

D R A F T

FOR DISCUSSION ONLY

# **REVISED UNIFORM DURABLE POWER OF ATTORNEY ACT**

---

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

~~MEETING IN ITS ONE-HUNDRED-AND-THIRTEENTH YEAR  
PORTLAND, OREGON  
JULY 30-AUGUST 6, 2004~~

~~REVISED UNIFORM DURABLE POWER OF ATTORNEY ACT~~

~~WITHOUT PREFATORY NOTE AND PRELIMINARY COMMENTS~~

Copyright ©2004  
By

---

**Draft Dated September 30, 2004**

**Copyright © 2004**  
**by**  
NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

---

*The ideas, concepts and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been ~~passed upon~~ reviewed, debated or approved by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not ~~necessarily~~ reflect the views of the Conference and its Commissioners ~~and or~~ the Drafting Committee and its Members and ~~Reporters~~ Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal made by the National Conference of Commissioners on Uniform State Laws.*

**DRAFTING COMMITTEE TO REVISE  
UNIFORM DURABLE POWER OF ATTORNEY ACT**

JOHN P. BURTON, P.O. Box 1357, 315 Paseo de Peralta, Santa Fe, NM 87501, *Chair*

FRANK W. DAYKIN, 2180 Thomas Jefferson Dr., Reno, NV 89509, *Committee on Style  
Liaison*

KENNETH W. ELLIOTT, 22<sup>nd</sup> Floor, City Place Building, 204 N. Robinson Ave., Oklahoma  
City, OK 73102, *Enactment Plan Coordinator*

DAVID M. ENGLISH, University of Missouri-Columbia School of Law, Missouri Ave. &  
Conley Ave., Columbia, MO 65211

THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box  
865557, Tuscaloosa, AL 35486-0050

NATHANIEL STERLING, Law Revision Commission, Suite D-1, 4000 Middlefield Rd., Palo  
Alto, CA 94303

RICHARD V. WELLMAN, University of Georgia School of Law, Athens, GA 30602

STEVE WILBORN, ~~306 Tower Dr., Shelbyville, KY 40065~~ **718 Shelby St., Unit 2, Frankfort,  
KY 40601**

LINDA S. WHITTON, Valparaiso University School of Law, Wesemann Hall, 656 S.  
Greenwich, Valparaiso, IN 46383, *Reporter*

**EX OFFICIO**

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056,  
Norman, OK 73019, *President*

MARTHA T. STARKEY, Suite 850, 30 S. Meridian St., Indianapolis, IN 46204, *Division Chair*

## AMERICAN BAR ASSOCIATION ADVISORS

WILLIAM P. LAPIANA, New York Law School, 57 Worth St., New York, NY 10013, *Advisor*

ABIGAIL G. KAMPMANN, 153 Treeline, Suite 320, San Antonio, TX 78209-1880, *Real*

*Property, Probate and Trust Law Section Advisor*

~~CHARLES P.~~ **CHARLIE** SABATINO, ABA Commission on Law and Aging, 740 15th St.,

Washington, DC 20005, *ABA Commission on Law and Aging Advisor*

## EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL  
35487-0382, *Executive Director*

WILLIAM J. PIERCE, 1505 Roxbury Road, Ann Arbor, MI 48104, *Executive Director Emeritus*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

211 E. Ontario Street, Suite 1300

Chicago, Illinois 60611

312/915-0195

[www.nccusl.org](http://www.nccusl.org)

**TABLE OF CONTENTS**

## ~~REVISED UNIFORM DURABLE POWER OF ATTORNEY ACT~~

### ~~TABLE OF CONTENTS~~

#### ~~{ARTICLE}~~ **ARTICLE 1**

#### GENERAL PROVISIONS AND DEFINITIONS

SECTION 101. SHORT TITLE .....	1
SECTION 102. DEFINITIONS .....	1
SECTION 103. KNOWLEDGE .....	2
SECTION 104. DURABLE POWER OF ATTORNEY NOT AFFECTED BY INCAPACITY OR LAPSE OF TIME .....	3
SECTION 105. EXECUTION .....	3
SECTION 106. RECORDING .....	3
SECTION 107. DURABLE POWER OF ATTORNEY EXECUTED IN FOREIGN JURISDICTION .....	3
SECTION 108. TWO OR MORE CONCURRENT AGENTS .....	3
SECTION 109. SUCCESSOR AGENTS .....	4
SECTION 110. NOMINATION OF GUARDIAN; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY .....	5

SECTION 111. DISSOLUTION OR ANNULMENT OF PRINCIPAL’S MARRIAGE TO AGENT; COMMENCEMENT OF PROCEEDINGS .....	5
SECTION 112. WHEN EFFECTIVE .....	6
SECTION 113. COMPENSATION OF AGENT .....	7
SECTION 114. REIMBURSEMENT OF AGENT .....	7
SECTION 115. AGENT’S DUTIES .....	7
SECTION 116. EXONERATION .....	8
SECTION 117. JUDICIAL REVIEW .....	9
SECTION 118. AGENT’S LIABILITY .....	<del>10</del> <u>9</u>
SECTION 119. NONCOMPENSATED AGENT; PROTECTION FROM ERRORS IN JUDGMENT .....	10
SECTION 120. AWARD OF ATTORNEY’S FEES AND EXPENSES TO PREVAILING PARTY .....	10
SECTION 121. AGENT’S RESIGNATION; NOTICE .....	10
SECTION 122. PRESUMPTION OF VALIDITY .....	10
SECTION 123. LIABILITY FOR REFUSAL TO ACCEPT AGENT’S AUTHORITY .....	11
SECTION 124. REVOCATION .....	12
SECTION 125. TERMINATION: .....	12
SECTION 126. PRINCIPLES OF LAW AND EQUITY .....	<del>13</del> <u>12</u>

## ~~1~~**ARTICLE 2** **POWERS**

SECTION 201. GENERAL GRANT OF AUTHORITY; POWERS WHICH REQUIRE SPECIFIC AUTHORIZATION .....	<del>14</del> <u>13</u>
SECTION 202. INCORPORATION OF POWERS; SIMILAR OR OVERLAPPING _____POWERS; EXISTING, LATER ACQUIRED, AND FOREIGN INTERESTS; MODIFICATION .....	<del>15</del> <u>14</u>
SECTION 203. CONSTRUCTION OF POWERS GENERALLY .....	<del>15</del> <u>14</u>
SECTION 204. REAL PROPERTY .....	<del>17</del> <u>16</u>
SECTION 205. TANGIBLE PERSONAL PROPERTY .....	<del>18</del> <u>17</u>
SECTION 206. STOCKS AND BONDS .....	<del>20</del> <u>18</u>
SECTION 207. COMMODITIES AND OPTIONS .....	<del>20</del> <u>19</u>
SECTION 208. BANKS AND OTHER FINANCIAL INSTITUTIONS .....	<del>20</del> <u>19</u>
SECTION 209. OPERATION OF BUSINESS .....	<del>22</del> <u>20</u>
SECTION 210. INSURANCE AND ANNUITIES .....	<del>24</del> <u>23</u>
SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIARY RELATIONSHIPS .....	<del>25</del> <u>24</u>
SECTION 212. CLAIMS AND LITIGATION .....	<del>26</del> <u>25</u>
SECTION 213. PERSONAL AND FAMILY MAINTENANCE .....	<del>28</del> <u>26</u>
SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE .....	<del>29</del> <u>27</u>
SECTION 215. RETIREMENT PLANS .....	<del>30</del> <u>28</u>
SECTION 216. TAXES .....	<del>30</del> <u>29</u>
SECTION 217. GIFTS .....	<del>31</del> <u>29</u>

