

D R A F T

FOR DISCUSSION ONLY

UNIFORM POWER OF ATTORNEY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

For Drafting Committee Meeting, February 10-12, 2006

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WITH PREFATORY NOTE AND WITHOUT COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM POWER OF ATTORNEY ACT

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UNIFORM POWER OF ATTORNEY ACT

Prefatory Note

The catalyst for the Uniform Power of Attorney Act (“the Act”) was a national study in 2002 which revealed growing divergence in state power of attorney legislation. The original Uniform Durable Power of Attorney Act (“Original Act”), last amended in 1987, was at one time followed by all but a few jurisdictions. Despite initial uniformity, the study found that a majority of states had enacted non-uniform provisions to deal with specific matters upon which the Original Act is silent. The topics about which there was increasing divergence included: 1) the authority of multiple agents; 2) the authority of a later-appointed fiduciary or guardian; 3) the impact of dissolution or annulment of the principal’s marriage to the agent; 4) activation of contingent powers; 5) the authority to make gifts; and 6) standards for agent conduct and liability. Other topics about which states had legislated, although not necessarily in a divergent manner, included: successor agents, execution requirements, portability, sanctions for dishonor of a power of attorney, and restrictions on powers that have the potential to dissipate a principal’s property or alter a principal’s estate plan.

To ascertain whether there was actual divergence of opinion about default rules for powers of attorney or only the lack of a detailed uniform model, the Joint Editorial Board for Uniform Trust and Estate Acts (JEB) conducted a national survey. The survey was distributed to probate and elder law sections of all state bar associations, to the fellows of the American College of Trust and Estate Counsel, the leadership of the ABA Section of Real Property, Probate and Trust Law and the National Academy of Elder Law Attorneys, as well as to special interest list serves of the ABA Commission on Law and Aging. Forty-four jurisdictions were represented in the 371 surveys returned.

The survey responses demonstrated a consensus of opinion in excess of seventy percent that a power of attorney statute should:

- (1) provide for confirmation that contingent powers are activated;
- (2) revoke a spouse-agent’s authority upon the dissolution or annulment of the marriage to the principal;
- (3) include a portability provision;
- (4) require gift making authority to be expressly stated in the grant of authority;
- (5) provide a default standard for fiduciary duties;
- (6) permit the principal to alter the default fiduciary standard;
- (7) require notice by an agent when the agent is no longer willing or able to act;
- (8) include safeguards against abuse by the agent;
- (9) include remedies and sanctions for abuse by the agent;
- (10) protect the reliance of other persons on a power of attorney; and
- (11) include remedies and sanctions for refusal of other persons to honor a power of attorney.

Informed by the study and survey results, the Conference drafted the Act to reflect both state legislative trends and collective best practices. While the Act is primarily a set of default rules that can be altered by specific provisions within a power of attorney, the Act also contains certain safeguards for the protection of an incapacitated principal. The Act was drafted to strike a balance between the need for flexibility and acceptance of an agent's authority and the need to prevent and redress abuse.

Among the provisions that enhance flexibility are the statutory definitions of powers in Article 2 which can be incorporated by reference in an individually drafted power of attorney or selected for inclusion on the optional statutory form provided in Article 3. The statutory definitions of enumerated powers are an updated version of those in the Uniform Statutory Form Power of Attorney Act (1988), which the Act supersedes. The national study found that seventeen jurisdictions had adopted some type of statutory form power of attorney. The decision to include a statutory form power of attorney in the Act was based on this trend and the proliferation of power of attorney forms currently available to the public.

Sections 118 and 119 of the Act address the problem of persons refusing to accept an agent's authority. Section 118 provides protection from liability for persons that in good faith accept the agent's authority. This section also prohibits such persons from requiring a different form of power of attorney. Section 119 sanctions refusal to accept an agent's authority unless the refusal meets limited statutory exceptions.

In exchange for mandated acceptance of an agent's authority, the Act does not require persons that deal with an agent to investigate the agent or the agent's actions. Instead, safeguards against abuse are provided through heightened requirements for granting authority that could dissipate the principal's property or alter the principal's estate plan (Section 201(c)), provisions that set out the agent's duties and liabilities (Sections 113 and 116) and by specification of the categories of persons that have standing to request judicial review of the agent's conduct (Section 115). A provision that gives the reviewing court discretion to award reasonable attorney's fees to the prevailing party (Section 115(d)) serves to both deter frivolous actions and facilitate redress where warranted.

