that my dying not be prolonged by administration of death-prolonging procedures. If my condition is terminal and I am unable to participate in decisions regarding my medical treatment, I direct my attending physician to withhold or withdraw medical procedures that merely prolong the dying process and are not necessary to my comfort or to alleviate pain. It is not my intent to authorize affirmative or deliberate acts or omissions to shorten my life rather only to permit the natural process of dying.

Signed this ................... day of ...................., ............ .

Signature ................................... City, County and State of residence ............................

The declarant is known to me, is eighteen years of age or older, of sound mind and voluntarily signed this document in my presence.

Witness ....................................

Address ....................................

Witness ....................................

Address ....................................

REVOCATION PROVISION

I hereby revoke the above declaration.

Signed ......................................

(Signature of Declarant)

Date ........................................

(L. 1985 S.B. 51 § 2)

Revocation--mental or physical condition not considered part of medical records--liability for failure to act, when.
459.020. 1. A declaration may be revoked at any time and in any manner by which the declarant is able to communicate his intent to revoke, without regard to mental or physical condition.

2. The attending physician or health care provider shall make the revocation a part of the declarant's medical record.

3. There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless the revocation is in the patient's medical record or unless that person has actual knowledge of the revocation.

(L. 1985 S.B. 51 § 3)

Declaration operative, when.

459.025. The directions of a declarant able to make treatment decisions shall at all times supersede the declaration. The declaration shall be given operative effect only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions. Such determinations shall be recorded in the declarant's medical record. A physician, health care professional or facility or other person shall not act contrary to the declarant's expressed intent to withhold or withdraw death-prolonging procedures without serious reason therefor consistent with the best interest of the declarant. Such reason shall be recorded in the declarant's medical record. The declaration to withdraw or withhold treatment by a patient diagnosed as pregnant by the attending physician shall have no effect during the course of the declarant's pregnancy.

(L. 1985 S.B. 51 § 4)

Physician or health facility unwilling to comply to transfer declarant.

459.030. 1. An attending physician who is unwilling to comply with the requirements of section 459.025 or who is unwilling to comply with the declaration of a patient in accordance with section 459.015 shall take all reasonable steps to effect the transfer of the declarant to another physician.

2. If the policies of a health care facility preclude compliance with the declaration of a patient under sections 459.010 to 459.055, that facility shall take all reasonable steps to effect the transfer of the declarant to a facility in which the provisions of sections 459.010 to 459.055 can be carried out.

(L. 1985 S.B. 51 § 5)

Declarant presumed to be competent.

459.035. For the purpose of sections 459.010 to 459.055, a physician or medical care facility may presume in the absence of actual notice to the contrary that an individual who executed a declaration was competent when it was executed. The fact of an individual having executed a declaration shall not be considered as an indication of a declarant's mental incapacity. Advanced age of itself shall not be a bar to a determination of capacity.

(L. 1985 S.B. 51 § 6)

Physicians not liable, when.

459.040. A physician, licensed health care professional, medical care facility or employee thereof or other person who, in good faith and pursuant to usual and customary medical standards, causes or participates in the withholding or withdrawal of death-prolonging procedures, which acts are not otherwise unlawful, from a patient pursuant to a declaration made in accordance with sections 459.010 to 459.055 shall not, as a result thereof, be subject to criminal or civil liability or be found to have committed an act of unprofessional conduct.

(L. 1985 S.B. 51 § 7)
Unprofessional conduct by physician, when--inheritance rights forfeited, when--destroying or forging declaration-- penalties.

459.045. 1. It shall constitute unprofessional conduct if a physician or other licensed health care professional or facility with actual knowledge of a declaration acts, when the declarant is in a terminal condition and unable to make treatment decisions, contrary to the expressed intention of the declarant, as stated in his declaration, without serious reason therefor consistent with the best interest of the declarant.

2. Any person with actual knowledge of a declaration who acts, when the declarant is in a terminal condition and unable to make treatment decisions, contrary to the expressed intention of the patient as stated in his declaration, without serious reason therefor consistent with the best interests of the patient, shall lose such rights of inheritance to the extent such loss is provided for by the patient's last will and testament.

3. Any person who willfully conceals, cancels, defaces, obliterates or destroys the declaration of another without such declarant's consent or who falsifies or forges a revocation of the declaration of another shall be guilty of a class A misdemeanor.

4. Any person who falsifies or forges the declaration of another, or who willfully conceals or withholds personal knowledge of the revocation of a declaration, with the purpose of causing withholding or withdrawal of medical procedures contrary to the wishes of the declarant, and thereby, because of such act, directly causes medical procedures to be withheld or withdrawn, causing death or causing death to be hastened, shall be guilty of a class B felony.

(L. 1985 S.B. 51 § 8)

Life insurance, declaration not to affect.

459.050. 1. The making of a declaration pursuant to sections 459.010 to 459.055 shall not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of death-prolonging procedures from an insured declarant, notwithstanding any term of the policy to the contrary.

2. No person, corporation or governmental agency shall require or induce any person to execute a declaration as a condition for a contract or for the provision of any service or benefit whatsoever.

(L. 1985 S.B. 51 § 9)

Purposes of declaration.

459.055. Sections 459.010 to 459.055 shall be interpreted consistent with the following:

(1) Each person has the primary right to request or refuse medical treatment subject to the state's interest in protecting innocent third parties, preventing homicide and suicide and preserving good ethical standards in the medical profession.

(2) Nothing in sections 459.010 to 459.055 shall be interpreted to increase or decrease the right of a patient to make decisions regarding use of medical procedures so long as the patient is able to do so, nor to impair or supersede any right or responsibility that any person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of sections 459.010 to 459.055 are cumulative.

(3) Sections 459.010 to 459.055 shall create no presumption concerning the intention of an individual who has not executed a declaration to consent to the use or withholding of medical procedures.

(4) Communication regarding treatment decisions among patients, the families and physicians is encouraged.
(5) Sections 459.010 to 459.055 do not condone, authorize or approve mercy killing or euthanasia nor permit any affirmative or deliberate act or omission to shorten or end life.

(L. 1985 S.B. 51 § 10)