SECTION 218. DELEGATION OF AUTHORITY .....	32 <u>30</u>
SECTION 219. ANY OTHER MATTER .....	32 <u>30</u>

### **{ARTICLE }3**

#### **STATUTORY FORM DURABLE POWER OF ATTORNEY**

SECTION 301. OPTIONAL FORM .....	33 <u>31</u>
----------------------------------	--------------

### **{ARTICLE }4**

#### **MISCELLANEOUS PROVISIONS**

SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION .....	39 <u>37</u>
SECTION 402. ELECTRONIC SIGNATURES .....	39 <u>37</u>
SECTION 403. EFFECTIVE DATE .....	39 <u>37</u>
SECTION 404. EFFECT ON EXISTING POWERS OF ATTORNEY .....	39 <u>37</u>
SECTION 405. REPEAL .....	39 <u>37</u>

1                   **REVISED UNIFORM DURABLE POWER OF ATTORNEY ACT**

2

3                                   **[ARTICLE] 1**

4                                   **GENERAL PROVISIONS AND DEFINITIONS**

5                   **SECTION 101. SHORT TITLE.** This [act] may be cited as the Revised Uniform

6 Durable Power of Attorney Act.

7                   **SECTION 102. DEFINITIONS.** In this [act]:

8                   (1) “Agent” means the person granted authority to act as an attorney in fact for the

9 principal under a durable power of attorney.

10                  (2) “Court” means the [        ] court.

11                  (3) “Durable power of attorney” means a record by which a principal grants to an agent

12 authority that is not terminated by the incapacity of the principal and is executed and

13 acknowledged as provided in Section ~~104~~ 105.

14                  (4) “ Incapacity” means inability of an individual to manage property or business affairs

15 because of an impairment in the ability to receive and evaluate information or make decisions

16 even with the use of technological assistance, or because the individual is missing, detained, or

17 unable to return to the United States. “Incapacitated” has a corresponding meaning.

18                  (5) “Person” means an individual, corporation, business trust, estate, trust, partnership,

19 limited liability company, association, joint venture, public corporation, government,

20 governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

21                  (6) “Principal” means an individual having legal capacity to contract who grants authority

22 under a durable power of attorney.

(7) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(8) “Sign” means, with present intent to authenticate or adopt a record:

(i) to execute or adopt a tangible symbol; or

(ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

(9) “State” means a state of the United States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

### **SECTION 103. KNOWLEDGE; NOTICE.**

(a) Subject to subsection (b), a person has knowledge of a fact involving a durable power of attorney if the person:

(1) has actual knowledge of it;

(2) has received a notice or notification of it; or

(3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization has notice or knowledge of a fact involving a durable power of attorney from the time it is brought to the attention of the individual conducting a transaction involving the durable power of attorney and , in any event, from the time it would have been brought to the individual’s attention if the organization had exercised due diligence. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to the person conducting the transaction and ~~there is reasonable~~

1 compliance the organization reasonably complies with the routines. Due diligence does not  
2 require an individual acting for the organization to communicate information unless the  
3 communication is part of the individual's duties or the individual has reason to know of the  
4 transaction and that the transaction would be materially affected by the information.

5 **SECTION 104. DURABLE POWER OF ATTORNEY NOT AFFECTED BY**  
6 **INCAPACITY OR LAPSE OF TIME.** A power of attorney executed in accordance with  
7 this [act] is durable unless the power of attorney provides that it is terminated by the incapacity  
8 of the principal. All acts performed by an agent pursuant to a durable power of attorney,  
9 including acts performed during any period of incapacity of the principal, have the same effect  
10 and inure to the benefit of and bind the principal and the principal's successors in interest as if  
11 the principal had capacity and performed the acts. Unless the durable power of attorney provides  
12 a time of termination, the authority of an agent is exercisable notwithstanding a lapse of time  
13 since the execution of the durable power of attorney.

14 **SECTION 105. EXECUTION.** The principal must sign a durable power of attorney or  
15 direct another individual to sign on behalf of the principal in the principal's presence, and must  
16 acknowledge the signature before a notary public or other person authorized to take  
17 acknowledgments.

18 **SECTION 106. RECORDING.** A durable power of attorney need not be recorded to  
19 be valid.

20 **SECTION 107. DURABLE POWER OF ATTORNEY EXECUTED IN FOREIGN**  
21 **JURISDICTION.** A durable power of attorney executed in another state or jurisdiction in  
22 compliance with the law of that state or jurisdiction or the law of this state is valid in this state.

1           **SECTION 108. TWO OR MORE CONCURRENT AGENTS.**

2           (a) A principal may designate more than one agent in a durable power of attorney.

3           (b) Unless the durable power of attorney or this section otherwise provides, authority  
4 granted to two or more concurrent agents is exercisable only by their unanimous consent.

5           (c) If prompt action is required to accomplish the purposes of the durable power of  
6 attorney or to avoid irreparable injury to the principal's interests and an agent is unavailable  
7 because of absence, illness, or other temporary incapacity, the other agents may exercise  
8 authority under the durable power of attorney as if they were the only agents. Other persons may  
9 rely on a writing or other record by the agent or agents who exercise authority under this  
10 subsection as conclusive proof that the nonparticipating agent is unavailable.

11          (d) If a vacancy occurs in one or more of the designations of agent under a durable power  
12 of attorney, the remaining agents may exercise authority as if they were the only agents. Other  
13 persons may rely on a writing or other record by the agent or agents who exercise authority under  
14 this subsection as conclusive proof that there is a vacancy in one or more of the designations of  
15 agent under a durable power of attorney.

16          (e) An agent is not liable for the actions of another agent unless the agent participates in,  
17 knowingly acquiesces in, or conceals a breach of fiduciary duty committed by the other agent.

18           **SECTION 109. SUCCESSOR AGENTS.**

19          (a) A principal may designate one or more successor agents to act if an initial or  
20 predecessor agent resigns, dies, becomes incapacitated, is not qualified to serve, or ~~refuses~~  
21 declines to serve. A principal may grant authority to another person, designated by name, by

1 office, or by function, including an initial or successor agent, to designate one or more successor  
2 agents.

3 (b) Unless a durable power of attorney otherwise provides, a successor agent has the  
4 same authority as that granted to an initial agent. Other persons may rely on a writing or other  
5 record by a successor agent who exercises authority under this subsection as conclusive proof  
6 that the authority of the initial or predecessor agent is terminated.