Overview of the Uniform Power of Attorney Act

The Act consists of 4 articles. The basic substance of the Act is located in Articles 1 and 2. Article 3 contains the optional statutory form and Article 4 consists of miscellaneous provisions dealing with general application of the Act and repeal of certain prior acts. The following is a brief overview.

Article 1 – General Provisions and Definitions – Section 102 lists definitions which are useful in interpretation of the Act. Of particular note is the definition of “incapacity” which replaces the term “disability” used in the Original Act. The definition of “incapacity” is

consistent with the standard for appointment of a conservator under Section 401 of the Uniform Guardianship and Protective Proceedings Act as amended in 1997. Another significant change in terminology from the Original Act is the use of “agent” in place of the term “attorney in fact”. The term “agent” was also used in the Uniform Statutory Form Power of Attorney Act and is intended to clarify confusion in the lay public about the meaning of “attorney in fact.” Section 103 provides that the Act is to apply broadly to all powers of attorney, but excepts from the Act powers of attorney for health care and certain specialized powers such as those coupled with an interest or dealing with proxy voting.

Another innovation is the presumption of durability contained in Section 104. This change reflects the view that most principals prefer their powers of attorney to be durable rather than non-durable. No longer must a durable power of attorney include language indicating that the authority conferred is exercisable notwithstanding the principal’s subsequent disability or incapacity. A power of attorney executed under the Act is durable unless it contains express language indicating otherwise. While the Original Act was silent on execution requirements for a power of attorney, Section 105 requires the principal’s signature and provides that an acknowledged signature is presumed genuine. Section 106 is a portability provision for powers of attorney not executed under the Act and Section 107 states the guidelines for interpretation of such powers.

Section 108 addresses the relationship of the agent to a later court-appointed fiduciary. The Original Act conferred upon a conservator or other later-appointed fiduciary the same power to revoke or amend the power of attorney as the principal would have had prior to incapacity. In contrast, the Act reserves this power to the court and states that the agent’s authority continues until limited, suspended, or terminated by the court. This approach reflects greater deference for the previously expressed preferences of the principal and is consistent with the Uniform Guardianship and Protective Proceedings Act.

The default rule for when a power of attorney becomes effective is stated in Section 109. Unless the principal specifies that it is to become effective upon a future date, event, or contingency, the authority of an agent under a power of attorney becomes effective when the power is executed. Section 109 permits the principal to designate who may determine when contingent powers are triggered. The determination of a person designated by the principal may be considered conclusive by those relying on the power of attorney. If the trigger for contingent powers is the principal’s incapacity, Section 109 provides that the person designated to make that determination has the authority to act as the principal’s personal representative under the Health Insurance Portability and Accountability Act (HIPAA) for purposes of accessing the principal’s health care information and communicating with the principal’s health care provider. This provision does not, however, confer upon an agent the authority to make health care decisions for the principal. If the trigger for contingent powers is incapacity but the principal has not designated anyone to make the determination, or the person authorized is unable or unwilling to make the determination, the statute provides for determination by a physician or licensed psychologist that the principal’s ability to manage property or business affairs is impaired, or by

an attorney-at-law, judge, or government official that the principal is missing, detained, or unable to return to the United States.

The bases for termination of a power of attorney are covered in Section 110. In response to concerns expressed in the JEB survey, the Act provides as the default rule that authority granted to a principal's spouse is revoked upon the commencement of proceedings for legal separation, marital dissolution or annulment.

Sections 111 through 117 address matters related to the agent, including default rules for compensation, reimbursement, agent duties and liability. Section 114 provides that a principal may lower the standard of liability for agent conduct subject to a minimum level of accountability for actions taken dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney. Section 115 sets out a comprehensive list of persons that may petition the court to review the agent's conduct. An agent may resign by following the notice procedures described in Section 117.

Sections 118 and 119 are included in the Act to address the frequently reported problem of persons that refuse to accept an agent's authority. Section 118 protects persons that accept an agent's authority without actual knowledge that a power of attorney is revoked, terminated, or invalid or that the agent is exceeding or improperly exercising the agent's powers. In exchange for this protection, Section 119 imposes liability for refusal to accept an agent's authority subject to limited exceptions.

