

TRUSTS, USES, AND POWERS

CHAPTER 581

HOUSE BILL NO. 1392
(Atkinson)

PRIVATE FOUNDATIONS AND CHARITABLE TRUSTS

AN ACT to create and enact section 59-02-22 of the North Dakota Century Code, relating to the activities of private foundations, charitable trusts, and split-interest trusts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1.) Section 59-02-22 of the North Dakota Century Code is hereby created and enacted to read as follows:

59-02-22. PRIVATE FOUNDATIONS - CHARITABLE TRUSTS - SPLIT-INTEREST TRUSTS.)

1. Any will or trust instrument creating a trust which is a "private foundation", as defined in section 509 (a) of the Internal Revenue Code of 1954, or a "charitable trust", as defined in section 4947 (a) (1) of the Internal Revenue Code of 1954, or a "split-interest trust", as defined in section 4947 (a) (2) of the Internal Revenue Code of 1954, and any other instrument governing the trustee of any such trust, or the use, retention, or disposition of any of the income or property of such trust, shall be deemed to have incorporated within such will, trust instrument, or other governing instrument, with the same effect as though such language were set forth verbatim in such will, trust instrument, or other governing instrument, the following provisions with respect to such trust and the trustee thereof, and, except as the contrary is provided in subsection 2 of this section, such provisions shall govern the administration and distribution of any such trust, irrespective of any provisions of any applicable will, trust instrument, or other governing instrument, statute, or law of this state to the contrary:

- a. The trustee shall distribute for each taxable year of the trust amounts at least sufficient to avoid liability for the tax imposed by section 4942 (a) of the Internal Revenue Code of 1954, as now enacted or as hereafter amended.
 - b. The trustee shall not engage in any act of "self-dealing", as defined in section 4941 (d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4941 (a) of the Internal Revenue Code of 1954.
 - c. The trustee shall not retain any "excess business holdings", as defined in section 4943 (c) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4943 (a) of the Internal Revenue Code of 1954.
 - d. The trustee shall not make any investments which would jeopardize the carrying out of any of the exempt purposes of the trust, within the meaning of section 4944 of the Internal Revenue Code of 1954, so as to give rise to any liability for the tax imposed by section 4944 (a) of the Internal Revenue Code of 1954.
 - e. The trustee shall not make any "taxable expenditure", as defined in section 4945 (d) of the Internal Revenue Code of 1954, which would give rise to any liability for the tax imposed by section 4945 (a) of the Internal Revenue Code of 1954.
2. Subsection 1 shall not apply to the extent that a court of competent jurisdiction shall determine that such application would be contrary to the terms of the will, trust instrument, or other governing instrument described in subsection 1 and that such will, trust instrument, or other governing instrument may not be changed to conform to subsection 1.
 3. As used in this section, "trustee" means a corporation, individual, or other legal entity acting as an original, added, or successor trustee of a testamentary or inter vivos trust estate. Any reference to a particular section of the Internal Revenue Code of 1954 herein shall mean and include, as now enacted or as hereafter amended, such section and any provision of federal law as is or may hereafter be applicable, cognate to such section.
 4. Nothing in this section shall impair the rights and powers of the attorney general or the courts of this state with respect to any trust.

Approved March 27, 1971

CHAPTER 582

HOUSE BILL NO. 1235
(R. Peterson)

POWERS OF ATTORNEY

AN ACT to authorize a person to execute a power of attorney to provide for the care of his person or property while under disability, to provide for the manner of execution of the power, for its termination, and for the appointment of a successor, and prescribing the duties and liabilities of the attorney in fact.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. EXECUTION - PURPOSE - APPROVAL.)

1. A power of attorney may be executed by any person having capacity to contract as a means of providing for the care of his person or property, or both, while under disability resulting from injury, old age, senility, disease, or other related or similar cause, if signed by the principal in the presence of and approved by a judge of the county court of the county in which the power is executed. The power is not invalidated by reason of any subsequent change in the mental or physical condition of the principal, including but not restricted to incompetency.
2. The approval of the judge may be given only if (1) the principal requests approval, (2) the attorney in fact consents to serve, (3) the judge is satisfied, after any examination and investigation he deems appropriate, that the principal is a person covered by this Act and reasonably understands the nature and purpose of the power, and that the attorney in fact is a suitable person to carry out the obligations imposed upon him, and (4) the provisions of this Act have been observed. Approval may be given informally in chambers or other convenient place without the necessity of service of summons or other notice and shall be endorsed upon the face of the original of the instrument. The power remains valid until terminated as provided in this Act.

SECTION 2. SCOPE AND APPLICABILITY OF THE POWER.)

1. The power of attorney shall show or state (a) the fact of execution under the provisions of this Act, (b) the

time and the conditions under which the power is to become effective, (c) the extent and scope of the power conferred, (d) who is to exercise the power, (e) the annual income covered by the instrument and the nature or description and estimated value of the property, if any, to be affected; and may state the conditions and circumstances under which the power terminates.