7 (c) A successor agent is not liable for the actions of a predecessor agent.

8 **SECTION 110. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**  
9 **COURT-APPOINTED FIDUCIARY.**

10 (a) In a durable power of attorney, a principal may nominate a conservator, guardian of  
11 the principal's estate, or guardian of the principal's person for consideration by the court if  
12 protective proceedings for the principal's estate or person are thereafter commenced. The court  
13 shall make its appointment in accordance with the principal's most recent nomination in a  
14 durable power of attorney except for good cause or disqualification.

15 (b) If, after the execution of a durable power of attorney, a court appoints a conservator or  
16 guardian of the principal's estate, or other fiduciary charged with the management of all of the  
17 principal's property or all of the property except specified exclusions, the agent is accountable to  
18 the fiduciary as well as to the principal. The agent's authority continues until limited, suspended,  
19 or terminated by the court.

20 **SECTION 111. DISSOLUTION OR ANNULMENT OF PRINCIPAL'S**  
21 **MARRIAGE TO AGENT; COMMENCEMENT OF PROCEEDINGS.** Unless a durable  
22 power of attorney otherwise provides, authority granted to a principal's spouse in a durable

1 power of attorney is terminated upon commencement of proceedings for dissolution or  
2 annulment of the spouse's marriage to the principal. If the spouse's authority is terminated solely  
3 by reason of the commencement of dissolution or annulment proceedings, the authority is revived  
4 by the termination of the proceedings without a court order of dissolution or annulment, or upon  
5 the spouse's remarriage to the principal.

6 **SECTION 112. WHEN EFFECTIVE.**

7 (a) An agent's authority under a durable power of attorney becomes effective when  
8 executed unless the principal otherwise specifies that it is to become effective at a future date, or  
9 upon the occurrence of a future event or contingency.

10 (b) If a durable power of attorney becomes effective upon the occurrence of a future event  
11 or contingency, the principal may designate one or more persons who have authority to determine  
12 conclusively in a writing or other record that the event or contingency has occurred. Other  
13 persons may rely on the determination of a person so designated by the principal without liability  
14 to the principal or to any other person, whether or not the event or contingency has actually  
15 occurred.

16 (c) If the durable power of attorney becomes effective upon the principal's incapacity and  
17 the principal has not designated one or more persons to have authority to determine conclusively  
18 that the principal is incapacitated, the durable power of attorney becomes effective upon a  
19 determination in a writing or other record by a physician that the principal is incapacitated. Other  
20 persons may rely on the determination of the physician without liability to the principal or to any  
21 other person.

(d) Unless a durable power of attorney otherwise provides, a person designated by the principal to make a determination of the principal's incapacity may act as the principal's personal representative pursuant to sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d (sections 262 and 264 of Public Law 104-191) [or successor provisions] and applicable regulations, to access the principal's health care information and communicate with the principal's health care provider or physician.

**SECTION 113. COMPENSATION OF AGENT.** If a durable power of attorney does not specify an agent's compensation, the agent is entitled to compensation that is reasonable under the circumstances.

**SECTION 114. REIMBURSEMENT OF AGENT.** Except as otherwise provided in a durable power of attorney, an agent is entitled to reimbursement of reasonable expenses advanced by the agent on behalf of the principal.

**SECTION 115. AGENT'S DUTIES.**

(a) An agent's exercise of authority granted by the principal under a durable power of attorney creates a fiduciary relationship.

(b) Except as otherwise provided in the durable power of attorney, the duties of an agent, when exercising authority granted by the principal, include the duty to:

- (1) act in good faith and with prudence for the best interest of the principal;
- (2) subject to subsection (c), avoid a conflict of interest that would impair the agent's ability to act in the best interest of the principal;
- (3) keep a complete record of all receipts, disbursements, and transactions conducted on behalf of the principal;

1 (4) perform no act beyond the authority granted by the principal;

2 (5) complete an act undertaken on behalf of the principal and continue acts which  
3 are within the reasonable expectation of the principal and the agent until the durable power of  
4 attorney is terminated or revoked, or the agent dies or resigns pursuant to Section ~~120~~ 121; and

5 (6) take the principal's estate plan into account to the extent known to the agent  
6 and attempt to preserve the plan if consistent with the principal's best interest based on all  
7 relevant factors, including the principal's obligations, need for maintenance, and eligibility for  
8 public benefits or assistance under a statute or governmental regulation, but an agent is not liable  
9 to any beneficiary of the plan for failure to preserve the principal's estate plan unless the agent  
10 acts in bad faith.

11 (c) An agent who acts in good faith and with prudence for the best interest of the  
12 principal is not liable solely because the agent also benefits from the act or has an individual or  
13 conflicting interest in relation to the property or affairs of the principal.

14 (d) Except as otherwise provided in the durable power of attorney, an agent is not  
15 required to disclose receipts, disbursements, or transactions conducted on behalf of the principal  
16 unless requested by the principal, a guardian, conservator, or other fiduciary appointed for the  
17 principal, any governmental agency having regulatory authority to protect the welfare of the  
18 principal, or, upon the death of the principal, by the personal representative or successor in  
19 interest of the principal's estate, or ordered by a court. If so requested, the agent shall comply  
20 within 30 days or provide a writing or other record substantiating why additional time is needed.

21 **SECTION 116. EXONERATION.** A provision in a durable power of attorney  
22 relieving the agent of liability for breach of duty or providing that a person challenging the

1 performance of an agent has the burden of proof concerning the agent's breach of duty is binding  
2 on the principal and the principal's successors in interest except to the extent that the provision:

3 (1) relieves the agent of liability for breach of duty committed in bad faith or with  
4 reckless indifference to the purposes of the durable power of attorney or the interests of the  
5 principal; or

6 (2) was inserted as a result of an abuse by the agent of a confidential or fiduciary  
7 relationship with the principal.

8 **SECTION 117. JUDICIAL REVIEW.** The court may construe a durable power of  
9 attorney, review the agent's conduct, and grant appropriate relief. Persons who may petition the  
10 court include:

11 (1) the principal;

12 (2) a conservator, guardian of the estate, or other fiduciary charged with management of  
13 the principal's property;

14 (3) the principal's spouse, parent, or descendant;

15 (4) a person who ~~would~~ could qualify as an intestate successor of the principal upon the  
16 principal's death;

17 (5) a person named as a beneficiary to receive any property, benefit, or contractual right  
18 on the principal's death, or as a beneficiary of a trust created by or for the principal;

19 (6) a governmental agency having regulatory authority to protect the welfare of the  
20 principal; and

21 (7) the principal's caregiver or any other person who demonstrates sufficient interest in  
22 the principal's welfare.

1           **SECTION 118. AGENT’S LIABILITY.** An agent that violates this [act] or acts  
2 outside the durable power of attorney and causes loss or damage to the principal or the  
3 principal’s successors in interest is liable to the principal or the principal’s successors in interest  
4 for the loss or damage, attorney’s fees, and expenses paid from the principal’s estate for the  
5 defense of the agent in an action to review the agent’s conduct, and any amount awarded under  
6 Section 120 to the prevailing party that brought the action to review the agent’s conduct.

