Effective - 28 Aug 1977

362.470. Joint deposits. — 1. When a deposit is made by any person in the name of the depositor and any one or more other persons, whether minor or adult, as joint tenants or in form to be paid to any one or more of them, or the survivor or survivors of them and whether or not the names are stated in the conjunctive or the disjunctive or otherwise, the deposit thereupon and any additions thereto made by any of these persons, upon the making thereof, shall become the property of these persons as joint tenants, and the same, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to any one of such persons during his lifetime, or to any one of the survivors of them after the death of any one or more of them. The making of a deposit in such form, and the making of additions thereto, in the absence of fraud or undue influence, shall be conclusive evidence in any action or proceeding to which either the bank or trust company or any survivor is a party of the intention of all the parties to the account to vest title to the account and the additions thereto and all interest thereon in the survivor. By written instructions of all joint tenants given to the bank or trust company they may require the signatures of more than one of such persons during their lifetimes or of more than one of the survivors after the death of any one of them on any order for payment, withdrawal, check endorsement or receipt, in which case the bank shall honor orders to pay or withdrawals and make payments of interest only in accordance with such instructions, but no such instructions shall limit the right of the sole survivor or of all of the survivors to all or any part of any such deposit or interest thereon. The payment and the receipt or acquittance of the one to whom the payment is made as provided in this section shall be a valid and sufficient release and discharge to the bank or trust company, whether any one or more of the persons named is dead or alive, for all payments made on account of such deposit prior to the receipt by the bank or trust company of notice in writing signed by any one of the joint tenants not to pay the deposit in accordance with the terms thereof. After receipt of such notice a bank or trust company may refuse without liability to honor any check or other order to pay, withdrawal, receipt, or to pay out any interest thereon pending determination of the rights of the parties. No bank or trust company paying any survivor in accordance with the provisions of this section shall thereby be liable for any estate, inheritance or succession taxes which may be due this state. As to any minor who is a joint tenant as provided in this section, all of the provisions of section 362.465 shall apply.

2. If more than two persons are named as such depositors and one of them dies, the deposit becomes the property of the survivors as joint tenants.

3. The pledge or assignment to the bank or trust company of all or part of a joint

tenancy deposit or the interest thereon, signed by any joint tenant or tenants, whether minor or adult, upon whose signature or signatures withdrawals may be made from the account shall be a valid pledge or transfer to the bank or trust company of that part of the deposit pledged or assigned, and shall not operate to sever or terminate the joint tenancy of or any part of the account, subject to the effect of the pledge or assignment.

4. The adjudication of incompetency of any one or more joint tenants shall not operate to sever or terminate the joint tenancy of any part of the deposit and the deposit may be withdrawn, paid out or pledged by any one or more of the joint tenants in the same manner as though the adjudication of incompetency had not been made except that any payment, withdrawal or pledge on behalf of the incompetent joint tenant shall be by his guardian.

5. Any deposit made in the name of two persons or the survivor thereof who are husband and wife shall be considered a tenancy by the entirety unless otherwise specified.

(RSMo 1939 § 7996, A.L. 1967 p. 445, A.L. 1977 S.B. 420)

Prior revisions: 1929 § 5400; 1919 § 11779

(1967) A deposit made by deceased depositor and in the name of deceased depositor "or" his brother was not in form to be paid to either, or the survivor of them, and did not comply with this section. Ison v. Ison (Mo.), 410 S.W.2d 65.

(1967) The use of the words "as tenants by the entirety" in relation to two persons who are not husband and wife creates no presumption of a joint tenancy. Horton v. Estate of Elmore (A.), 420 S.W.2d 48.

(1967) Certificates of deposit issued to the order of deceased or defendant were not within purview of statute and created no presumption of joint tenancy with the incident of survivorship, but account which is accompanied and commemorated by an integrated, unambiguous joint tenancy deposit contract of the parties constitutes the single and final memorial of the parties which may not be varied or changed by parol evidence. Melton v. Ensley (A.), 421 S.W.2d 44.

(1974) Overrules Jenkins v. Meyer and Wantuck v. United Savings and Loan Association. Held, this section creates a statutory joint tenancy and the strict common law requirements do not apply. Dietz v. Humphreys (Mo.), 507 S.W.2d 389.

(1975) Held that facts did not meet requirements for statutory joint tenancy. Smith v. Thomas (A.), 520 S.W.2d 132.

(1976) Where deposits and withdrawals were all made by person originally opening account and that person acting alone changed title of the account to read A or B and signature cards for a joint account were never signed, the account did not become a joint

account and A's estate was entitled to proceeds. Matter of Estate of Bonacker (A.), 532 S.W.2d 898.

(1980) Before statutory joint tenancy can be created in bank account, there must be deposit made in name of depositor and any one or more other persons, and it must be made in form to be paid to any one or more of them. Thummel v. Thummel (A.), 609 S.W.2d 175.

(1980) Where statute creating joint account is not complied with, but bank deposit is payable to husband and wife, but account is not in their names as husband and wife, account is presumed to be held in estate by entirety whether husband or wife or both furnished monies that went into account. Thummel v. Thummel (A.), 609 S.W.2d 175.

---- end of effective 28 Aug 1977 ----

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History and Fun Facts

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Effective - 28 Aug 1995

461.031. Effect of beneficiary designation on ownership of property during lifetime and at death. — 1. Prior to the death of the owner, a beneficiary shall have no rights in the property by reason of the beneficiary designation and the signature or agreement of the beneficiary shall not be required for any transaction respecting the property.

2. On death of one of two or more joint owners, property with respect to which a beneficiary designation has been made belongs to the surviving joint owner or owners, and the right of survivorship continues as between two or more surviving joint owners.

3. On death of the owner, property passes by operation of law to the beneficiary.

4. If two or more beneficiaries survive, there is no right of survivorship among the beneficiaries in the event of death of a beneficiary thereafter unless the beneficiary designation expressly provides for survivorship among them, and, unless so expressly provided, surviving beneficiaries hold their separate interests in the property as tenants in common. The share of any subsequently deceased beneficiary belongs to that beneficiary's estate.

5. If no beneficiary survives the owner, the property belongs to the estate of the owner.

(L. 1989 H.B. 145 § 27, A.L. 1995 S.B. 116)

487 S.W.2d 493
Supreme Court of Missouri, En Banc.

In the Matter of the ESTATE of August LaGARCE, Deceased. Bertha LaGARCE, Executrix of the Estate of August LaGarce, Deceased, Respondent, v. Leona MOULDON and William B. Quinn, Appellants.

No. 57936.
|
Dec. 11, 1972.

Synopsis
Discovery of assets proceeding. The Probate Court sustained plaintiff executrix' motion for judgment on pleadings, and defendants appealed. The Circuit Court, City of St. Louis, Gary M. Gaertner, J., also entered judgment on pleadings in favor of executrix, and defendants again appealed. The Supreme Court, Holman, P.J., held that on death of depositor, who had savings and loan association certificate transferred to his name and names to two others 'as joint tenants with right of survivorship and not as tenants in common,' surviving joint tenants were owners of deposit, though depositor may have intended to retain beneficial interest in the account during his lifetime. The Court further held that where trial court erroneously sustained executrix' motion for judgment on pleadings on ground that decedent depositor did not surrender control of certificate and intended a testamentary disposition of it, remand for trial rather than remand for entry of judgment for defendant joint tenants was required, in that executrix was entitled to offer evidence as to any fraud or undue influence relating to transaction.

Reversed and remanded.

West Headnotes (6)

[1] **Executors and Administrators** ⇐ Judgment and review

Where affidavit to discover assets had been filed by executrix and stated that defendants were unlawfully withholding savings certificate in their control, certificate was based on signature agreement, answers to interrogatories and legal memoranda filed in probate court made reference to agreement and executrix did not contend in probate or circuit court that agreement should not be considered, Supreme Court would, on appeal, consider the signature agreement, though such agreement, which appeared in typed form as exhibit attached to affidavit appended to defendants' motion for new trial in circuit court, assertedly appeared in transcript of probate court as exhibit to motion which was denied by probate court and withdrawn in circuit court. V.A.M.S.Const. art. 5, § 10; Sections 473.340–473.353 RSMo 1969, V.A.M.S.

[2] **Finance, Banking, and Credit** ⇐ Creation and Existence

Statute providing that savings and loan association membership certificates issued in name of two or more persons to be paid to any one or more of them or survivors of them shall become property of survivors as joint tenants and if one of persons named in certificate dies, account represented by certificates shall become property of survivors as joint tenants, creates statutory joint tenancy which should be given effect without consideration of strict common-law requirements; overruling Jenkins v. Meyer, 380 S.W.2d 315, Wantuck v. United States Savings and Loan Ass'n, 461 S.W.2d 692, and other similar holdings. Section 369.150 RSMo 1969, V.A.M.S.

34 Cases that cite this headnote

[3] **Finance, Banking, and Credit** ⇐ Survivorship

On death of depositor, who had savings and loan association certificate transferred to his name and names of two others "as joint tenants with right of survivorship and not as tenants in common," surviving joint tenants were owners of deposit, though depositor may have intended to retain beneficial interest in the account during his lifetime; overruling Jenkins v. Meyer, 380 S.W.2d 315, Wantuck v. United States Savings and Loan Ass'n, 461 S.W.2d 692, and other similar holdings. Section 369.150 RSMo 1969, V.A.M.S.

31 Cases that cite this headnote

[4] **Finance, Banking, and Credit** ⇐ Survivorship

If statute providing that savings and loan association may issue membership certificates in name of two or more persons, and in form to be paid to any one or more of them, or survivors of them and that if one of such persons dies, account represented by certificate shall become property of survivors as joint tenants is complied with, survivor will become owner of account, absent fraud, undue influence, mental incapacity or mistake; overruling Jenkins v. Meyer, 380 S.W.2d 315, Wantuck v. United States Savings and Loan Ass'n, 461 S.W.2d 692, and other similar holdings. Section 369.150 RSMo 1969, V.A.M.S.

30 Cases that cite this headnote

[5] **Property** ⇐ Method of Termination or Severance

Even if depositor, who had savings and loan association certificate transferred to his name and names of two others "as joint tenants with right of survivorship and not as tenants in common," had intended to terminate joint tenancy, tenancy could not be terminated by depositor, absent cashing in of certificate by him. Section 369.150 RSMo 1969, V.A.M.S.

