

TITLE 13. COMMERCIAL TRANSACTIONS -- OHIO UNIFORM COMMERCIAL CODE  
CHAPTER 1337. POWER OF ATTORNEY

ORC. 1337.09 (2006)

**§ 1337.09. Durable power of attorney;  
nomination of guardian or standby guardian for minor children**

(A) Whenever a principal designates another as attorney in fact by a power of attorney in writing and the writing contains the words "This power of attorney shall not be affected by disability of the principal," "this power of attorney shall not be affected by disability of the principal or lapse of time," or words of similar import, the authority of the attorney in fact is exercisable by the attorney in fact as provided in the written instrument notwithstanding the later disability, incapacity, or adjudged incompetency of the principal and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument.

(B) Whenever a principal designates another the principal's attorney in fact by a power of attorney in writing and the writing expressly states that the power of attorney shall become effective at a later time or upon the occurrence of a specified event, including, but not limited to, the disability, incapacity, or adjudged incompetency of the principal, the attorney in fact may exercise the authority provided to the attorney in fact in the written instrument at the later time or upon the occurrence of the specified event notwithstanding the later disability, incapacity, or adjudged incompetency of the principal and, unless the instrument states a time of termination, notwithstanding the lapse of time since its execution.

(C) All acts done by an attorney in fact pursuant to an instrument as described in division (A) or (B) of this section during any period of disability, incapacity, or adjudged incompetency of the principal shall have the same effect and inure to the benefit of and bind the principal or the principal's heirs, devisees, and personal representatives as if the principal were competent and not disabled or incapacitated. If a guardian thereafter is appointed for the principal and the guardian is not the attorney in fact, the attorney in fact, during the continuance of the appointment, shall account to the guardian rather than the principal. The guardian has the same power the principal would have had if not incompetent, to revoke all or any part of the power and authority of the attorney in fact.

(D) In a durable power of attorney as described in division (A) or (B) of this section, a principal may nominate the attorney in fact or any other person to be the guardian of the principal's person, estate, or both and may nominate the attorney in fact or any other person to be the guardian of the person, the estate, or both of one or more of the principal's minor children, whether born at the time of the execution of the durable power of attorney or afterward. The nomination is for consideration by a court if proceedings for the appointment of a guardian for the principal's person, estate, or both or if proceedings for the appointment of a guardian of the person, the estate, or both of one or more of the principal's minor children are commenced at a later time. The principal may authorize in a power of attorney of that nature the person nominated as guardian or the attorney in fact to nominate a successor guardian for consideration by a court.

The principal may direct, in a power of attorney of that nature, that bond be waived for a person nominated as guardian in it or nominated as a successor guardian in accordance with an authorization in it.

Nomination of a person as a guardian or successor guardian of the person, the estate, or both of one or more of the principal's minor children under this division, and any subsequent appointment of the guardian or successor guardian as guardian under *section 2111.02 of the Revised Code*, does not vacate the jurisdiction of any other court that previously may have exercised jurisdiction over the person of the minor.

The durable power of attorney as described in division (A) or (B) of this section that contains the nomination of a person to be the guardian of the person, the estate, or both of one or more of the principal's minor children under this division may be filed with the probate court for safekeeping, and the probate court shall designate the nomination as the nomination of a standby guardian.

**HISTORY:** 136 v S 165 (Eff 7-12-76); 140 v S 115 (Eff 10-14-83); 142 v S 228 (Eff 3-22-89); 146 v H 288. Eff 1-14-97.