2. The power may be restricted or it may grant complete authority to provide for the care of the principal's person and property. Except to the extent limited by the instrument creating the power or to the extent that the court approval is required by the instrument, the attorney in fact without prior court approval may endorse checks and other instruments made payable to the principal; may sell, encumber, lease or otherwise manage the principal's property; and may execute and deliver deeds, conveyances, stock and bond transfers, contracts, and other instruments necessary to carry out the power.

SECTION 3. ATTORNEY IN FACT - FILING OF POWER.)

1. The attorney in fact may be an individual, a corporation authorized by law to act in a fiduciary capacity, an agency of government, a Community Fund or United Fund participating agency, or the American National Red Cross.
2. The original power of attorney shall be filed in the office of the clerk of the court whose judge approves the power. A certified copy shall be filed or recorded in the office of the register of deeds of the county of the principal's residence and of each county in which real property to be affected by an exercise of the power is located.

SECTION 4. POWER UNAFFECTED BY VALUE OR INCOME - WHEN PERFORMANCE BOND REQUIRED.) Unless limited by its provisions, a power of attorney executed under authority of this Act which grants powers concerning property or income may be approved without limit as to the value of the property or amount of income involved. A performance bond shall not be required unless required by a provision of the power.

SECTION 5. REMOVAL OF ATTORNEY IN FACT - APPOINTMENT OF SUCCESSOR.) If the attorney in fact, or any successor, dies, ceases to act, refuses or is unable to serve, resigns, fails to maintain or replace a bond, or is removed for cause by a court, a successor attorney in fact may be appointed by the principal. If the principal, without having revoked the power of attorney, fails or is unable to appoint a successor within a reasonable time, a judge of the court which approved the power may appoint a successor, unless

precluded from doing so by provisions of the original power of attorney. The appointment of a successor attorney in fact shall be in writing. If the appointment is by the principal, it is subject to approval by a judge of the court which approved the original power. The original and certified copies of the appointment of the successor shall be filed or recorded as required for an original power of attorney.

SECTION 6. TERMINATION OF POWER - FILING - PROTECTION OF THIRD PERSONS - ACTS DONE AFTER TERMINATION.)

1. A power of attorney terminates on (a) written revocation executed by the principal while competent, (b) death of the principal, (c) order of a court appointing a guardian or conservator of person or property or both of the principal, unless the order otherwise provides, (d) expiration or termination as specified in the power of attorney, or (e) a determination by a judge of the approving court that the value of the property or the amount of the annual money income covered by the instrument has so far increased that this Act is no longer appropriately applicable.
2. The original resignation of an attorney in fact or written revocation of the power of attorney by a principal, a certified copy of the death certificate of the principal or of the attorney in fact or of any court judgment or order terminating the power of attorney or removing the attorney in fact for cause, shall be filed promptly in the office of the clerk of the court whose judge approved the power, and certified copies shall be filed or recorded promptly in all offices in which a certified copy of the original power of attorney is filed or recorded. A notation of the terminating event shall be made by the clerk on the face of the original power of attorney.
3. A person dealing with the attorney in fact is not required to inquire into the validity or adequacy of proceedings involving an approval, filing or recording of the power of attorney to determine if the principal or attorney in fact is qualified or to determine whether the power may have been terminated if not yet shown by filing or recordation provided for in subsection 2. He is not required to inquire into the validity or propriety of any act of an attorney in fact apparently authorized by his approved power, or to assure the proper application by the attorney in fact of any money or property paid or delivered to him.
4. The attorney in fact is liable to the principal and the principal's estate for all damage and loss the principal suffers because of the attorney's acts done

after the attorney receives notice of the termination of his authority or after termination by provision of the power itself. After the power is terminated, other than by death of the principal, he may perform such ministerial acts as may be reasonably necessary to complete and conclude his duties.

SECTION 7. LIABILITY OF ATTORNEY IN FACT.) Unless otherwise provided in the power of attorney, an attorney in fact not compensated for his services is not liable for losses to the principal's property unless they result from intentional wrongdoing, gross negligence or fraud. If he is compensated for his services, he is bound by standards of conduct and liability applicable to other fiduciaries.

SECTION 8. EXPENSES - COMPENSATION FOR SERVICES.) An attorney in fact is entitled to reimbursement for his reasonable expenses incurred in the performance of his duties and, unless precluded by the power of attorney, to reasonable compensation for his services, payable out of the income and assets subject to the power. The amount of compensation and time of payment may be fixed in the power.

SECTION 9. DUTY TO ACCOUNT.) An attorney in fact shall account to the principal or his legal representative at times specified in the power of attorney, at any time directed by a judge of the approving court and upon termination of the power or his authority, and shall promptly deliver to the principal, his legal representative or a successor attorney in fact all property held by him as attorney in fact upon termination of the power or his authority.

SECTION 10. ACT LIMITED TO POWERS EXECUTED UNDER IT.) This Act governs only powers of attorney executed under it. It does not affect powers of attorney executed under other statutes or the common law of this state.

SECTION 11. SEVERABILITY.) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Approved March 18, 1971