8 Cases that cite this headnote

[6] **Executors and Administrators** ⇐ Judgment and review

Where trial court erroneously sustained executrix' motion for judgment on the pleadings in discovery of assets proceeding on ground that decedent depositor, who had savings and loan association certificate transferred to his name and names of two others "as joint tenants with right of survivorship and not as tenants, in common" did not surrender control of certificate and intended a testamentary disposition of it, remand for trial rather than remand for entry of judgment for defendant joint tenants was required, in that executrix was entitled to offer evidence as to any fraud or undue influence relating to transaction. Section 369.150 RSMo 1969, V.A.M.S.

17 Cases that cite this headnote

Attorneys and Law Firms

***494** Martin Schiff, Jr., Fordyce, Mayne, Hart man, Renard & Stribling, Clayton, Richard R. Russell, Kirkwood, for respondent.

James E. Heckel, St. Louis, for appellants.

Opinion

HOLMAN, Presiding Judge.

This is a discovery of assets proceeding. See ss 473.340 to 473.353,[1] inclusive. The probate court sustained a motion for judgment on the pleadings filed by plaintiff-executrix and accordingly entered a judgment for plaintiff. Upon appeal to the circuit court a judgment was also entered on the pleadings in favor of plaintiff and against defendants. Defendants appealed to the St. Louis District of the Court of Appeals. That court adopted the opinion of Judge Simeone which reversed the judgment and remanded the case with directions to enter a judgments in favor of defendants. Upon plaintiff's application we ordered the case transferred to this court. It will be determined here 'the ***495** same as on original appeal.' Mo.Const., Art. V. s 10, V.A.M.S.

We adopt a portion of Judge Simeone's opinion, as follows:

'On February 3, 1970, Bertha LaGarce, executrix of the estate of August LaGarce, filed an affidavit to discover assets which she alleged were unlawfully withheld by James and Leona Mouldon and William B. Quinn. She alleged that savings certificate No. 494 of the Tower Grove Savings and Loan Association of St. Louis, Missouri, in the sum of $7,000, was unlawfully withheld by the Mouldons and Quinn.[2] The probate court ordered a citation to issue to the Mouldons and Quinn to appear.

'Subsequently, and in accordance with law, interrogatories were addressed to James and Leona Mouldon and William B. Quinn. Answers were, in due course, filed by the defendants. No evidence was ever taken since a motion for judgment on the pleadings was sustained. The interrogatories, exhibits, and the answers given constitute the pleadings and contain the controlling and dispositive facts.[3]

'Sometime prior to August 21, 1969, August LaGarce was the sole owner of a Tower Grove Savings and Loan Association Certificate No. 494 in the amount of $7,000. On that date, according to the answers to interrogatories, August LaGarce, in the presence of James and Leona, had the certificate transferred to his name and the names of James and Leona 'as joint tenants with right of survivorship and not as tenants in common.' This was done at the Tower Grove office. Contemporaneously, each signed an agreement which stated that '* * * It is agreed by the signatory parties with each other and by the parties with the Association that any funds placed in or added to the account by any one of the parties is and shall be conclusively intended to be a gift at that time of such funds to the other signatory party or parties to the extent of his or their pro rata interest in the account * * *.' The agreement was in the names of August LaGarce, James Mouldon, and Leona Mouldon 'as joint tenants with right of survivorship and not as tenants in common, and not as tenants by entirety * * *.' * * * No consideration was paid by James or Leona. The certificate was delivered by August to James and Leona on that same date. August was the first cousin to James' mother. On August 21, 1969, when August instructed the Tower Grove Savings and Loan Association, in the presence of James and Leona, to change the certificate from his name alone to his name and James and Leona, there was a conversation between these parties and Mrs. Mayer, an employee of Tower Grove. August told Mrs. Mayer that he wanted to change the certificate so that 'if anything happened to him the certificate would belong to James Mouldon and Leona Mouldon.' After Mrs. Mayer changed the certificate by typing the names of James and Leona and each had signed the card, Mrs. Mayer handed the certificate to August who in turn handed it to James Mouldon. Mrs. Mayer then said, 'The way that certificate is now made out, the person holding it can bring it in and cash it at any time without the signature or consent of the others, and if anyone whose name is on it dies then it will belong to those that are living.' August said, 'Yes, that is the way ***496** I want it, and I want them to have it and keep it and if I want it I can get it. I know they won't cash it.' James replied, 'If he wants it back he can get it.'

'On August 23, 1969, the Mouldons retained defendant-appellant William B. Quinn to advise them as to the legal effect of the transfer and delivery of the certificate. About a week later, on August 30, 1969, Quinn was retained by August LaGarce to represent him in a controversy he was having with his wife. In due time, August reconciled with his wife and wrote to Quinn that his services were no longer necessary and paid him for services rendered between August 30 and September 30, 1969. During the term of Quinn's employment, August delivered to him certain property and securities, consisting of cashier's checks, a passbook savings account, a certificate of deposit, bank stock certificates and savings certificates issued by Tower Grove, but these securities did not include Certificate No. 494. Later, and on September 26, LaGarce went to Quinn's office and requested the return of these assets and securities. Quinn responded by letter on September 29, advising August he would return the assets just as soon as his schedule permitted him to arrange an appointment. On the same date LaGarce wrote Quinn terminating Quinn's services and requesting a statement. On September 30, August wrote to Quinn informing him that he had reconciled with his wife but was unable to fulfill the reconciliation agreement because Quinn had the assets in his office. On October 3, Quinn returned the assets to August and was paid for his services from August 30 to September 30, 1969.

'On the evening of October 3, August telephoned Leona and told her that his wife, Bertha, had promised to return to their home and live with him, provided he agreed to put her name on all his property. Leona asked him if he was calling to have the certificate returned and he said 'that wasn't the way he wanted things, but that he was very sick' and needed someone to take care of him. In this conversation Leona told August that she would turn the certificate (No. 494) over to his friend John Zakibe that evening. After concluding the phone conversation, leona and her husband 'decided' to make the certificate available to August by placing it in the hands of Mr. Quinn. That same evening Leona telephoned August and

told him 'what had been decided by my husband and me about making the certificate available to him.'

'On October 7, the certificate was delivered to Quinn by the Mouldons, who on that date retained Quinn 'for the purpose of making it available to August and only to him' at the office of Quinn upon the condition that August would pay $150 to Leona and one Ruth Moffit for house cleaning and laundry.

'In her answers to interrogatories, Leona stated that on October 7, 1969, the certificate was placed in the possession of William B. Quinn with the request that 'he hold it so as to make it available to August LaGarce at the office of William B. Quinn, to be picked up personally by August LaGarce, when and if he so desired,' upon the conditions set forth above.

'The next day, October 8, a female telephoned Leona at her home and identified herself as Mrs. Mayer of Tower Grove. Mrs. Mayer stated she was calling about the certificate that August had transferred. She stated that August and his wife had been in the office for the purpose of having the certificate changed to the name of August and his wife but that since August did not have the certificate the change could not be made. She asked Leona if she had the certificate and if 'we would give it to Mr. and Mrs. LaGarce.' Leona told her that the certificate had been turned over to Quinn 'to make it available to August LaGarce, and only August LaGarce, and that if he wanted it he, and only he, could pick it up from William B. Quinn at his office.' Mrs. Mayer replied that August was very sick and that it was ***497** likely he would die and that he could not go to Quinn's office. Leona then stated that if August was so sick that he might die, then she would not turn over the certificate to anyone under any circumstances since it was August's intention that 'my husband and I have the certificate if he died, and that I would instruct William B. Quinn not to give the certificate to anyone, including August LaGarce, until the outcome of his illness was known.' Leona was unable to reach Quinn until after August died, when she instructed him to return the certificate to her, which was done on October 15.

'Strangely, all the circumstances came to a head on October 9, 1969: (1) Quinn received a telegram from an attorney, Richard Russell, demanding immediate delivery of the certificate; (2) Quinn dictated and signed a letter addressed to August requesting him to arrange to be in Quinn's office on October 10 for the purpose of making available to August, and no other person, the certificate in dispute and to collect $150 for services rendered to him; and (3) August died.

'Subsequently, the attorney for the executrix, Bertha LaGarce, demanded from Quinn that the savings certificate be returned, and within a few days thereafter the Mouldons retained Quinn to represent them in their claim to sole ownership of the certificate. The Mouldons claim ownership of the certificate because they say that August made a gift of it to them at the time he had it transferred from his name alone to him and the Mouldons.

'On February 3, 1970, the executrix of August's estate filed with the probate court her affidavit to discover assets alleging that James and Leona and Quinn had unlawfully withheld the certificate. * * *

'In the proceedings in the probate court, James and Leona moved to join Tower Grove as an additional party; Quinn moved for summary judgment; and Bertha, the executrix of August, moved for judgment on the pleadings.

'On December 23, 1970, the probate court denied the motions of James and Leona and Quinn, sustained Bertha's motion for judgment on the pleadings, and entered its order directing the defendants to deliver the certificate, finding that it was an asset of August's estate.

'The probate court, in a memorandum opinion, held that '(t)aking the pleadings as a whole there can be no question but that both the decedent and the respondents Mouldon intended that the creation of the so-called 'joint tenancy' was for the sole purpose of making a testamentary disposition of the certificate for $7,000. It was not and could not have been a valid gift inter vivos, as respondent contends, under the admitted facts. The decedent did not create a true joint tenancy because he did not surrender control to the respondents.' The probate court relied on Jenkins v. Meyer, Mo.Sup., 380 S.W.2d 315. The court, therefore, rendered judgment on the pleadings in favor of Bertha. Defendants appealed to the circuit court.

'In the circuit court the executrix suggested the death of James Mouldon which occurred on February 16, 1971, and the executrix, Leona, and Quinn waived substitution. Bertha refiled her motion for judgment on the pleadings; defendants filed a joint motion for summary judgment. The circuit court denied the defendants' motions and sustained the motion for judgment on the pleadings, received the entire transcript on

appeal, concurred with the findings and conclusions of the probate court, and affirmed the judgment.

[1] 'The respondent, Bertha, in her brief, urges that the joint savings account card is not properly a part of the record and is not before this court for consideration. She contends that the signature card appears in the transcript of the probate court as an exhibit to a motion by Leona to join the Tower Grove Savings and Loan Association as a party defendant which was denied by the probate court. This motion was withdrawn in the circuit court. *498 It also appears in typed form as an exhibit attached to an affidavit appended to the defendants' motion for a new trial in the circuit court.

