

FIRST REGULAR SESSION

# HOUSE BILL NO. 633

## 91ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BOUCHER.

Read 1<sup>st</sup> time February 1, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

1360L.011

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### AN ACT

To repeal section 404.705, RSMo 2000, relating to durable power of attorney, and to enact in lieu thereof one new section relating to the same subject.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Section 404.705, RSMo 2000, is repealed and one new section enacted in lieu thereof, to be known as section 404.705, to read as follows:

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"; and

(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

19 any disability or incapacity of the principal or any uncertainty as to whether the principal is dead  
20 or alive.

21         3. A durable power of attorney does not have to be recorded to be valid and binding  
22 between the principal and attorney in fact or between the principal and third persons, except to  
23 the extent that recording may be required for transactions affecting real estate under sections  
24 442.360 and 442.370, RSMo.

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

33         **5. No person shall be appointed an attorney in fact under a durable power of**  
34 **attorney without the written consent of all members of the grantor's immediate family.**