7           **SECTION 119. NONCOMPENSATED AGENT; PROTECTION FROM ERRORS**  
8 **IN JUDGMENT.** A noncompensated agent is not liable to the principal or the principal’s  
9 successors in interest for a loss due to error of judgment or for the act or default of another  
10 person unless the loss results from the agent’s bad faith or intentional wrongdoing.

11           **SECTION 120. AWARD OF ATTORNEY’S FEES AND EXPENSES TO**  
12 **PREVAILING PARTY.** In an action to review an agent’s conduct, the court may award  
13 reasonable attorney’s fees and expenses to the prevailing party.

14           **SECTION 121. AGENT’S RESIGNATION; NOTICE.** An agent may resign by  
15 giving notice to the principal and, if the principal is incapacitated, to:

- 16           (1) the conservator or guardian, if one has been appointed for the principal, and a  
17 concurrent agent or successor agent, if any; or  
18           (2) the principal’s caregiver or other person reasonably believed by the agent to have  
19 sufficient interest in the principal’s welfare, if the principal ~~is incapacitated and~~ has neither a  
20 conservator nor a guardian, and has not named concurrent or successor agents.

21           **SECTION 122. PRESUMPTION OF VALIDITY.** A writing or other record that  
22 purports to be a durable power of attorney signed and acknowledged by the principal is presumed

1 to be a valid durable power of attorney. A person with which an agent seeks to act may not  
2 require an additional or different form of power of attorney for authority granted under the  
3 durable power of attorney presented by the agent. A photocopy or electronically transmitted  
4 facsimile of an original durable power of attorney may be relied upon to the same extent as the  
5 original. A person may rely on the validity of a durable power of attorney or a statement, writing,  
6 or other record made by an agent without investigating whether the durable power of attorney is  
7 valid, the agent is in fact authorized to act, or the agent deals properly with property delivered to  
8 the agent.

9 **SECTION 123. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S**  
10 **AUTHORITY.**

11 (a) Except as otherwise provided in subsection (b), a person that refuses to accept the  
12 authority of an agent to exercise a power granted under a durable power of attorney is liable to  
13 the principal or the principal's successors in interest to the same extent as the person would be  
14 liable had the person refused to accept the authority of a principal who has capacity to act on the  
15 principal's own behalf. The amount recoverable for refusal to accept an agent's authority is the  
16 total of actual damages or \$1000, whichever is greater, plus costs and reasonable attorney's fees.

17 (b) A person that refuses to accept the authority of an agent to exercise a power granted  
18 under a durable power of attorney is not liable under subsection (a) if:

19 (1) the person has knowledge of the revocation of the durable power of attorney  
20 before the exercise of the power;

21 (2) the duration of the authority specified in the durable power of attorney has  
22 expired;

1 (3) the person has knowledge of the death of the principal;

2 (4) the person reasonably believes that the durable power of attorney is not valid  
3 under the law of this state and provides the agent with a writing or other record not more than 10  
4 business days after the refusal, describing the reason that the durable power of attorney is not  
5 valid under the law of this state; or

6 (5) the person reasonably believes that the agent does not have authority to  
7 perform the act requested and provides the agent with a writing or other record not more than 10  
8 business days after the refusal, describing the reason the person believes the agent lacks that  
9 authority under the durable power of attorney.

10 (c) This section does not abrogate any other cause of action or relief at law or in equity or  
11 to which the principal or agent is entitled under another statute or at common law.

12 **SECTION 124. REVOCATION.** Except as otherwise provided in the durable power of  
13 attorney, a durable power of attorney may be revoked only by a writing or other record that  
14 identifies the durable power of attorney revoked and is signed by the principal. A durable power  
15 of attorney that conflicts with an earlier power of attorney revokes the earlier power of attorney  
16 to the extent of the conflict.

17 **SECTION 125. TERMINATION.** Except as otherwise provided in the durable power  
18 of attorney, a durable power of attorney continues until revocation by the principal or the death of  
19 the principal. Revocation by the principal or the death of a principal does not, however,  
20 terminate the agency as to the agent or other person that, without knowledge of the revocation by  
21 the principal or the death of the principal, acts in good faith under the power. An act so

1 performed, unless otherwise invalid or unenforceable, binds the principal and the successors in  
2 interest of the principal.

3 **SECTION 126. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by the  
4 particular provisions of this [act], the principles of law and equity supplement its provisions.  
5

## 6 **[ARTICLE] 2**

### 7 **POWERS**

8 **SECTION 201. GENERAL GRANT OF AUTHORITY; POWERS WHICH**  
9 **REQUIRE SPECIFIC AUTHORIZATION.**

10 (a) Subject to subsection (b), if a principal grants to an agent general authority that is not  
11 limited to one or more express acts, subjects, or purposes for which general authority is granted,  
12 the agent has all the authority to act that the principal would have if the principal had capacity to  
13 contract, other than an act for which the personal action of the principal is required.

14 (b) An agent has authority under a durable power of attorney to do the following only if a  
15 principal expressly grants the specific authority to:

- 16 (1) create, modify, or revoke a trust;
- 17 (2) fund with the principal's property a trust not created by the principal or a person  
18 authorized to create a trust on behalf of the principal;
- 19 (3) make or revoke a gift of the principal's property in trust or otherwise;
- 20 (4) create or change rights of survivorship in the principal's property or in property in  
21 which the principal may have an interest;

(5) designate or change the designation of a beneficiary to receive any property, benefit, or contractual right on the principal's death;

(6) create in the agent or a person to whom the agent owes a legal duty of support the right to receive property, a benefit, or a contractual right in which the principal has an interest; or

(7) delegate, subject to Section 218, the powers granted under the durable power of attorney to another person.

**SECTION 202. INCORPORATION OF POWERS; SIMILAR OR  
OVERLAPPING POWERS; EXISTING, LATER ACQUIRED, AND FOREIGN  
INTERESTS; MODIFICATION.**

(a) An agent has a power described in this [article] if the durable power of attorney incorporates the power by:

(1) referring to a descriptive caption in Sections 204 through 219; or

(2) citing to a specific section of Sections 204 through 219.

(b) A reference in a durable power of attorney to a descriptive caption in Sections 204 through 219 or a citation to a specific section of Sections 204 through 219 incorporates the entire section as if it were set out in full in the durable power of attorney.

(c) If powers are similar or overlap, the broadest power controls.

(d) The powers described in Sections 204 through 219 are exercisable with respect to property or rights the principal has when the durable power of attorney is executed or an interest acquired after execution, whether or not the property is located in this state, and whether or not the powers are exercised or the durable power of attorney is executed in this state.

1 (e) The principal may modify a power incorporated by reference.