'We believe that both the certificate and signature card (agreement) are to be considered in determining the issues in this case. The affidavit to discover assets filed by Bertha states that the defendants are unlawfully withholding the savings certificate which is in the control of the defendants. The certificate is based on the signature agreement. The answers to interrogatories refer to the signature card having been signed by all the parties and the legal memoranda filed in the probate court make reference to the agreement. The executrix did not object that the agreement should not be considered in either the probate or circuit court. Furthermore, the circuit court necessarily considered the agreement in reaching its conclusion. Hence, we believe that neither the certificate nor the agreement can be ignored in reaching our conclusions.'

As heretofore indicated the trial court adopted the findings and conclusions of the probate court which found for plaintiff on the theory that the pleadings indicated that the certificate did not create a valid joint tenancy because August did not surrender control and intended only to make a testamentary disposition of it; that August therefore could not have made a valid gift inter vivos. Upon this appeal the defendants contend that the trial court erred in entering judgment on the pleadings for plaintiff because the said pleadings did not establish that the savings certificate was an asset of the estate. For reasons hereinafter stated we agree with that contention.

In our consideration of this appeal we have thoroughly researched the law of this and other states in regard to joint accounts. After so doing we are inclined to agree with the conclusion, "That there are in the cases confusion and contradiction and perplexing distinction is obvious." 'THE POOR MAN'S WILL,' 53 Columbia Law Review 112. Another writer has characterized the present state of the law by stating that 'Judicial statements with respect to the status of the joint bank gift range from continued attempts to identify the joint account by traditional concepts to recognition of the account as a new and useful technique for transferring property which need not fit any historical molds.' 'JOINT BANK ACCOUNT MUDDLE,' 26 University of Chicago Law Review 401. Most of the states have enacted statutes which make provision for joint accounts. A summary of the various types of statute appears in 10 Am.Jur.2d, Banks, s 372, pp. 335, 336, as follows:

'Some states have statutes providing that a deposit in the names of two or more persons, payable to either or the survivor or survivors, shall be a joint tenancy and prima facie evidence of an intent to vest title to the deposit in the survivor or survivors. Such a statute creates a presumption of survivorship when a deposit is made in the form prescribed thereby, and reasonably clear and persuasive proof is required to overcome the persumption. * * * Other states have statutes prescribing that a deposit in the name of the depositor and another in form to be paid to either or the survivor, is deemed their joint property withdrawable by either or the survivor. Some courts takes the view that such a statute creates a rebuttable presumption that a bank deposit made in the form prescribed thereby is the property of the depositors as joint tenants with right of survivorship. Other courts have held, however, that such a statute creates a joint tenancy with the right of survivorship in a deposit made in the form prescribed thereby, and does not simply create a presumption to that effect. There seems to be no doubt, however, that where an account is in the form prescribed by such a statute, that fact, unexplained by other competent evidence, fixes the respective rights of the depositors named as joint owners, with all the incidents attaching to such *499 ownership, including the right of survivorship. * * * Some statutes specifically provide that the making of a bank deposit in the form of a joint tenancy with right of survivorship shall be conclusive evidence of the intention of the depositors to vest title in the survivor. An agreement made in the form contemplated by such statute cannot be challenged by other evidence of intent, in the absence of fraud or undue influence.'

The great difficulty the courts have had in determining the validity and effect of statutory joint accounts results from the fact that the relationships created 'do not fit readily into common-law categories. The four unities of the common-law joint tenancy, the notion of an undivided moiety in each joint tenant, and the difficulty of applying the common-law concept of joint tenancy to a fluctuating res have caused difficulties. Common-law doctrines governing gifts of

personal property have contributed their share to the complex of legal problems stemming from joint bank accounts, for the common law required a complete relinquishment of ownership by the donor in order to achieve an effective gift, while the joint bank account contemplates power of withdrawal by both parties. The varying methods adopted by the courts in meeting these problems appear in the cases collected and discussed in the following annotations: 48 A.L.R. 189; 66 A.L.R. 881; 103 A.L.R. 1123; 135 A.L.R. 993; 149 A.L.R. 879.' In re Schneider's Estate, 6 Ill.2d 180, 127 N.E.2d 445, 447, 448.

Missouri has two statutes relating to joint accounts, both originally enacted in 1915. Section 362.470 relates to banks and trust companies, and s 369.150 governs deposits in savings and loan associations. And in all material respects they are the same. We quote s 369.150 in its entirety, as follows:

',1. An association may issue membership certificates in the name of two or more persons, whether minor or adult, and in form to be paid to any one or more of them, or the survivor or survivors of them.

'2. Such account, and any additions made thereto by any of them, shall become the property of such persons as joint tenants and shall be held for the exclusive use of the persons so named and may be paid to any person named therein, or the survivor or survivors of them.

'3. And such payment and the receipt or acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge to said association, whether any one or more of the persons named be living or dead, for all payments so made by the association on such account prior to the acknowledgment of receipt by, or service by an officer empowered to make service of process upon, said association at its home office of notice in writing signed by any one of such joint tenants not to pay such account in accordance with the terms thereof.

'4. If there are more than two persons named in such membership certificate and one of such persons dies, the account represented by such certificate shall become the property of the survivors as joint tenants. Such a joint account shall create a single membership in an association.'

The following indicates the construction the courts of this state have placed upon these statutes: 'Deposits made and accounts created within the purview of these statutes presumptively become the property of the persons named as joint tenants and, absent competent evidence to the contrary, actually fix the ownership of the funds in the persons named as joint tenants with the attendant right of survivorship. * * * The presumption is rebuttable and may be overcome by competent parol or other evidence showing a different intent.[1] (see also extensive collection of cases in footnote.).' Melton v. Ensley, Mo.App., 421 S.W.2d 44, 51. Also, the recent ***500** cases of Jenkins v. Meyer, Mo.Sup., 380 S.W.2d 315, and Wantuck v. United Savings and Loan Ass'n, Mo.Spp., 461 S.W.2d 692, disclose that this court has regarded the transfer of assets by joint account as a gift, and it is required that all of the common-law elements be present in order for the account to constitute a valid gift inter vivos. The situation which most often results in a joint account being held to be invalid as a joint tenancy is that in which the depositor furnishing the money expresses an intention to retain control during his lifetime and for the fund, at his death, to go to the surviving depositor. In that situation it is said that the requirements of a valid gift are absent, and also that such is void because testamentary in nature and thus in violation of the statute of wills.

It is interesting to consider how the foregoing statutory construction developed. The first case discussing that question was Ball v. Mercantile Trust Co., 220 Mo.App. 1165, 297 S.W. 415. In Ball the court adopted the construction placed upon an identical statute by a New York court and stated: '* * * it is our view, and we so hold, that under the provisions of our statute, quoted supra, the deposit in the bank in the form in which it was made was sufficient, in the first instance, to establish in this action a joint ownership in the fund with all the incidents attached to such ownership, including the attendant rights of survivorship therein. Also, that the depositors or their representatives, as between themselves, may be permitted to introduce other competent evidence that the actual agreement, if any, as between the parties was that title to joint ownership was not intended to be established, nor in fact conferred.' 297 S.W. l.c. 418. A short time later this court stated that 'under the construction given to such statute by respectable judicial authorities, a presumption arises thereunder that the deposit became the property of the depositors as joint tenants or owners, with the attendant right of survivorship, at least in the absence of competent evidence to the contrary.' Mississippi Valley Trust Co. v. Smith, 320 Mo. 989, 9 S.W.2d 58, l.c. 63. The later cases, as stated in Meyer, supra, developed the gift theory and held that accounts where the intention was to

retain the beneficial interest during the donor's lifetime were not valid joint tenancies.

We have concluded that the heretofore indicated construction placed upon our joint account statutes is erroneous and has been misleading to depositors who have complied with said statutes. Our courts have placed limitations thereon and have added requirements thereto which are not contained in the statutes and are not warranted. Section 369.150 specifically and unqualifiedly provides that if the certificate is issued in the statutory form the account 'shall become the property of such persons as joint tenants and shall be held for the exclusive use of the persons so named and may be paid to any person named therein, or the survivor.' There is nothing in the statute which would warrant the conclusion that a rebuttable presumption is created that the deposit shall become the property of such persons as joint tenants and that it may be shown by competent evidence that it was not a joint tenancy even though the statutory form had been complied with. The statute says it 'shall become the property of such persons as joint tenants.' The limitations were placed upon the statute by judicial interpretation apparently resulting from a consideration of common-law principles.

[2] **[3]** **[4]** It is our view that the statute creates what might be described as a statutory joint tenancy which should be given effect without consideration of the strict common-law requirements mentioned in the cases. In the case before us we are particularly interested in the rights of the surviving depositor. Upon the death of the depositor who furnished the money, we cannot see any reason why the surviving joint tenant should not be held to be the owner of the deposit even though the donor ***501** may have intended to retain the beneficial interest in the account during his lifetime. It is true that such an arrangement is somewhat of a testamentary nature, but we see no reason why the statute of wills should prevail over equally valid statutes relating to deposits in banks and savings and loan institutions. As indicated in 21 Journal of the Missouri Bar 394, 'ANOTHER VIEW OF JOINT BANK ACCOUNTS,' by Charles B. Blackmar, the courts have approved a number of arrangements with testamentary purposes which transfer money and property without the use of a will. The statute is clear and needs no construction. It is our view that if the statute is complied with, in the absence of fraud, undue influence, mental incapacity, or mistake, the survivor will become the owner of the account. Depositors have a right to expect the statute to be enforced according to its plain language. We are supported in our view by the dicisions in Lett v. Twentieth Street Bank, 138 W.Va. 759, 77 S.E.2d 813; Tesch v. Miller, 227 Ark. 74, 296 S.W.2d 392(1); McConnell v. McCook Nat. Bank of McCook, 142 Neb. 451, 6 N.W.2d 599, and Crabtree v. Garcia, Fla., 43 So.2d 466. It follows from the foregoing that the Jenkins and Wantuck cases, supra, and others with similar holdings, to the extent that they conflict with the views heretofore set out, should no longer be followed.

