

ESTATES CODE

TITLE 2. ESTATES OF DECEDENTS; DURABLE POWERS OF ATTORNEY

SUBTITLE P. DURABLE POWERS OF ATTORNEY

CHAPTER 753. REMOVAL OF ATTORNEY IN FACT OR AGENT

Sec. 753.001. PROCEDURE FOR REMOVAL. (a) In this section, "person interested," notwithstanding Section 22.018, has the meaning assigned by Section 1002.018.

(b) The following persons may file a petition under this section:

(1) any person named as a successor attorney in fact or agent in a durable power of attorney; or

(2) if the person with respect to whom a guardianship proceeding has been commenced is a principal who has executed a durable power of attorney, any person interested in the guardianship proceeding, including an attorney ad litem or guardian ad litem.

(c) On the petition of a person described by Subsection (b), a probate court, after a hearing, may enter an order:

(1) removing a person named and serving as an attorney in fact or agent under a durable power of attorney;

(2) authorizing the appointment of a successor attorney in fact or agent who is named in the durable power of attorney if the court finds that the successor attorney in fact or agent is willing to accept the authority granted under the power of attorney; and

(3) if compensation is allowed by the terms of the durable power of attorney, denying all or part of the removed attorney in fact's or agent's compensation.

(d) A court may enter an order under Subsection (c) if the court finds:

(1) that the attorney in fact or agent has breached the attorney in fact's or agent's fiduciary duties to the principal;

(2) that the attorney in fact or agent has materially violated or attempted to violate the terms of the durable power of attorney and the violation or attempted violation results in a material financial loss to the principal;

(3) that the attorney in fact or agent is incapacitated or is otherwise incapable of properly performing the attorney in fact's or agent's duties; or

(4) that the attorney in fact or agent has failed to make an accounting:

(A) that is required by Section 751.104 within the period prescribed by Section 751.105, by other law, or by the terms of the durable power of attorney; or

(B) as ordered by the court.

Added by Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 6, eff. September 1, 2017.

Sec. 753.002. NOTICE TO THIRD PARTIES. Not later than the 21st day after the date the court enters an order removing an attorney in fact or agent and authorizing the appointment of a successor under Section 753.001, the successor attorney in fact or agent shall provide actual notice of the order to each third party that the attorney in fact or agent has reason to believe relied on or may rely on the durable power of attorney.

Added by Acts 2017, 85th Leg., R.S., Ch. 514 (S.B. 39), Sec. 6, eff. September 1, 2017.