2 **SECTION 203. CONSTRUCTION OF POWERS GENERALLY.** By executing a  
3 durable power of attorney that incorporates by reference a power described in Sections 204  
4 through 219, except to the extent modified in the durable power of attorney, the principal  
5 authorizes the agent with respect to that subject to:

6 (1) demand, receive, and obtain by litigation or otherwise, money or other thing of value  
7 to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or  
8 use anything so received for the purposes intended;

9 (2) contract in any manner with any person, on terms agreeable to the agent, to  
10 accomplish a purpose of a transaction, and perform, rescind, reform, release, or modify the  
11 contract or another contract made by or on behalf of the principal;

12 (3) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, security  
13 agreement, lease, notice, check, promissory note, electronic funds transfer, release, or other  
14 instrument or communication the agent considers desirable to accomplish a purpose of a  
15 transaction;

16 (4) prosecute, defend, submit to arbitration or mediation, settle, and propose or accept a  
17 compromise with respect to, a claim existing in favor of or against the principal or intervene in  
18 litigation relating to the claim;

19 (5) seek on the principal's behalf the assistance of a court to carry out an act authorized  
20 by the principal in the durable power of attorney;

21 (6) engage, compensate, and discharge an attorney, accountant, expert witness, or other  
22 assistant;

1 (7) keep appropriate records of each transaction, including an accounting of receipts and  
2 disbursements;

3 (8) prepare, execute, and file a record, report, or other document the agent considers  
4 desirable to safeguard or promote the principal's interest under a statute or governmental  
5 regulation;

6 (9) reimburse the agent for expenditures properly made by the agent in exercising the  
7 powers granted by the durable power of attorney; and

8 (10) in general, do any other lawful act with respect to the power.

9 **SECTION 204. REAL PROPERTY.** Language granting power with respect to real  
10 property authorizes the agent to:

11 (1) accept as a gift or as security for an extension of credit, reject, demand, buy, lease,  
12 receive, or otherwise acquire, an interest in real property or a right incident to real property;

13 (2) sell, exchange, convey with or without covenants, quitclaim, release, surrender,  
14 mortgage, retain title for security, encumber, partition, consent to partitioning, subdivide, apply  
15 for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant  
16 options concerning, lease, sublease, or otherwise dispose of, an interest in real property or a right  
17 incident to real property;

18 (3) release, assign, satisfy, or enforce by litigation or otherwise, a mortgage, deed of trust,  
19 conditional sale contract, encumbrance, lien, or other claim to real property which exists or is  
20 asserted;

21 (4) manage or conserve an interest in real property or a right incident to real property,  
22 owned or claimed to be owned by the principal, including:

1 (A) insuring against a casualty, liability, or loss;

2 (B) obtaining or regaining possession, or protecting the interest or right, by

3 litigation or otherwise;

4 (C) paying, compromising, or contesting taxes or assessments, or applying for and

5 receiving refunds in connection with them; and

6 (D) purchasing supplies, hiring assistance or labor, and making repairs or

7 alterations to the real property;

8 (5) use, develop, alter, replace, remove, erect, or install structures or other improvements

9 upon real property in or incident to which the principal has, or claims to have, an interest or right;

10 (6) participate in a reorganization with respect to real property or a legal entity that owns

11 an interest in or right incident to real property and receive and hold, directly or indirectly, shares

12 of stock or obligations, or other evidences of ownership or debt, received in a plan of

13 reorganization, and act with respect to them, including:

14 (A) selling or otherwise disposing of them;

15 (B) exercising or selling an option, conversion, or similar right with respect to

16 them; and

17 (C) voting them in person or by proxy;

18 (7) change the form of title of an interest in or right incident to real property, except as

19 otherwise provided in Section 201(b); and

20 (8) dedicate to public use, with or without consideration, easements or other real property

21 in which the principal has, or claims to have, an interest.

22 **SECTION 205. TANGIBLE PERSONAL PROPERTY.** Language granting power

1 with respect to tangible personal property authorizes the agent to:

2 (1) accept as a gift or as security for an extension of credit, reject, demand, buy, receive,  
3 or otherwise acquire ownership or possession of tangible personal property or an interest in  
4 tangible personal property;

5 (2) sell, exchange, convey with or without covenants, release, surrender, create a security  
6 interest in, grant options concerning, lease, sublease to others, or otherwise dispose of tangible  
7 personal property or an interest in tangible personal property;

8 (3) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or  
9 other claim on behalf of the principal, with respect to tangible personal property or an interest in  
10 tangible personal property;

11 (4) manage or conserve tangible personal property or an interest in tangible personal  
12 property on behalf of the principal, including:

13 (A) insuring against casualty, liability, or loss;

14 (B) obtaining or regaining possession, or protecting the property or interest, by  
15 litigation or otherwise;

16 (C) paying, compromising, or contesting taxes or assessments or applying for and  
17 receiving refunds in connection with taxes or assessments;

18 (D) moving from place to place;

19 (E) storing for hire or on a gratuitous bailment; and

20 (F) using, altering, and making repairs or alterations; and

21 (5) change the form of title of an interest in tangible personal property, except as  
22 otherwise provided in Section 201(b).

1           **SECTION 206. STOCKS AND BONDS.** Language granting power with respect to  
2 transactions concerning stocks and bonds authorizes the agent to buy, sell, and exchange stocks,  
3 bonds, mutual funds, and all other types of securities and financial instruments, whether held  
4 directly or indirectly, except commodity futures contracts and call and put options on stocks and  
5 stock indexes, receive certificates and other evidences of ownership with respect to securities,  
6 exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and  
7 consent to limitations on the right to vote.

8           **SECTION 207. COMMODITIES AND OPTIONS.** Language granting power with  
9 respect to transactions concerning commodities and options authorizes the agent to buy, sell,  
10 exchange, assign, settle, and exercise commodity futures contracts and call and put options on  
11 stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify,  
12 and terminate option accounts with a broker.

13           **SECTION 208. BANKS AND OTHER FINANCIAL INSTITUTIONS.** Except as  
14 otherwise provided in Section 201(b), language granting power with respect to transactions  
15 concerning banks and other financial institutions authorizes the agent to:

16           (1) continue, modify, and terminate an account or other banking arrangement made by or  
17 on behalf of the principal;

18           (2) establish, modify, and terminate an account or other banking arrangement with a bank,  
19 trust company, savings and loan association, credit union, thrift company, brokerage firm, or  
20 other financial institution selected by the agent;

21           (3) rent a safe deposit box or space in a vault;

22           (4) contract for other services available from a financial institution as the agent considers

1       desirable;

2               (5) withdraw by check, order, or otherwise money or property of the principal deposited  
3       with or left in the custody of a financial institution;

4               (6) receive bank statements, vouchers, notices, and similar documents from a financial  
5       institution and act with respect to them;

6               (7) enter a safe deposit box or vault and withdraw or add to the contents;

7               (8) borrow money at an interest rate agreeable to the agent and pledge as security personal  
8       property of the principal necessary in order to borrow, pay, renew, or extend the time of payment  
9       of a debt of the principal;

10              (9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,  
11       checks, drafts, and other negotiable or nonnegotiable paper of the principal, or payable to the  
12       principal or the principal's order, transfer money, receive the cash or other proceeds of those  
13       transactions, accept a draft drawn by a person upon the principal, and pay it when due;

14              (10) receive for the principal and act upon a sight draft, warehouse receipt, or other  
15       negotiable or nonnegotiable instrument;

16              (11) apply for, receive, and use letters of credit, credit and debit cards, and ~~traveler's~~  
17       traveler's checks from a financial institution and give an indemnity or other agreement in  
18       connection with letters of credit; and

19              (12) consent to an extension of the time of payment with respect to commercial paper or a  
20       financial transaction with a financial institution.