[5] Plaintiff has suggested in her brief that any transfer of the certificate was revoked by August prior to his death. We do not agree. At most, the evidence shows an intent by the Mouldons, for a short period of time, to return the certificate, and an intent to terminate or sever the joint tenancy and not an actual severance thereof. Even if the certificate had been delivered to August and he had possession thereof, there could not be an actual termination of the joint tenancy unless and until August had actually cashed in the certificate. An intent to terminate the joint tenancy agreement cannot be equated with actual termination.

We rule, as indicated, that the trial court erred in sustaining the plaintiff's motion for judgment on the pleadings which ruling was based on the finding that August did not surrender control of the certificate and intended a testamentary disposition of it.

Both sides have briefed contentions relating to the applicability of the parol evidence rule to this case in accordance with the holding in Commerce Trust Co. v. Watts, 360 Mo. 971, 231 S.W.2d 817. Our ruling herein makes it unnecessary to consider those contentions.

[6] While we have reached the same result (although on a different theory) as the court of appeals that the judgment should be reversed, we do not agree with the directions of that court to the trial court to enter judgment for defendants. There has been no trial of this case, and no evidence has been taken, since the judgment was on the pleadings. The plaintiff has not yet had an opportunity to offer evidence, if she has any, on the issue as to whether there was any fraud, undue influence, etc., relating to this transaction, which evidence we have stated would be appropriate. The judgment should therefore be reversed and the cause remanded for further proceedings in accordance with the views herein expressed. It is so ordered.

All concur.

All Citations

487 S.W.2d 493

Footnotes

1 Statutory references are to RSMo 1969, V.A.M.S.

2 While the cause was in the circuit court James Mouldon died and his death was suggested to the court. The substitution of the executor of the estate of James Mouldon was waived.

3 The respondent moved to strike the depositions of Bertha LaGarce, Russell Loving, and Theresa Mayer, filed as Exhibit No. 2 in this court, as not being before the court. The depositions were never introduced in either the probate court or the circuit court below. The depositions are not necessary for a determination of this case—the facts contained in the interrogatories, exhibits, and answer thereto are sufficient for a determination of the cause. The respondent also moved to strike the circuit court file, but this file, almost the duplicate of the probate court file, is properly to be considered and the motion to strike this exhibit is overruled.

End of Document

Effective - 28 Aug 1995

461.025. Deeds effective on death of owner — recording, effect. — 1. A deed that conveys an interest in real property to a grantee designated by the owner, that expressly states that the deed is not to take effect until the death of the owner, transfers the interest provided to the designated grantee beneficiary, effective on death of the owner, if the deed is executed and filed of record with the recorder of deeds in the city or county or counties in which the real property is situated prior to the death of the owner. A beneficiary deed need not be supported by consideration or be delivered to the grantee beneficiary. A beneficiary deed may be used to transfer an interest in real property to a trust estate, regardless of such trust's revocability.

2. This section does not preclude other methods of conveyancing that are permitted by law and that have the effect of postponing enjoyment of an interest in real property until the death of the owner. This section does not invalidate any deed, otherwise effective by law to convey title to the interest and estates therein provided, that is not recorded until after the death of the owner.

(L. 1989 H.B. 145 § 25, A.L. 1994 S.B. 701, A.L. 1995 S.B. 116)

Effective - 28 Aug 1995

461.045. Lineal descendant substitutes. — 1. Whenever a person designated as beneficiary of a nonprobate transfer is a lineal descendant of the owner, and the beneficiary is deceased at the time the beneficiary designation is made or does not survive the owner, or is treated as not surviving the owner, the nonsurviving beneficiary's share shall belong to that beneficiary's lineal descendants per stirpes who survive the owner, to take in place of and in substitution for the nonsurviving beneficiary, the same as the beneficiary would have taken if the beneficiary had survived. This subsection shall not apply to a beneficiary designation with the notation "no LDPS" after a beneficiary's name or other words negating an intention to direct the transfer to the lineal descendant substitutes of a nonsurviving beneficiary.

2. A beneficiary designation may provide that the share of any beneficiary not related to the owner as provided in subsection 1 of this section, and who does not survive the owner, shall belong to that beneficiary's lineal descendants per stirpes who survive the owner, by including after the name of the beneficiary the words "and lineal descendants per stirpes" or the abbreviation "LDPS".

3. Lineal descendants, taking as substitutes for a beneficiary of a nonprobate transfer, if they are of the same degree of kinship to the nonsurviving beneficiary, share equally, but if they are of unequal degree, then those of more remote degree take the share of their parent by representation.

4. Whenever a nonprobate transfer is to be made to a beneficiary's lineal descendants per stirpes, the property shall belong to such lineal descendants of the beneficiary who survive the owner, and in such proportions, as would result if the survivors were inheriting personal property of the beneficiary under the laws of Missouri and the beneficiary had died at the time of the owner's death, intestate, unmarried, domiciled in Missouri and possessed of such property.

5. Whenever a beneficiary of a nonprobate transfer does not survive the owner and the beneficiary is a person for whom the beneficiary's surviving lineal descendants take as substitutes under subsection 1 or 2 of this section, if there are no lineal descendants of the beneficiary who survive the owner, the beneficiary's share shall belong to the surviving beneficiaries, or to the owner's estate, as would be the case if transfer to the beneficiary's lineal descendants were not required to be considered.

(L. 1989 H.B. 145 § 32, A.L. 1995 S.B. 116)

Effective - 23 May 1996, see footnote

474.333. Will may provide for disposal of personal property by separate list. — A will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, securities and property used in trade or business. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by the testator, must be dated and must describe the items and the devisees with reasonable certainty. The writing may:

(1) Be referred to as one to be in existence at the time of the testator's death;

(2) Be prepared before or after the execution of the will;

(3) Be altered by the testator after its preparation; and

(4) Be a writing which has no significance apart from its effect upon the dispositions made by the will.

(L. 1980 S.B. 637, A.L. 1996 S.B. 494)

Effective 5-23-96

---- end of effective 23 May 1996 ----
use this link to bookmark section 474.333

Effective - 28 Aug 2016, 2 histories

473.050. Wills, presentment for probate, time limited — presented, defined. — 1. A will, to be effective as a will, must be presented for and admitted to probate.

2. When used in chapter 472, chapter 474, chapter 475, and this chapter, the term "**presented**" means:

(1) Either the delivery of a will of a decedent, if such will has not previously been delivered, to the probate division of the circuit court which would be the proper venue for the administration of the estate of such decedent, or the delivery of a verified statement to such court, if the will of such decedent is lost, destroyed, suppressed or otherwise not available, setting forth the reason such will is not available and setting forth the provisions of such will so far as known; and

(2) One of the following:

(a) An affidavit pursuant to section 473.097, which requests such will be admitted to probate; or

(b) A petition which seeks to have such will admitted to probate; or

(c) An authenticated copy of the order admitting such will to probate in any state, territory or district of the United States, other than this state.

3. No proof shall be taken of any will nor a certificate of probate thereof issued unless such will has been presented within the applicable time set forth as follows:

(1) In cases where notice has previously been given in accordance with section 473.033 of the granting of letters on the estate of such testator, within six months after the date of the first publication of the notice of granting of letters, or within thirty days after the commencement of an action under section 473.083 to establish or contest the validity of a will of the testator named in such will, whichever later occurs;

(2) In cases where notice has not previously been given in accordance with section 473.033 of the granting of letters on the estate of testator, within one year after the date of death of the testator;

(3) In cases involving a will admitted to probate in any state, territory or district of the United States, other than this state, which was the decedent's domicile, at any time during the course of administration of the decedent's domiciliary estate in such other state, territory or district of the United States.

4. A will presented for probate within the time limitations provided in subsection 3 of this section may be exhibited to be proven, and proof received and administration

granted on such will at any time after such presentation.

5. A will not presented for probate within the time limitations provided in subsection 3 of this section is forever barred from admission to probate in this state.

6. Except as provided in subsection 4 of this section and section 537.021, no letters of administration shall be issued unless application is made to the court for such letters within one year from the date of death of the decedent.

(RSMo 1939 § 532, A.L. 1955 p. 385 § 42, A.L. 1969 S.B. 85, A.L. 1973 H.B. 216, A.L. 1978 H.B. 1634, A.L. 1996 S.B. 494, A.L. 2016 H.B. 1765)

Prior revisions: 1929 § 531; 1919 § 519; 1909 § 549

(1997) Action by probate division is condition precedent to bringing suit to set aside a will or to establish a will that has been rejected. Brunig v. Humburg, 957 S.W.2d 345 (Mo.App.E.D.).

(2005) Tolling provisions of federal Servicemembers' Civil Relief Act toll statute of limitations for filing petition for presentment and application for letters testamentary for covered individuals. State ex rel. Estate of Perry ex rel. Perry, 168 S.W.3d 577 (Mo.App.W.D.).

---- end of effective 28 Aug 2016 ----
use this link to bookmark section 473.050

- All versions

	Effective	End
473.050	8/28/2016	
473.050	5/23/1996	8/28/2016

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website on the effective date of such enacted statutory section.

▸ **Other Information**

▸ **Other Links**

Missouri Senate **MO.gov** **Missouri House**

Effective - 28 Aug 2009

475.045. Who may be appointed guardian of minor. — 1. Except in cases where they fail or refuse to give required security or are adjudged unfit for the duties of guardianship or conservatorship, or waive their rights to be appointed, the following persons, if otherwise qualified, shall be appointed as guardians or conservators of minors:

(1) The parent or parents of the minor, except as provided in section 475.030;

(2) If any minor over the age of fourteen years has no qualified parent living, a person nominated by the minor, unless the court finds appointment contrary to the best interests of the minor;

(3) Where both parents of a minor are dead, any person appointed under this section or section 475.046 by the will of the last surviving parent, who has not been adjudged unfit or incompetent for the duties of guardian or conservator.

2. Unfitness of any of the persons mentioned in subsection 1 for the duties of guardianship or conservatorship may be adjudged by the court after due notice and hearing.

3. If no appointment is made under subsection 1 of this section, the court shall appoint as guardian or conservator of a minor the most suitable person who is willing to serve and whose appointment serves the best interests of the child to a stable and permanent placement.

