

NORTH CAROLINA GENERAL ASSEMBLY
1961 SESSION

CHAPTER 341
SENATE BILL 34

1 AN ACT TO PROVIDE FOR THE APPOINTMENT OF AN ATTORNEY IN FACT WHICH
2 SHALL CONTINUE TO BE EFFECTIVE NOTWITHSTANDING THE INCAPACITY
3 OR INCOMPETENCE OF THE PRINCIPAL THEREIN.
4

5 The General Assembly of North Carolina do enact:
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7 **Section 1.** Chapter 47 of the General Statutes is hereby amended by adding a new
8 Section immediately following Section 47-115 in the 1959 Cumulative Supplement to Volume
9 2A of the General Statutes to be numbered Section 47-115.1 to read as follows:

10 **"§ 47-115.1. Appointment of Attorney in Fact which may be continued in effect**
11 **notwithstanding incapacity or mental incompetence of the principal therein.** (a) Any
12 person twenty-one (21) years of age or more and mentally competent may as principal execute
13 a power of attorney pursuant to the provisions of this Section which shall continue in effect
14 until revoked as hereinafter provided notwithstanding any incapacity or mental incompetence
15 of such principal which occurs after the date of the execution and acknowledgment of the
16 power of attorney.

17 "(b) The power of attorney shall be in writing, signed by the principal under seal,
18 acknowledged by the principal before an officer authorized to take the acknowledgment of
19 deeds whose authority is recognized under the law of North Carolina in effect at the time of
20 such acknowledgment, and delivered to the attorney in fact.

21 "(c) The power of attorney shall contain a statement that it is executed pursuant to the
22 provisions of this Section, or shall contain such other language as shall clearly indicate the
23 intention that the power of attorney shall continue in effect notwithstanding the incapacity or
24 incompetence of the principal.

25 "(d) No power of attorney executed pursuant to the provisions of this Section shall be
26 valid but from the time of registration thereof in the office of the register of deeds of that
27 county in this State designated in the power of attorney, or if no place of registration is
28 designated, in the office of the register of deeds of the county in which the principal has his
29 legal residence at the time of such registration or, if the principal has no legal residence in this
30 State at the time of registration or the attorney in fact is uncertain as to the principal's residence
31 in this State, in some county in the State in which the principal owns property or the county in
32 which one or more of the attorneys in fact reside. Within thirty (30) days after the registration
33 of the power of attorney as above provided, the attorney in fact shall file with the Clerk of
34 Superior Court in the county of such registration a copy of the power of attorney, but failure to
35 file with the clerk shall not affect validity of the instrument.

36 "(e) Every power of attorney executed pursuant to the provisions of this Section shall be
37 revoked by:

- 38 (1) the death of the principal; or
39 (2) the appointment of a guardian or trustee of the property in this State of the
40 principal, and the registration of a certified copy of such appointment in the
41 office of the register of deeds where the power of attorney has been
42 registered; or

1 (3) registration in the office of the register of deeds where the power of attorney
2 has been registered of an instrument of revocation executed and
3 acknowledged by the principal while he is not incapacitated or mentally
4 incompetent, or by the registration in such office of an instrument of
5 revocation executed by any person or corporation who is given such power
6 of revocation in the power of attorney, with proof of service thereof in either
7 case on the attorney in fact in the manner prescribed for service of summons
8 in civil actions.

9 "(f) Any person dealing in good faith with an attorney in fact acting under a power of
10 attorney executed and then in effect under this Section shall be protected to the full extent of
11 the powers conferred upon such attorney in fact, and no person so dealing with such attorney in
12 fact shall be responsible for the misapplication of any money or other property paid or
13 transferred to such attorney in fact.

14 "(g) Every attorney in fact acting under a power of attorney in effect under this Section
15 shall keep full and accurate records of all transactions in which he acts as agent of the principal
16 and of all property of the principal in his hands and the disposition thereof.

17 "(h) If the power of attorney provides for rendering inventories and accounts, such
18 provisions shall govern. Otherwise, the attorney in fact shall file in the office of the Clerk of the
19 Superior Court of the county in which the power of attorney is registered, inventories of the
20 property of the principal in his hands and annual and final accounts of the receipt and
21 disposition of property of the principal and of other transactions in behalf of the principal. The
22 power of the clerk to enforce the filing and his duties in respect to audit and recording of such
23 accounts shall be the same as those in respect to the accounts of administrators, but the fees and
24 charges of the clerk shall be computed or fixed only with relation to property of the principal
25 required to be shown in the accounts and inventories. The fees and charges of the clerk shall be
26 paid by the attorney in fact out of the principal's money or other property and allowed in his
27 accounts. If the powers of an attorney in fact shall terminate for any reason whatever, he, or his
28 executors or administrators, shall have the right to have a judicial settlement of a final account
29 by any procedure available to executors, administrators or guardians.

30 "(i) A power of attorney executed under this Section may contain any provisions, not
31 unlawful, relating to the appointment, resignation, removal and substitution of an attorney in
32 fact, and to the rights, powers, duties and responsibilities of the attorney in fact.

33 "(j) If all attorneys in fact named in the instrument or substituted shall die, or cease to
34 exist, or shall become incapable of acting, and all methods for substitution provided in the
35 instrument have been exhausted, such power of attorney shall cease to be effective. Any
36 substitution by a person authorized to make it shall be in writing signed and acknowledged by
37 such person. Notice of every other substitution shall be in writing signed and acknowledged by
38 the person substituted. No substitution or notice shall be effective until it has been recorded in
39 the office of the register of deeds of the county in which the power of attorney has been
40 recorded."

41 **Sec. 2.** G.S. 2-16 as the same presently appears in Recompiled Volume 1B of the
42 General Statutes is hereby amended by rewriting Subsection 17 thereof to read as follows:

43 "17. To audit the accounts of executors, administrators, collectors, receivers,
44 commissioners, guardians, and attorneys in fact when required by G.S. 47-115.1(h)."

45 **Sec. 3.** G.S. 2-42 as the same presently appears in Recompiled Volume 1B of the
46 General Statutes is hereby amended by rewriting Subsection 12 thereof to read as follows:

47 "12. Record of appointments, which shall contain a record of appointments of executors,
48 administrators, guardians, collectors, and attorneys in fact appointed pursuant to G.S. 47-115.1,
49 with revocations of all such appointments; and on which shall be noted all subsequent
50 proceedings relating thereto."

1 **Sec. 4.** G.S. 2-42 as the same presently appears in Recompiled Volume 1B of the
2 General Statutes is hereby further amended by rewriting Subsection 14 thereof to read as
3 follows:

4 "14. Record of accounts, which shall contain a record of accounts, in which must be
5 recorded inventories and annual accounts of executors, administrators, collectors, trustees
6 under assignments for creditors, guardians, and attorneys in fact when required by
7 G.S. 47-115.1(h), as audited by him from time to time."

8 **Sec. 5.** All laws and clauses of laws in conflict with this Act are hereby repealed.

9 **Sec. 6.** This Act shall be in full force and effect from and after its ratification.

10 In the General Assembly read three times and ratified, this the 3rd day of May,
11 1961.