21              **SECTION 209. OPERATION OF BUSINESS.** Language granting power with respect  
22       to operating a business authorizes the agent to:

1 (1) operate, buy, sell, enlarge, reduce, and terminate a business interest;

2 (2) act for a principal, subject to the terms of a partnership agreement or operating  
3 agreement, to:

4 (A) perform a duty or discharge a liability and exercise a right, power, privilege,  
5 or option that the principal has, may have, or claims to have, under the partnership agreement or  
6 operating agreement, whether or not the principal is a partner in a partnership or member of a  
7 limited liability company;

8 (B) enforce the terms of the partnership agreement or operating agreement by  
9 litigation or otherwise; and

10 (C) defend, submit to arbitration, settle, or compromise litigation to which the  
11 principal is a party because of membership in a partnership or limited liability company;

12 (3) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,  
13 privilege, or option the principal has or claims to have as the holder of a bond, share, or other  
14 instrument of similar character and defend, submit to arbitration or mediation, settle, or  
15 compromise litigation to which the principal is a party because of a bond, share, or similar  
16 instrument;

17 (4) with respect to a business controlled by the principal:

18 (A) continue, modify, renegotiate, extend, and terminate a contract made by or on  
19 behalf of the principal with respect to the business before execution of the durable power of  
20 attorney;

21 (B) determine:

22 (i) the location of its operation;

1 (ii) the nature and extent of its business;

2 (iii) the methods of manufacturing, selling, merchandising, financing,  
3 accounting, and advertising employed in its operation;

4 (iv) the amount and types of insurance carried; and

5 (v) the mode of engaging, compensating, and dealing with its accountants,  
6 attorneys, other agents, and employees;

7 (C) change the name or form of organization under which the business is operated  
8 and enter into a partnership agreement or operating agreement with other persons or organize a  
9 corporation or other business entity to take over all or part of the operation of the business; and

10 (D) demand and receive money due or claimed by the principal or on the  
11 principal's behalf in the operation of the business, and control and disburse the money in the  
12 operation of the business;

13 (5) put additional capital into a business in which the principal has an interest;

14 (6) join in a plan of reorganization, consolidation, or merger of the business;

15 (7) sell or liquidate a business or part of it at the time and upon the terms the agent  
16 considers desirable;

17 (8) establish the value of a business under a buy-out agreement to which the principal is a  
18 party;

19 (9) prepare, sign, file, and deliver reports, compilations of information, returns, or other  
20 papers with respect to a business which are required by a governmental agency or instrumentality  
21 or which the agent considers desirable, and make related payments; and

22 (10) pay, compromise, or contest taxes or assessments and perform any other act that the

1 agent considers desirable to protect the principal from illegal or unnecessary taxation, fines,  
2 penalties, or assessments with respect to a business, including attempts to recover, in any manner  
3 permitted by law, money paid before or after the execution of the durable power of attorney.

4 **SECTION 210. INSURANCE AND ANNUITIES.** Language granting power with  
5 respect to insurance and annuities authorizes the agent to:

6 (1) continue, pay the premium or assessment on, modify, rescind, release, or terminate a  
7 contract procured by or on behalf of the principal which insures or provides an annuity to either  
8 the principal or another person, whether or not the principal is a beneficiary under the contract;

9 (2) procure new, different, and additional contracts of insurance and annuities for the  
10 principal and the principal's spouse, children, and other dependents, and select the amount, type  
11 of insurance or annuity, and mode of payment;

12 (3) pay the premium or assessment on, modify, rescind, release, or terminate a contract of  
13 insurance or annuity procured by the agent;

14 (4) designate the beneficiary of the contract, except as otherwise provided in Section  
15 201(b);

16 (5) apply for and receive a loan on the security of a contract of insurance or annuity;

17 (6) surrender and receive the cash surrender value;

18 (7) exercise an election;

19 (8) change the manner of paying premiums;

20 (9) change or convert the type of insurance or annuity, with respect to which the principal  
21 has or claims to have a power described in this section;

22 (10) change the beneficiary of a contract of insurance or annuity, except as otherwise

provided in Section 201(b);

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity; and

(13) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

#### **SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIARY**

**RELATIONSHIPS.** Except as otherwise provided in Section 201(b), language granting power with respect to estates, trusts, and other relationships in which the principal is a beneficiary, authorizes the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

(1) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(2) demand or obtain by litigation or otherwise money or other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

(3) initiate, participate in, and oppose litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in, and oppose litigation to remove, substitute, or surcharge

1 a fiduciary;

2 (5) conserve, invest, disburse, and use anything received for an authorized  
3 purpose; and

4 (6) transfer an interest of the principal in real property, stocks, bonds, accounts  
5 with financial institutions or securities intermediaries, insurance, annuities, and other property, to  
6 the trustee of a revocable trust created by the principal as settlor.

7 **SECTION 212. CLAIMS AND LITIGATION.** Language granting power with respect  
8 to claims and litigation authorizes the agent to:

9 (1) assert and prosecute before a court or administrative agency a claim, a claim for relief,  
10 cause of action, counterclaim, offset, or defense against an individual, organization, or  
11 government, including actions to recover property or other thing of value, to recover damages  
12 sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific  
13 performance, or other relief;

14 (2) bring an action to determine adverse claims, intervene in litigation, and act as amicus  
15 curiae;

16 (3) in connection with litigation, procure an attachment, garnishment, libel, order of  
17 arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to  
18 effect or satisfy a judgment, order, or decree;

19 (4) in connection with litigation, perform any lawful act, including acceptance of tender,  
20 offer of judgment, admission of facts, submission of a controversy on an agreed statement of  
21 facts, consent to examination before trial, and binding the principal in litigation;

22 (5) submit to arbitration or mediation, settle, and propose or accept a compromise with

1 respect to a claim or litigation;

2 (6) waive the issuance and service of process upon the principal, accept service of  
3 process, appear for the principal, designate persons upon whom process directed to the principal  
4 may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings,  
5 seek appellate review, procure and give surety and indemnity bonds, contract and pay for the  
6 preparation and printing of records and briefs, receive and execute and file or deliver a consent,  
7 waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other  
8 instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

9 (7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or  
10 involuntary, concerning the principal or some other person, or with respect to a reorganization,  
11 receivership, or application for the appointment of a receiver or trustee which affects an interest  
12 of the principal in property or other thing of value; and

13 (8) pay a judgment against the principal or a settlement made in connection with litigation  
14 and receive and conserve money or other thing of value paid in settlement of or as proceeds of a  
15 claim or litigation.