(RSMo 1939 §§ 375, 378, 379, 380, 392, A.L. 1955 p. 385 § 290, A.L. 1983 S.B. 44 & 45, A.L. 2009 H.B. 154)

Prior revisions: 1929 §§ 375, 378, 379, 380, 392; 1919 §§ 371, 374, 375, 376, 388; 1909 §§ 403, 406, 407, 408, 420

CROSS REFERENCE:

Public administrator appointed as guardian, when, 473.743

Effective - 23 May 1996, see footnote

474.010. General rules of descent. — All property as to which any decedent dies intestate shall descend and be distributed, subject to the payment of claims, as follows:

(1) The surviving spouse shall receive:

(a) The entire intestate estate if there is no surviving issue of the decedent;

(b) The first twenty thousand dollars in value of the intestate estate, plus one-half of the balance of the intestate estate, if there are surviving issue, all of whom are also issue of the surviving spouse;

(c) One-half of the intestate estate if there are surviving issue, one or more of whom are not issue of the surviving spouse;

(2) The part not distributable to the surviving spouse, or the entire intestate property, if there is no surviving spouse, shall descend and be distributed as follows:

(a) To the decedent's children, or their descendants, in equal parts;

(b) If there are no children, or their descendants, then to the decedent's father, mother, brothers and sisters or their descendants in equal parts;

(c) If there are no children, or their descendants, father, mother, brother or sister, or their descendants, then to the grandfathers, grandmothers, uncles and aunts or their descendants in equal parts;

(d) If there are no children or their descendants, father, mother, brother, sister, or their descendants, grandfather, grandmother, uncles, aunts, nor their descendants, then to the great-grandfathers, great-grandmothers, or their descendants, in equal parts; and so on, in other cases without end, passing to the nearest lineal ancestors and their children, or their descendants, in equal parts; provided, however, that collateral relatives, that is, relatives who are neither ancestors nor descendants of the decedent, may not inherit unless they are related to the decedent at least as closely as the ninth degree, the degree of kinship being computed according to the rules of the civil law; that is, by counting upward from the decedent to the nearest common ancestor, and then downward to the relative, the degree of kinship being the sum of these two counts, so that brothers are related in the second degree;

(3) If there is no surviving spouse or kindred of the decedent entitled to inherit, the whole shall go to the kindred of the predeceased spouse who, at the time of the spouse's death, was married to the decedent, in like course as if such predeceased spouse had survived the decedent and then died entitled to the property, and if there is more than one such predeceased spouse, then to go in equal shares to the kindred of each

predeceased spouse;

(4) If no person is entitled to inherit as provided in this section the property shall escheat as provided by law.

(RSMo 1939 § 306, A.L. 1955 p. 385 § 236, A.L. 1980 S.B. 637, A.L. 1996 S.B. 494)

Prior revisions: 1929 § 306; 1919 § 303; 1909 § 332

Effective 5-23-96

CROSS REFERENCES:

Adopted child, right to inherit, 453.090, 453.170

Escheats, generally, Chap. 470

Estates of suicides to descend as in cases of natural death, Const. Art. I § 30

(1958) Devise of undivided one-half interest in realty to testator's son for life and at his death to his children absolutely but if he should die without issue living, then to other son for life and at his death to other son's "heirs at law", was construed according to statute of descent and distribution in effect when second life tenant died rather than statute in effect at execution of will and testator's death and thus widow of second life tenant took one-half of the undivided one-half interest against contention that testator indicated intent that land go to his descendants. Thomas v. Higginbotham (Mo.), 318 S.W.2d 234.

Effective - 16 Oct 2015, 2 histories, see footnote

*194.119. **Right of sepulcher, the right to choose and control final disposition of a dead human body.** — 1. As used in this section, the term "**right of sepulcher**" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "**next-of-kin**" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;

(2) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in accordance with P.L. 109-163, Section 564, 10 U.S.C. Section 1482;

(3) The surviving spouse;

(4) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place of the child unless such child's legal or natural guardian was subject to an action in dissolution from the deceased. In such event the person or persons who may serve as next-of-kin shall serve in the order provided in subdivisions (5) to (9) of this subsection;

(5) (a) Any surviving parent of the deceased; or

(b) If the deceased is a minor, a surviving parent who has custody of the minor; or

(c) If the deceased is a minor and the deceased's parents have joint custody, the parent whose residence is the minor child's residence for purposes of mailing and education;

(6) Any surviving sibling of the deceased;

(7) The next nearest surviving relative of the deceased by consanguinity or affinity;

(8) Any person or friend who assumes financial responsibility for the disposition of

the deceased's remains if no next-of-kin assumes such responsibility;

(9) The county coroner or medical examiner; provided however that such assumption of responsibility shall not make the coroner, medical examiner, the county, or the state financially responsible for the cost of disposition.

3. The next-of-kin of the deceased shall be entitled to control the final disposition of the remains of any dead human being consistent with all applicable laws, including all applicable health codes.

4. A funeral director or establishment is entitled to rely on and act according to the lawful instructions of any person claiming to be the next-of-kin of the deceased; provided however, in any civil cause of action against a funeral director or establishment licensed pursuant to this chapter for actions taken regarding the funeral arrangements for a deceased person in the director's or establishment's care, the relative fault, if any, of such funeral director or establishment may be reduced if such actions are taken in reliance upon a person's claim to be the deceased person's next-of-kin.

5. Any person who desires to exercise the right of sepulcher and who has knowledge of an individual or individuals with a superior right to control disposition shall notify such individual or individuals prior to making final arrangements.

6. If an individual with a superior claim is personally served with written notice from a person with an inferior claim that such person desires to exercise the right of sepulcher and the individual so served does not object within forty-eight hours of receipt, such individual shall be deemed to have waived such right. An individual with a superior right may also waive such right at any time if such waiver is in writing and dated.

7. If there is more than one person in a class who are equal in priority and the funeral director has no knowledge of any objection by other members of such class, the funeral director or establishment shall be entitled to rely on and act according to the instructions of the first such person in the class to make arrangements; provided that such person assumes responsibility for the costs of disposition and no other person in such class provides written notice of his or her objection. If the funeral director has knowledge that there is more than one person in a class who are equal in priority and who do not agree on the disposition, the decision of the majority of the members of such class shall control the disposition.

8. For purposes of conducting a majority vote under subsection 7 of this section, the funeral director shall allow voting by proxy using a written authorization or instrument.

(L. 2003 H.B. 394, A.L. 2008 S.B. 788 merged with S.B. 1139, A.L. 2010 H.B. 1524 & 2260, A.L. 2015 H.B. 618)

*Effective 10-16-15, see § 21.250. H.B. 618 was vetoed on July 10, 2015. The veto was overridden September 16, 2015.

Effective - 28 Aug 2011

194.115. Autopsy — consent required — penalty for violation — availability of report, to whom. — 1. Except when ordered or directed by a public officer, court of record or agency authorized by law to order an autopsy or postmortem examination, it is unlawful for any licensed physician and surgeon to perform an autopsy or postmortem examination upon the remains of any person without the consent of one of the following:

(1) The deceased, if in writing, and duly signed and acknowledged prior to his death; or

(2) A person designated by the deceased in a durable power of attorney that expressly refers to the giving of consent to an autopsy or postmortem examination; or

(3) The surviving spouse; or

(4) If the surviving spouse through injury, illness or mental capacity is incapable of giving his or her consent, or if the surviving spouse is unknown, or his or her address unknown or beyond the boundaries of the United States, or if he or she has been separated and living apart from the deceased, or if there is no surviving spouse, then any surviving child, parent, brother or sister, in the order named; or

(5) If no surviving child, parent, brother or sister can be contacted by telephone or telegraph, then any other relative, by blood or marriage; or

(6) If there are no relatives who assume the right to control the disposition of the remains, then any person, friend or friends who assume such responsibility.

2. If an individual through injury, illness, or mental capacity is incapable of giving consent prior to his or her death as contemplated by subdivision (1) of subsection 1 of this section, then any child, parent, brother or sister of said individual may petition the court to order that an autopsy or postmortem examination shall be performed upon the remains of said individual following his or her passing.

3. If the surviving spouse, child, parent, brother or sister hereinabove mentioned is under the age of twenty-one years, but over the age of sixteen years, such minor shall be deemed of age for the purpose of granting the consent hereinabove required.

4. Any licensed physician and surgeon performing an autopsy or postmortem examination with the consent of any of the persons enumerated in subsection 1 of this section shall use his judgment as to the scope and extent to be performed, and shall be in no way liable for such action.

5. It is unlawful for any licensed physician, unless specifically authorized by law, to hold a postmortem examination on any unclaimed dead without the consent required by

section 194.170.

6. Any person not a licensed physician performing an autopsy or any licensed physician performing an autopsy without the authorization herein required shall upon conviction be adjudged guilty of a misdemeanor, and subject to the penalty provided for in section 194.180.

7. If an autopsy is performed on a deceased patient and an autopsy report is prepared, such report shall be made available upon request to the personal representative or administrator of the estate of the deceased, the surviving spouse, any surviving child, parent, brother or sister of the deceased.

(L. 1953 p. 629 § 1, A.L. 1961 p. 514, A.L. 1989 H.B. 145, A.L. 2001 S.B. 267, A.L. 2011 S.B. 213)

---- end of effective 28 Aug 2011 ----
use this link to bookmark section 194.115

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website on the effective date of such enacted statutory section.

Effective - 28 Aug 2008

194.245. Gift for transplantation, therapy, research, or education, priority list for persons making. — 1. Subject to subsections 2 and 3 of this section and unless barred by section 194.235 or 194.240, an anatomical gift of a decedent's body or part for purposes of transplantation, therapy, research, or education may be made in the order of priority listed, by any member of the following classes of persons who is reasonably available, in the order of priority listed:

(1) An agent of the decedent at the time of death who could have made an anatomical gift under subdivision (2) of subsection 2 of section 194.220 immediately before the decedent's death;

(2) The spouse of the decedent;

(3) Adult children of the decedent;

(4) Parents of the decedent;

(5) Adult siblings of the decedent;

(6) Adult grandchildren of the decedent;

(7) Grandparents of the decedent;

(8) The persons who were acting as the guardian of the person of the decedent at the time of death; and

(9) Any other public official having the authority to dispose of the decedent's body.

2. If there is more than one member of a class listed in subdivision (1), (3), (4), (5), (6), (7), or (9) of subsection 1 of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift can pass under section 194.255 knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.

