

HOUSE RESEARCH

Bill Summary

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Subject: Statutory Short Form Power of Attorney

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Overview

This bill amends the statutory short form power of attorney. The bill amends what is considered a gift to the attorney-in-fact. It expands judicial relief to request for an accounting and adds a civil action for damages when an accounting is not provided.

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- 1 Acknowledgement.** The statutory short form will now have an acknowledgement signed by the attorney-in-fact accepting the appointment.
- 2 Short Form.** The short form is amended in the following ways:
 - Notice. The statutory short form has a notice to the principal on their rights and responsibilities. This section has adds a notice to the attorney-in-fact, indicating that they must sign and date the power of attorney.
 - Financial Matters. This section adds that the catch-all intended to allow an attorney-in-fact to act regarding multiple matters is specific to “all other financial matters.”
 - Gifts. The short form requires the power of attorney to directly indicate whether or not the attorney-in-fact is authorized to make gifts to themselves and adds that this includes gifts to individuals the attorney-in-fact is legally obligated to support. It requires them to write in the name of the attorney-in-fact and initial that they may make gifts to themselves and persons they are legally obligated to support.
 - Acknowledgement. Requires the attorney-in-fact to sign an acknowledgement

Section

indicating they have read the document and understand their rights and responsibilities including that they must keep accurate records of transactions they enter using the power of attorney and they acknowledge principal's right to request an accounting.

- 3** **Gifts.** Changes the cap for gifts to an attorney in fact in a calendar year from \$10,000 to the federal annual gift exclusion amount, which is \$14,000 for 2013. Expands the definition of transactions that are considered gifts to the attorney-in-fact to include anyone the attorney-in-fact is legally obligated to support. This includes transferring assets to them, placing them on the account as a joint owner, or giving them survivorship rights on an account.
- 4** **Financial Matters.** Changes the catch-all that previously included "all other matters" to apply to "all other financial matters." The bill clarifies that this section is intended to allow the attorney-in-fact to act on any matters that are "affecting the financial affairs of the principal."
- 5** **Judicial Relief.** Provides for a process to seek judicial relief, including a protective order, and to request an accounting as allowed by the law and as indicated in the power of attorney short form. Allows the court to order damages for failure to provide an accounting to either the principal or another person named to receive an accounting and that the principal is entitled to damages equal to three times the compensatory damages or \$10,000 whichever is greater. The principal or another person to whom the attorney-in-fact was supposed to account to is entitled to recover reasonable attorney's fees and costs.
- 6** **Effective Date.** Sections 1 through 4 are effective after August 1, 2013, and apply to power of attorney forms signed on or after August 1, 2013. Section 5, the judicial relief for a power of attorney, applies to any effective power of attorney form regardless of when it was signed.