16 **SECTION 213. PERSONAL AND FAMILY MAINTENANCE.** Language granting  
17 power with respect to personal and family maintenance authorizes the agent to:

18 (1) perform the acts necessary to maintain the customary standard of living of the  
19 principal, the principal's spouse, children, and other individuals customarily or legally entitled to  
20 be supported by the principal, including providing living quarters by purchase, lease, or other  
21 contract, or paying the operating costs, including interest, amortization payments, repairs, and  
22 taxes, on premises owned by the principal and occupied by those individuals;

1 (2) provide for the individuals described in paragraph (1) normal domestic help, usual  
2 vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and  
3 other current living costs;

4 (3) pay on behalf of the individuals described in paragraph (1) expenses for necessary  
5 medical, dental, and surgical care, hospitalization, and custodial care;

6 (4) act as the principal's personal representative pursuant to sections 1171 through 1179  
7 of the Social Security Act, 42 U.S.C. Section 1320d (sections 262 and 264 of Public Law  
8 104-191) [or successor provisions] and applicable regulations, in making decisions related to the  
9 past, present, or future payment for the provision of health care consented to by the principal or  
10 anyone authorized under the law of this state to consent to health care on behalf of the principal;

11 (5) continue any provision made by the principal, for the individuals described in  
12 paragraph (1), for automobiles or other means of transportation, including registering, licensing,  
13 insuring, and replacing them;

14 (6) maintain or open charge accounts for the convenience of the individuals described in  
15 paragraph (1) and open new accounts the agent considers desirable to accomplish a lawful  
16 purpose; and

17 (7) continue payments incidental to the membership or affiliation of the principal in a  
18 church, club, society, order, or other organization or to continue contributions to those  
19 organizations.

20 **SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL**  
21 **OR MILITARY SERVICE.** Language granting power with respect to benefits from social

1 security, medicare, medicaid, other governmental programs, or civil or military service,  
2 authorizes the agent to:

3 (1) execute vouchers in the name of the principal for allowances and reimbursements  
4 payable by the United States or a foreign government or by a state or subdivision of a state to the  
5 principal, including allowances and reimbursements for transportation of the individuals  
6 described in Section 213(1), and for shipment of their household effects;

7 (2) take possession and order the removal and shipment of property of the principal from  
8 a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or  
9 private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket,  
10 certificate, or other instrument for that purpose;

11 (3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial  
12 or otherwise, to which the principal claims to be entitled under a statute or governmental  
13 regulation;

14 (4) prosecute, defend, submit to arbitration or mediation, settle, and propose or accept a  
15 compromise with respect to any benefit or assistance the principal may be entitled to receive  
16 under a statute or governmental regulation; and

17 (5) receive the financial proceeds of a claim of the type described in paragraph (3) and  
18 conserve, invest, disburse, or use anything so received for a lawful purpose.

19 **SECTION 215. RETIREMENT PLANS.** Except as otherwise provided in Section  
20 201(b), language granting power with respect to retirement plans authorizes the agent to:

21 (1) select a payment option under a retirement plan in which the principal participates,  
22 including a plan for a self-employed individual;

- (2) make voluntary contributions to those plans;
- (3) exercise the investment powers available under a self-directed retirement plan;
- (4) make a rollover of benefits into another retirement plan;
- (5) if authorized by the plan, borrow from, sell assets to, purchase assets from, or request distributions from the plan; and
- (6) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

**SECTION 216. TAXES.** Language granting power with respect to tax matters authorizes the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under the Internal Revenue Code, 26 U.S.C. Section 2032A [or successor provisions], closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the Internal Revenue Service, and any other taxing authority.

1           **SECTION 217. GIFTS.** Except as otherwise provided in Section 201(b), language  
2     granting power with respect to gifts authorizes the agent to make gifts of any of the principal's  
3     property to individuals or organizations within the limits of the annual exclusion under the  
4     Internal Revenue Code, 26 U.S.C. Section 2503(b) [or successor provisions], as the agent  
5     determines to be in the principal's best interest based on all relevant factors, including:

- 6           (1) the value and nature of the principal's property;
- 7           (2) the principal's foreseeable obligations and need for maintenance;
- 8           (3) minimization of income, estate, inheritance, generation-skipping transfer or gift taxes;
- 9           (4) eligibility for public benefits or assistance under a statute or governmental regulation;
- 10     and
- 11           (5) the principal's personal history of making or joining in ~~the~~ making gifts ~~while living~~.

12           **SECTION 218. DELEGATION OF AUTHORITY.** Language granting power with  
13     respect to delegation of authority authorizes the agent to delegate revocably by writing or other  
14     record to one or more persons a power granted to the agent by the principal. The agent remains  
15     responsible to the principal for the exercise or nonexercise of the delegated authority.

16           **SECTION 219. ANY OTHER MATTER.** Except as otherwise provided in Section  
17     201(b), language granting power with respect to any other matter authorizes the agent to exercise  
18     all possible powers of the principal with respect to all possible types of property and interests in  
19     property except to the extent the principal has limited the generality of the grant by withholding a  
20     specific power or by specifying another limitation in the durable power of attorney.

1

2

3

4

5

6 **[ARTICLE] 3**

7

8 **STATUTORY FORM DURABLE POWER OF ATTORNEY**

9

10 **SECTION 301. OPTIONAL FORM.** The following form may be used to create a

11

12 durable power of attorney that has the meaning and effect prescribed by this [act].

13

14 **[INSERT NAME OF JURISDICTION]**

15 **STATUTORY FORM DURABLE POWER OF ATTORNEY**

16 **OF**

17 \_\_\_\_\_

18 **(insert your name)**

19

20 **IMPORTANT INFORMATION**

21

22 You are the Principal. You are using this durable power of attorney to grant

23 authority to another person, known as your agent, to make decisions regarding your

24 money and property.

25

26 Your agent will have the powers that you have indicated below to make

27 decisions about your money and property without advance notice to you or approval

28 by you. The powers that you give to your agent are explained more fully in Article

29 2 of the Revised Uniform Durable Power of Attorney Act [insert citation to state

30 statute here].

31

1 This durable power of attorney does not authorize anyone to make medical or  
2 other health care decisions for you. You may sign a separate document to grant  
3 authority for medical and health care decisions.  
4

5 The authority granted in this durable power of attorney will be effective even  
6 if you no longer have the capacity to make your own decisions about your money and  
7 property. The authority will terminate on your death unless you revoke it earlier.  
8

9 If you have any questions about this document or the powers you are granting  
10 to your agent, you should obtain legal advice.  
11

12 **DESIGNATION OF AGENT:**

13 I designate the following person(s) as my agent(s):  
14  
15  
16  
17  
18  
19  
20  
21

22 (Insert full name and address of the person(s) designated.)  
23

24 If I have designated more than one agent, I instruct that my agents:  
25

26 (CROSS OUT the option that you DO NOT want. If you fail to cross out an option, the  
27 agents must act together.)  
28

- 29 • may act INDEPENDENTLY.  
30 • must act TOGETHER.  
31

32 **DESIGNATION OF SUCCESSOR AGENT:**

33 I designate as my successor agent(s):  
34  
35  
36  
37  
38  
39  
40  
41

42 (Insert full name and address of the person(s) designated.)