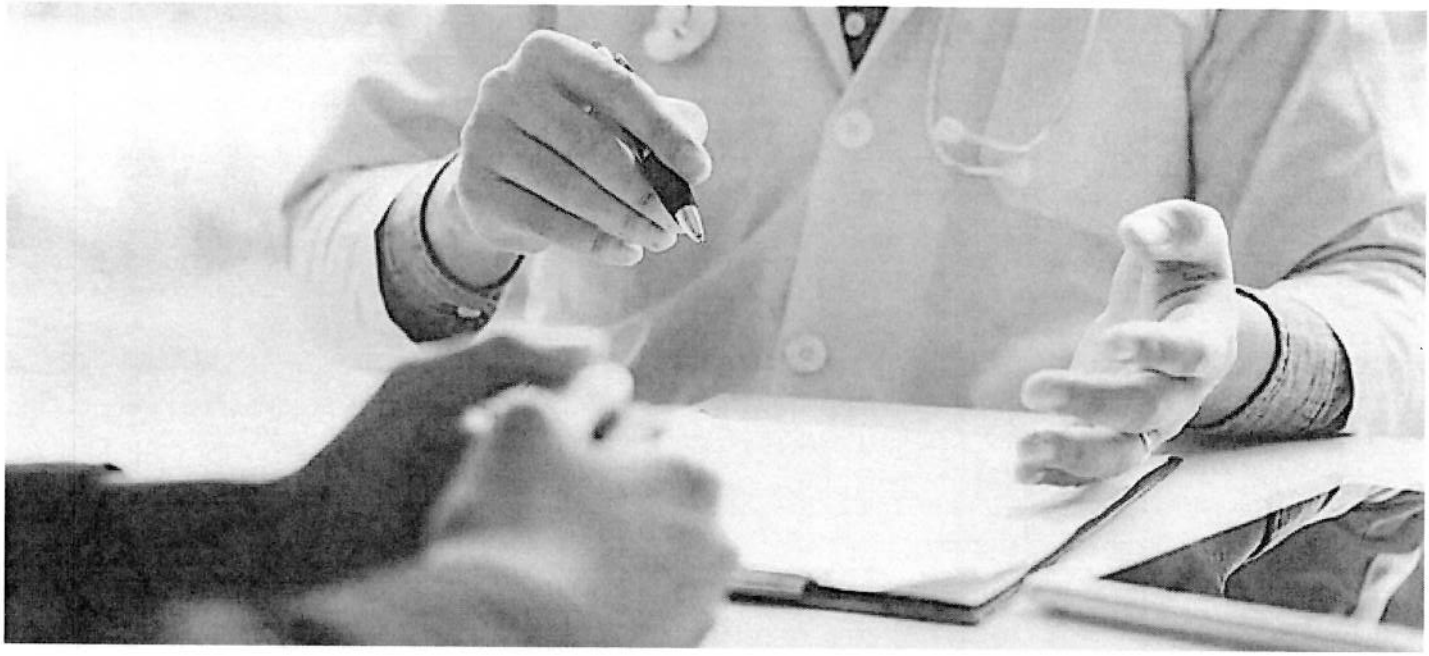
3. A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection 1 of this section is reasonably available to make or to object to the making of an anatomical gift.

(L. 2008 S.B. 1139)

What is the difference between a Do Not Resuscitate (DNR), a Living Will, and a Healthcare Power of Attorney?

APRIL 16, 2020

April 16th is National Healthcare Decisions Day, a day set aside to encourage all adults to educate, discuss, and engage in advanced care planning. Advance care planning is the process of discussing and documenting your healthcare wishes now in case you become temporarily or permanently incapacitated and unable to speak your decisions to your medical providers. National Healthcare Decisions Day (NHDD) started in 2008, but this year NHDD seems to be more noticeable to many people given the recent global pandemic of Covid-19 (the Coronavirus).



There are many legal and medical documents that can be involved in a person's advance care planning, depending on the person's age, health, and preferences (including religious preferences). You should speak with a qualified elder law attorney and your medical professional when determining what documents are appropriate for you. Three primary documents used in advance care planning are a healthcare power of attorney, a living will, and a do not resuscitate (DNR) order. These documents serve separate purposes, but often work together during an end of life scenario.

A **healthcare power of attorney** (https://www.theelderlawgroup.com/news/powers-of-attorney) is a legal document in which a person appoints a trusted friend or family member, called an "Agent" to make the person's medical decisions if the person becomes incapacitated in the future. The healthcare power of attorney allows the Agent to give consent to or prohibit any health care, medical care, treatment, or procedure. However, an Agent may not withhold or withdraw artificially supplied nutrition and hydration unless this wish is specifically provided in the healthcare power of attorney document. All adults over the age of eighteen should have a healthcare power of attorney naming a trusted friend or family member to make their medical decisions should the person become temporarily or permanently incapacitated.

A **living will** (also called a **physician's directive** or **advanced healthcare directive**) is a legal document which directs a person's wishes regarding the use or withholding of medical treatments; specifically, a living will typically addresses a person's wishes relating to the use or non-use of death-prolonging procedures if a person becomes incapacitated and cannot express those wishes due to the incapacity. A death-prolonging procedure is "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." RSMo. § 459.010(3). Missouri law requires clear and convincing evidence of a person's wishes regarding death-prolonging measures before medical treatment may be withheld or withdrawn. *Cruzan by*

Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990). A living will is the preferred document for a person to express their preference on death-prolonging medical treatment in certain circumstances. The living will can then be used if the person becomes incapacitated and unable to speak their wishes regarding the withdraw of medical treatment. All adults, but especially older adults, should have a living will and discuss their end of life wishes (https://www.theelderlawgroup.com/news/10-questions-to-ask-aging-parents) with their close friends, family members, and Agent(s) named in their healthcare power of attorney.

A **do not resuscitate order (DNR)** is a medical order signed by an adult patient and their doctor ordering that no cardiopulmonary resuscitation (CPR) be performed on the patient in the event of cardiac or respiratory arrest, even if CPR would save the patient's life. CPR includes cardiac compression, endotracheal intubation, artificial ventilation, defibrillation, and other related medical procedures. An **out of hospital do not resuscitate order (OHDNR)** extends the medical order to when the patient is no longer admitted to a health care facility (for example, if the patient is at home) and prohibits all emergency medical services (EMS) personnel from administering CPR. An OHDNR must be on purple paper and must be presented to EMS personnel to be effective. A person's Agent under a healthcare power of attorney may execute a DNR or OHDNR on behalf of the person; if a person has failed to execute a healthcare power of attorney and does not have a court-appointed guardian (https://www.theelderlawgroup.com/news/practicalpointers), the person's spouse or other family member may not execute a DNR or OHDNR on behalf of the person. A DNR or OHDNR must also be signed by the patient's doctor. Any person wishing to execute a DNR or OHDNR should contact their doctor to discuss their options.

Another, newer, document is the **Transportable Physician Orders for Patient Preferences (TPOPP)**, which is called **Physician Orders for Life Sustaining Treatment (POLST)** in states other than Missouri. A TPOPP is a medical order signed by the patient's doctor and is designed to be used whether the patient is in a hospital, at their own home, in a skilled nursing facility, etc. A TPOPP is broader than a DNR and includes preferences on CPR, antibiotics, ventilation, feeding tubes, and other medical treatments. The TPOPP is a non-statutory document that is endorsed by many medical providers in the state of Missouri. A TPOPP is intended for patients who have serious medical conditions and may be at high risk for life-threatening medical events, including patients who qualify for Hospice and patients with advanced neurodegenerative disease (i.e. dementia or Alzheimer's).

Navigating, discussing, and executing these different legal and medical documents can ensure your medical wishes are carried out if you become incapacitated. The attorneys at The Elder Law Group are experienced in providing specific, tailored legal advice to confirm our client's medical and end-of-life wishes without unnecessary complications. Contact us today at 417-708-2044 (tel:+14177082044) or at info@TheElderLawGroup.com (mailto:info@TheElderLawGroup.com) to schedule a consultation.

The information in this blog post is provided for general informational purposes only, and may not reflect the current law in your jurisdiction. No information contained in this blog post should be construed as legal advice. No reader of this post should act or refrain from acting on the basis of any information included in this blog post without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue.

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(/news/secureact)

NEXT
Electronic Notary Executive Order: What it Means for Estate Planning
(/news/electronic-notary-executive-order-estate-planning)

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DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND/OR HEALTH CARE DIRECTIVE OF

(Print full name here) _____

(Address, City, State, Zip) _____

PART I. DURABLE POWER OF ATTORNEY FOR HEALTH CARE

(If you *DO NOT WISH* to name someone to serve as your decision-making Agent, mark an "X" through Part I on pages 1 & 2 and continue on to Part II.)

1. **Selection of Agent.** I, _____, currently a resident of Select County _____ County, Missouri, appoint the following person as my true and lawful attorney-in-fact ("Agent"):

Name: _____

Address: _____

_____

Phone(s): 1st _____ 2nd _____

2. **Alternate Agent.** If my Agent resigns or is not able or available to make health care decisions for me, or if an Agent named by me is divorced from me or is my spouse and legally separated from me, I appoint the following persons in the order named below to serve as my alternate Agent and to have the same powers as my Agent:

First Alternate Agent:

Name: _____

Address: _____

_____

Phone(s): 1st _____

2nd _____

Second Alternate Agent:

Name: _____

Address: _____

_____

Phone(s): 1st _____

2nd _____

3. **Durability.** This is a Durable Power of Attorney, and the authority of my Agent, 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.

4. **Effective Date as to Health Care Decision Making.** This Durable Power of Attorney is effective as to health care decision making when I am incapacitated and unable to make and communicate a health care decision as certified by ***(check one of the following boxes):*** ☐ one physician **OR** ☐ two physicians.

5. **Agent's Powers.** I grant to my Agent full authority as to health care decision making to:

A. Give consent to, prohibit, or withdraw any type of health care, long-term care, hospice or palliative care, medical care, treatment, or procedure, either in my residence or a facility outside of my residence, even if my death may result, including, but not limited to, an out of hospital do-not-resuscitate order, with the following specific authorization ***(initial one of the following boxes to indicate your choice):***

_____ **Initials** I wish to AUTHORIZE my Agent to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration (including tube feeding of food and water);

_____ **Initials** OR I DO NOT AUTHORIZE my Agent to direct a health care provider to withhold or withdraw artificially supplied nutrition and hydration (including tube feeding of food and water);

B. Make all necessary arrangements for health care services on my behalf and to hire and fire medical personnel responsible for my care;

C. Move me into, or out of, any health care or assisted living/residential care facility or my home (even if against medical advice) to obtain compliance with the decisions of my Agent;

D. Take any other action necessary to do what I authorize here, including, but not limited to, granting any waiver or release from liability required by any health care provider and taking any legal action at the expense of my estate to enforce this Durable Power of Attorney for Health Care;

E. Receive information regarding my health care, obtain copies of and review my medical records, consent to the disclosure of my medical records, and act as my "personal representative" as defined in the regulations [45 C.F.R. 164.502(g)] enacted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

6. **Effective Date as to Other Authority.** In addition to the powers set forth above, I authorize effective upon my signature and without the need for a physician's certification of incapacity that my Agent be authorized to have one or more of the following powers ***(initial your desired choices):***

_____ Initials Determine what happens to my body after my death (authority for right of sepulcher);

_____ Initials Give consent after my death to an autopsy or postmortem examination of my remains;

_____ Initials Delegate health care decision-making power to another person ("Delegee") as selected by my Agent, and the Delegee shall be identified in writing by my Agent;

With respect to anatomical gifts of my body or any part (i.e., organs or tissues), please initial your desired choice below:

_____ Initials **AUTHORIZATION OF ANATOMICAL GIFTS**. I wish to AUTHORIZE my Agent to make an anatomical gift of my body or part (organ or tissue).

My donations are for the following purposes: (check one)	GIFT SPECIFICATIONS: (check one)
☐ Transplantation ☐ Therapy ☐ Research ☐ Education ☐ All the above	I would like to donate ☐ Any needed organs and tissues, as allowed by law. ☐ Any needed organs and tissues as allowed by law, with the following restrictions:

_____ Initials **PROHIBITION OF ANATOMICAL GIFTS**. I DO NOT AUTHORIZE my Agent to make an anatomical gift of my body or any part (organ or tissue).

7. **Agent's Financial Liability and Compensation**. My Agent, acting under this Durable Power of Attorney for Health Care, will incur no personal financial liability. My Agent shall not be entitled to compensation for services performed under this Durable Power of Attorney for Health Care, but my Agent shall be entitled to reimbursement for all reasonable expenses incurred as a result of carrying out any provisions hereof.

PART II. HEALTH CARE DIRECTIVE

(If you *DO NOT WISH* to make a health care directive but only wish to have an Agent make your decisions without the directive, be sure that you have completed Part I on pages 1 & 2, mark an "X" through Part II on pages 2 & 3 and continue to Part III.)

1. I make this HEALTH CARE DIRECTIVE ("Directive") to exercise my right to determine the course of my health care and to provide clear and convincing proof of my choices and instructions about my treatment.

2. If I am persistently unconscious or there is no reasonable expectation of my recovery from a seriously incapacitating or terminal illness or condition, I direct that all of the life-prolonging procedures that I have initialed below be withheld or withdrawn.

Initials	**artificially supplied nutrition and hydration (including tube feeding of food and water)**		
Initials	**surgery or other invasive procedures**	Initials	**heart-lung resuscitation (CPR)**
Initials	**antibiotics**	Initials	**dialysis**
Initials	**mechanical ventilator (respirator)**	Initials	**chemotherapy**
Initials	**radiation therapy**		
Initials	**other procedures specified by me (insert)** _____		
Initials	**all other "life-prolonging" medical or surgical procedures that are merely intended to keep me alive without reasonable hope of improving my condition or curing my illness or injury**		

3. However, if my physician believes that any life-prolonging procedure may lead to a recovery significant to me as communicated by me or my Agent to my physician, then I direct my physician to try the treatment for a reasonable period of time. If it does not cause my condition to improve, I direct the treatment to be withdrawn even if it shortens my life. I also direct that I be given medical treatment to relieve pain or to provide comfort, even if such treatment might shorten my life, suppress my appetite or my breathing, or be habit-forming.

4. If I have already consented to be on the Missouri organ and tissue donor registry or my Agent has authorized the donation of my organs or tissues, I realize it may be necessary to maintain my body artificially after my death until my organs or tissues can be removed.

IF I HAVE NOT DESIGNATED AN AGENT IN THE DURABLE POWER OF ATTORNEY, PART II OF THIS DOCUMENT IS MEANT TO BE IN FULL FORCE AND EFFECT AS MY HEALTH CARE DIRECTIVE.

PART III. GENERAL PROVISIONS INCLUDED IN THE DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE

1. Relationship Between Durable Power of Attorney for Health Care and Health Care Directive . If I have executed both the Durable Power of Attorney for Health Care and Health Care Directive, I encourage my Agent to:

A. First, follow my choices as expressed in the above Directive or otherwise from knowing me or having had various discussions with me about making decisions regarding life-prolonging procedures.

B. Second, if my Agent does not know my choices for the specific decision at hand, but my Agent has evidence of my preferences, my Agent can determine how I would decide. My Agent should consider my values, religious beliefs, past decisions, and past statements. The aim is to choose as I would choose, *even if it is not what my Agent would choose for himself or herself.*

C. Third, if my Agent has little or no knowledge of choices I would make, then my Agent and the physicians will have to make a decision based on what a reasonable person in the same situation would decide. I have confidence in my Agent's ability to make decisions in my best interest if my Agent does not have enough information to follow my preferences.

D. Finally, if the Durable Power of Attorney for Health Care is determined to be ineffective, or if my Agent is not able to serve, the Health Care Directive is intended to be used on its own as firm instructions to my health care providers regarding life-prolonging procedures.

2. Protection of Third Parties Who Rely on My Agent. No person who relies in good faith upon any representations by my Agent or Alternate Agent shall be liable to me, my estate, my heirs or assigns, for recognizing the Agent's authority.

3. Revocation of Prior Durable Power of Attorney for Health Care or Health Care Directive. I revoke any prior living will, declaration or health care directive executed by me. If I have appointed an Agent in a prior durable power of attorney, I revoke any prior health care durable power of attorney or any health care terms contained in that other durable power of attorney and intend that this Durable Power for Attorney for Health Care (if completed) and this Health Care Directive (if completed) replace or supplant earlier documents or provisions of earlier documents.

4. Validity. This document is intended to be valid in any jurisdiction in which it is presented. The provisions of this document are separable, so that the invalidity of one or more provisions shall not affect any others. A copy of this document shall be as valid as the original.

IF YOU HAVE COMPLETED THE ENTIRE DOCUMENT OR ONLY THE DIRECTIVE (PART II), YOU MUST SIGN THIS DOCUMENT IN THE PRESENCE OF TWO WITNESSES.

IN WITNESS WHEREOF, I signed this document on _____(month, date),_____(year).

_____
Signature
Printed Name: _____

WITNESSES: The person who signed this document is of sound mind and voluntarily signed this document in our presence. Each of the undersigned witnesses is at least eighteen years of age.

Signature _____
Print Name _____
Address _____
_____

Signature _____
Print Name _____
Address _____
_____

NOTARY ACKNOWLEDGMENT
(Only required if Part I or entire document completed.)

STATE OF MISSOURI)
) SS
COUNTY OF _____)

On this _____ day of _____ (month), _____ (year), before me personally appeared _____ _____, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he/she executed the same as his/her free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County or City and state aforementioned, on the day and year first above written.

_____
_____, Notary Public
(Name Printed)

HIPAA Privacy Authorization Form

Authorization for Use or Disclosure of Protected Health Information
(Required by the Health Insurance Portability and Accountability Act — 45 CFR Parts 160 and 164)

1. I hereby authorize all medical service sources and health care providers to use and/or disclose the protected health information ("PHI") described below to my agent identified in my durable power of attorney for health care named _____.

2. Authorization for release of PHI covering the period of health care (check one)
   a. ☐ from (date) _____ - to (date)_____ OR
   b ☐ all past, present and future periods.

3. I hereby authorize the release of PHI as follows (check one):
   a. ☐ my complete health record (including records relating to mental health care, communicable diseases, HIV or AIDS, and treatment of alcohol/drug abuse). OR
   b. ☐ my complete health record *with the exception of the following information* (check as appropriate):
   - ☐ Mental health records
   - ☐ Communicable diseases (including HIV and AIDS)
   - ☐ Alcohol/drug abuse treatment
   - ☐ Other (please specify): _____ .

4. In addition to the authorization for release of my PHI described in paragraphs 3 a and 3 b of this Authorization, I authorize disclosure of information regarding my billing, condition, treatment and prognosis to the following individual(s):

   Name tt _____ Relationship _____

   Name _____ Relationship _____

   Name _____ Relationship _____

5. This medical information may be used by the persons I authorize to receive this information for medical treatment or consultation, billing or claims payment, or other purposes as I may direct.

6. This authorization shall be in force and effect until nine (9) months after my death or _____, (date or event) at which time this authorization expires.

7. I understand that I have the right to revoke this authorization, in writing, at any time. I understand that a revocation is not effective to the extent that any person or entity has already acted in reliance on my authorization or if my authorization was obtained as a condition of obtaining insurance coverage and the insurer has a legal right to contest a claim.

8. I understand that my treatment, payment, enrollment, or eligibility for benefits will not be conditioned on whether I sign this authorization.

9. I understand that information used or disclosed pursuant to this authorization may be disclosed by the recipient and may no longer be protected by federal or state law.

_____ Date: _____
Signature of Patient

Keep original, and give copies to your health care provider, agent and family members

Effective - 28 Aug 1997

404.705. Durable power of attorney, procedure to create, requirements, effect, recording not required, exception — person appointed has no duty to exercise authority conferred, exception. — 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 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.

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.

(L. 1989 H.B. 145 § 3, A.L. 1997 S.B. 265)

---- end of effective 28 Aug 1997 ----
use this link to bookmark section 404.705

Click here for the **Reorganization Act of 1974 - or - Concurrent Resolutions Having Force & Effect of Law**

In accordance with Section **3.090**, the language of statutory sections enacted during a legislative session are updated and available on this website on the effective date of such enacted statutory section.

▶ **Other Information**

▶ **Other Links**

Missouri Senate **MO.gov** **Missouri House**

Errors / suggestions - WebMaster@LR.mo.gov

History and Fun Facts

SHARE

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Effective - 28 Aug 2016, 2 histories

404.710. Power of attorney with general powers. — 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 entireties 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, including but not limited to the ability to disclaim or release any power of appointment granted to the principal and the ability to disclaim all or part of the principal's interest in appointive property to the extent authorized under sections 456.970 to 456.1135;

(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 subdivision 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 an anatomical gift of, or prohibit an anatomical gift of, all or part of the principal's body under the Revised Uniform Anatomical Gift Act or to exercise the right of sepulcher over the principal's body under section 194.119;

(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;

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

(12) To exercise, to revoke or amend the release of, or to contract to exercise or not to exercise, any power of appointment granted to the principal to the extent authorized under sections 456.970 to 456.1135.