1  
2 My successor agent(s) may act for me if every agent first designated is incapacitated or not  
3 qualified to serve, refuses to serve, or has resigned or died.  
4

5 If I have designated more than one successor agent, I instruct that:  
6

7 (CROSS OUT the TWO options that you DO NOT want. If you fail to cross out two options,  
8 the successor agents must act alone and successively in the order named.)  
9

- 10 • each successor agent must act ALONE AND SUCCESSIVELY in the order named.  
11 • each successor agent may act INDEPENDENTLY.  
12 • all successor agents must act TOGETHER.  
13  
14  
15

16 **GRANT OF POWERS:**  
17

18 I grant ~~to~~ my agent ~~power~~ authority with respect to the following subjects as defined in  
19 Article 2 of the Revised Uniform Durable Power of Attorney Act of this jurisdiction except for the  
20 power(s) that I have CROSSED OUT below:  
21

- 22 • Real Property  
23 • Tangible Personal Property  
24 • Stocks and Bonds  
25 • Commodities and Options  
26 • Banks and Other Financial Institutions  
27 • Operation of Business  
28 • Insurance and Annuities  
29 • Estates, Trusts, and Other Beneficiary Relationships  
30 • Claims and Litigation  
31 • Personal and Family Maintenance  
32 • Benefits from Government Programs or Military Service  
33 • Retirement Plans  
34 • Taxes  
35 • Any Other Matter  
36

37 I understand that the foregoing grant of powers DOES NOT authorize my agent to do any of  
38 the following specific acts UNLESS I have also ~~initialed~~ **INITIALED** the blank space (\_\_\_\_) in front  
39 of the power to act. I grant ~~power~~ authority to my agent to perform ONLY the specific acts  
40 initialed, as those acts may be further defined or limited by the Revised Uniform Durable Power of  
41 Attorney Act of this jurisdiction:  
42

43 (\_\_\_\_) create, modify, or revoke a trust.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- 35
- 36
- 37
- 38
- 39
- 40
- 41
- 42
- 43

[illegible]

24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43

(CROSS OUT the THREE options that you DO NOT want. If you do not cross out three options, this durable power of attorney will become effective when you sign it.)

- [illegible]

(          ) • upon my incapacity as determined by a physician.

( ) • upon the following future date ~~or event~~, or event, as determined by the person(s) indicated:

(State the future date or event that you intend to activate this durable power of attorney.)  
attorney, and the full name and address of any person(s) you wish to determine that the stated event has occurred.)

**INDEMNIFICATION OF PERSONS WHO RELY ON THIS DURABLE POWER OF ATTORNEY:**

I agree that any person that has knowledge of this durable power of attorney may rely upon its validity. Termination or revocation of this durable power of attorney is not effective as to my agent or other person who relies upon it without knowledge of the termination or revocation. I agree to indemnify any person for claims that may arise against that person because of reliance on my durable power of attorney.

**SIGNATURE AND ACKNOWLEDGMENT:**

Date: \_\_\_\_\_ .

\_\_\_\_\_  
Your signature

\_\_\_\_\_  
Your name printed

\_\_\_\_\_  
Your address

State of \_\_\_\_\_  
[County] of \_\_\_\_\_

1 This document was acknowledged before me on \_\_\_\_\_ (date),  
2 by \_\_\_\_\_ (name of Principal).  
3  
4

5 \_\_\_\_\_ (Seal, if any)  
6 Signature of Notary  
7  
8  
9

10 [This document prepared by:  
11  
12  
13 \_\_\_\_\_]  
14

15 **IMPORTANT INFORMATION FOR AGENT:**  
16

17 As the Agent, once you exercise authority granted to you by the Principal, a  
18 fiduciary relationship is created between you and the Principal. Unless otherwise  
19 modified in this durable power of attorney, your duties include a duty to:  
20

- 21 (1) Act in good faith and with prudence for the best interest of the Principal;
- 22 (2) Avoid conflicts of interest that would impair your ability to act in the  
23 best interest of the Principal;
- 24 (3) Keep a complete record of all receipts, disbursements, and transactions  
25 conducted on behalf of the Principal;
- 26 (4) Do nothing beyond the authority granted in this durable power of  
27 attorney;
- 28 (5) Complete an act undertaken on behalf of the Principal and continue  
29 acts within the reasonable expectation of yourself and the Principal until  
30 this durable power of attorney is terminated or revoked, or you resign;  
31 and
- 32 (6) Preserve the Principal's estate plan to the extent known to you when  
33 preservation of the estate plan is consistent with the Principal's best  
34 interest.  
35

36 If you violate the Revised Uniform Durable Power of Attorney Act or act  
37 outside the scope of this durable power of attorney, you may be liable for the loss or  
38 damage caused by your violation together with reasonable attorney's fees and  
39 expenses.

1           In any act performed under the authority of the durable power of attorney as an  
2 agent for the Principal, you must disclose your designation as the agent of the  
3 Principal by writing or printing the name of the Principal and signing your own name  
4 as “Agent” in the following manner: Principal’s Name by (Your Signature) as Agent.  
5

6           If there is anything about this document or your duties that you do not  
7 understand, you should obtain legal advice.  
8

1  
2 **[ARTICLE] 4**

3 **MISCELLANEOUS PROVISIONS**

4 **SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This  
5 [act] must be applied and construed to effectuate its general purpose to make uniform the law with  
6 respect to the subject matter of this [act] among states enacting it.

7 **SECTION 402. ELECTRONIC SIGNATURES.** This [act] modifies, limits, and  
8 supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.  
9 Section 7001 et seq., except that nothing in this [act] modifies, limits, or supersedes Section  
10 7001(c) of that Act or authorizes electronic delivery of any of the notices described in Section  
11 7003(b) of that Act.

12 **SECTION 403. EFFECTIVE DATE.** This [act] takes effect \_\_\_\_\_.

13 **SECTION 404. EFFECT ON EXISTING DURABLE POWERS OF ATTORNEY.**

14 (a) A durable power of attorney is valid if it:

15 (1) complies with this [act]; or

16 (2) is executed before the effective date of this [act] and valid under common law  
17 or statute existing at the time of execution.

18 (b) This [act] does not invalidate a durable power of attorney executed or an act of an  
19 agent performed, or affect a claim, right, or remedy that accrued, before the effective date of this  
20 [act].

21 **SECTION 405. REPEAL.** The following acts and parts of acts are repealed:

22 (1) Uniform Durable Power of Attorney Act.

1           (2) Uniform Statutory Form Power of Attorney Act.

2           **(3) Article 5, Part 5 of the Uniform Probate Code.**

3