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.

(L. 1989 H.B. 145 § 5, A.L. 1991 S.B. 148, A.L. 1997 S.B. 265, A.L. 2011 S.B. 59, A.L. 2016 H.B. 1765)

---- end of effective 28 Aug 2016 ----

use this link to bookmark section 404.710

- All versions

	Effective	End
404.710	8/28/2016	
404.710	8/28/2011	8/28/2016

Effective - 28 Aug 2018

475.602. Delegation to attorney-in-fact, powers — revocation or withdrawal — requirements of delegation. — 1. A parent or legal custodian of a child may, by a properly executed power of attorney as provided under section 475.604, delegate to an attorney-in-fact for a period not to exceed one year, except as provided under subsection 7 of this section, any of the powers regarding the care and custody of the child, except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. A delegation of powers under this section shall not be construed to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive the parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child.

2. The parent or legal custodian of the child shall have the authority to revoke or withdraw the power of attorney authorized in subsection 1 of this section at any time. Except as provided in subsection 7 of this section, if the delegation of authority lasts longer than one year, the parent or legal custodian of the child shall execute a new power of attorney for each additional year that the delegation exists. If a parent withdraws or revokes the power of attorney, the child shall be returned to the custody of the parents as soon as reasonably possible.

3. Unless the authority is revoked or withdrawn by the parent or legal custodian, the attorney-in-fact shall exercise parental or legal authority on a continuous basis without compensation for the duration of the power of attorney authorized by subsection 1 of this section and shall not be subject to any statutes dealing with the licensing or regulation of foster care homes.

4. Except as otherwise provided by law, if a parent or legal custodian uses a community service program that offers support services for families in crisis to assist in the delegation of any powers regarding the care and custody of a child by a properly executed power of attorney, then the execution of a power of attorney by such parent or legal custodian as authorized in subsection 1 of this section shall not constitute abandonment as provided in sections 568.030 and 568.032, or abuse or neglect as provided in sections 210.110 and 568.060, unless the parent or legal guardian fails to take custody of the child or execute a new power of attorney after the one-year time limit has elapsed. It shall be a violation of section 453.110 for any parent or legal custodian to execute a power of attorney with the intention of permanently avoiding or divesting himself or herself of parental or legal responsibility for the care of the child.

5. Under a delegation of powers as authorized by subsection 1 of this section, the child

or children subject to the power of attorney shall not be considered placed in foster care as otherwise defined in law and the parties shall not be subject to any of the requirements or licensing regulations for foster care or other regulations relating to community care for children.

6. If a parent or legal custodian uses a community service program that offers support services for families in crisis to assist in the delegation of any powers regarding the care and custody of a child by a properly executed power of attorney, then the community service program shall ensure that a background check is completed for the attorney-in-fact and any adult members of his or her household prior to the placement of the child. A community service program shall not place a child or children with an attorney-in-fact when he or she or any adult member of his or her household is found to be on the sex offender registry as established pursuant to sections 589.400 to 589.425, or the child abuse and neglect registry, as established pursuant to section 210.109, or has pled guilty or nolo contendere to or is found guilty of a felony offense under federal or state law. If a community service program has reasonable cause to suspect that a parent or legal custodian is executing a power of attorney under this section with the intention of permanently avoiding or divesting himself or herself of parental or legal responsibility for the care of the child, the community service program shall notify the Missouri children's division within the department of social services, and the division shall conduct an investigation of the parent or legal guardian to determine if there is a violation of section 453.110. A background check performed under this section shall include:

(1) A national and state fingerprint-based criminal history check;

(2) A sex offender registry, as established pursuant to sections 589.400 to 589.425, check; and

(3) A child abuse and neglect registry, as established pursuant to section 210.109, check.

7. A parent or legal custodian who is a member of the Armed Forces of the United States including any reserve component thereof, the commissioned corps of the National Oceanic and Atmospheric Administration, the Public Health Service of the United States Department of Health and Human Services detailed by proper authority for duty with the Armed Forces of the United States, or who is required to enter or serve in the active military service of the United States under a call or order of the President of the United States or to serve on state active duty may delegate the powers designated in subsection 1 of this section for a period longer than one year if on active duty service. The term of delegation shall not exceed the term of active duty service plus thirty days.

8. Nothing in this section shall conflict or set aside the preexisting residency requirements under section 167.020. An attorney-in-fact to whom powers are delegated

under a power of attorney authorized by this section shall make arrangements to ensure that the child attends classes at an appropriate school. If enrollment is at a public school, attendance shall be based upon residency or waiver of such residency requirements by the school.

9. If enrolled at any school, as soon as reasonably possible upon execution of a power of attorney for the temporary care of a child as authorized under this section, the child's school shall be notified of the existence of the power of attorney and be provided a copy of the power of attorney as well as the contact information for the attorney-in-fact. While the power of attorney is in force, the school shall communicate with both the attorney-in-fact and any parent or legal custodian with parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child. The school shall also be notified of the expiration, termination, or revocation of the power of attorney as soon as reasonably possible following such expiration, termination, or revocation and shall no longer communicate with the attorney-in-fact regarding the child upon the receipt of such notice.

10. No delegation of powers under this section shall operate to modify a child's eligibility for benefits the child is receiving at the time of the execution of the power of attorney including, but not limited to, eligibility for free or reduced lunch, health care costs, or other social services, except as may be inconsistent with federal or state law governing the relevant program or benefit.

(L. 2018 S.B. 819)

---- end of effective 28 Aug 2018 ----

use this link to bookmark section 475.602

▸ **Other Information**

▸ **Other Links**

Missouri Senate **MO.gov** **Missouri House**

Effective - 28 Aug 2018

475.604. Delegation form, contents. — Any form for the delegation of powers authorized under section 475.602 shall be witnessed by a notary public and contain the following information:

(1) The full name of any child for whom parental and legal authority is being delegated;

(2) The date of birth of any child for whom parental and legal authority is being delegated;

(3) The full name and signature of the attorney-in-fact;

(4) The address and telephone number of the attorney-in-fact;

(5) The full name and signature of the parent or legal guardian;

(6) One of the following statements:

(a) "I delegate to the attorney-in-fact all of my power and authority regarding the care, custody, and property of each minor child named above including, but not limited to, the right to enroll the child in school, inspect and obtain copies of education and other records concerning the child, the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."; or

(b) "I delegate to the attorney-in-fact the following specific powers and responsibilities (insert list). This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child."; and

(7) A description of the time for which the delegation is being made and an acknowledgment that the delegation may be revoked at any time.

(L. 2018 S.B. 819)

DURABLE POWER OF ATTORNEY
FOR CARE AND CUSTODY OF MINOR CHILD

(RSMo. § 475.602, 475.604)

KNOW ALL MEN BY THESE PRESENTS:

1. We, *SPOUSE 1* and *SPOUSE 2*, *husband and wife/spouse and spouse*, of *ADDRESS*, hereby make, constitute, and appoint *NAME*, of *ADDRESS*, whose telephone number is (XXX) XXX-XXXX, as our attorney-in-fact to take the actions set forth in this instrument.

2. Our attorney-in-fact is hereby authorized, as our true and lawful attorney-in-fact, to take custody and control of our minor child, *CHILD'S FULL LEGAL NAME*, and to make any and all decisions that *s/he* believes to be in the child's best interests, including any medical decisions, all without our prior approval or consent. We agree to be liable for any and all expenses incurred by our attorney-in-fact while *s/he* is acting under the provisions of this instrument.

3. We are the *natural parents/legal guardians* of *CHILD* (D.O.B. *X/XX/XXXX*) and we have full legal custody over *him/her*. The named attorney-in-fact is *his/her RELATIONSHIP TO CHILD*.

4. This power of attorney shall commence on the _____ day of _____, 20__, and shall end on the _____ day of _____, 20__. The term of this document may not be longer than one (1) year.

5. We delegate to the attorney-in-fact all of our power and authority regarding the care, custody, and property of each minor child named above including, but not limited to, the right to enroll the child in school, inspect and obtain copies of education and other records concerning the child, the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child.

6. This document may be revoked or withdrawn at any time.

7. Any third person, if acting in good faith, may rely and act on the instruction of and deal with either of the named attorneys-in-fact as a true and lawful attorney-in-fact under this instrument, and upon the receipt of a photocopy of this instrument. Any such third party acting in accordance with the attorney-in-fact's instructions is hereby absolved from any liability to us or our successors in interest.

8. This power of attorney is governed by the laws of the State of Missouri and terminates any previous powers of attorney relating to the care and custody of the above-mentioned minor child.

THIS IS A DURABLE POWER OF ATTORNEY, AND THE AUTHORITY OF OUR ATTORNEYS-IN-FACT SHALL NOT TERMINATE IF WE BECOME DISABLED OR INCAPACITATED, OR IN THE EVENT OF LATER UNCERTAINTY AS TO WHETHER WE ARE DEAD OR ALIVE.

_____ _____

SPOUSE 1 Date

_____ _____

SPOUSE 2 Date

STATE OF MISSOURI)
) ss.:
COUNTY OF _____)

On _____, 2021, before me personally appeared SPOUSE 1 and SPOUSE 2 to me known to be the individuals described in and who executed the foregoing Power of Attorney, and acknowledged that they executed the same as their voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County and State on the date first written above.

_____

_____, Notary Public

WITNESS ATTESTATION

The foregoing Power of Attorney was, on the day and year written above, published and declared by *SPOUSE 1* and *SPOUSE 2*. We, in their presence and at their request, and in the presence of each other, have attested to the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this instrument, *SPOUSE 1* and *SPOUSE 2* were, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

_____ _____

(Witness signature) **(Witness signature)**

_____ _____

(printed name) (printed name)

_____ _____

(street address) (street address)

_____ _____

(city, state zip) (city, state zip)

ACCEPTANCE BY ATTORNEY IN FACT

The undersigned Attorney-in-Fact acknowledges and executes this Power of Attorney, and by such execution does hereby affirm that S/HE accepts the appointment as Attorney-in-Fact and understand the duties under the Power of Attorney and under the law.

_____ _____

NAME OF ATTORNEY IN FACT Date