Section 120 clarifies that the Act is supplemented by existing bodies of law, including the common law and principles of equity. While the principles of common law and equity may supplement the provisions of the Act, the Uniform Power of Attorney Act preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies. Section 121 clarifies that the remedies under the Act are not exclusive and do not abrogate any other cause of action or remedy that may be available under the law of the enacting jurisdiction.

Article 2 – Powers – The Act offers the drafting attorney enhanced flexibility whether drafting an individually tailored power of attorney or using the statutory form. Like the Uniform Statutory Form Power of Attorney Act, Article 2 of the Act sets forth detailed descriptions of powers that can be conveyed to an agent. Section 202 provides that these powers can be incorporated by reference using the short descriptive captions or section numbers in Article 2. These definitions also provide the meaning for the powers enumerated on the optional statutory form in Article 3. Section 202 further states that these powers may be modified in the power of attorney.

Article 2 also addresses concerns about the grant of specific powers that could be used to dissipate the principal's property or alter the principal's estate plan. Section 201(c) lists the powers that cannot be implied from a general grant of authority, but which must instead be

delegated through express inclusion in the power of attorney. Section 201(b) clarifies that unless a power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not create in the agent or in a person to whom the agent owes a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

Article 3 – Statutory Form Power of Attorney – The optional form in Article 3 is designed for use by lawyers as well as lay persons. It contains, in plain language, instructions to the principal and agent. Step-by-step prompts are given for designation of the agent, successor agents, and the grant of powers. In the grant of powers section, the principal must initial the powers that the principal wishes to delegate to the agent. There is a separate list of the Section 201(c) powers, preceded by a warning to the principal about the extraordinary scope of those powers.

Article 4 – Miscellaneous Provisions – The miscellaneous provisions in Article 4 clarify that the Act is intended to have the widest possible effect within constitutional limitations. Enacting jurisdictions should repeal their existing power of attorney statutes, including, if applicable, the Uniform Durable Power of Attorney Act, The Uniform Statutory Form Power of Attorney Act, and Article 5, Part 5 of the Uniform Probate Code.

1 **UNIFORM POWER OF ATTORNEY ACT**

2

3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS AND DEFINITIONS**

5

6 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Power of

7 Attorney Act.

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

9 (1) “Agent” means a person granted authority to act for a principal under a power

10 of attorney. The term includes an original agent, coagent, successor agent, and a person to

11 which an agent’s authority is delegated.

12 (2) “Durable” means is not terminated by a principal’s incapacity.

13 (3) “Good faith” means honesty in fact.

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

15 affairs because:

16 (A) of an impairment in the ability to receive and evaluate information or

17 make or communicate decisions even with the use of technological assistance; or

18 (B) the individual is:

19 (i) missing;

20 (ii) detained; or

21 (iii) outside the United States and unable to return.

22 (5) “Person” means an individual; corporation, business trust, estate, trust,

1 partnership, limited liability company, association, joint venture, public corporation; government
2 or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

3 (6) “Power of attorney” means a signed writing or other record denominated as a
4 power of attorney in which a principal grants authority to an agent to act for the principal.

5 (7) “Principal” means an individual who grants authority to an agent in a power
6 of attorney.

7 (8) “Property” means anything that may be the subject of ownership, whether real
8 or personal, or legal or equitable, or any interest or right therein.

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

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

12 (A) to execute or adopt a tangible symbol; or

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

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

18 **SECTION 103. SCOPE, EXCEPTIONS, AND EXCLUSIONS.** This [act] applies to
19 all powers of attorney except:

20 (1) a power to the extent it is coupled with an interest in the subject of the power,
21 including a power given to or for the benefit of a creditor in connection with a credit transaction;

22 (2) a power to make health-care decisions;

(3) a proxy to exercise voting rights or management rights with respect to an entity; and

(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 104. POWER OF ATTORNEY IS DURABLE. A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal.

SECTION 105. EXECUTION OF POWER OF ATTORNEY. A power of attorney must be signed by the principal or by another individual directed by the principal to sign the principal's name on the power of attorney in the principal's presence. The signature is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized to take acknowledgments.

SECTION 106. VALIDITY OF POWER OF ATTORNEY.

(a) A power of attorney executed in this state [on or after the effective date of this [act]] is valid and enforceable if its execution complies with Section 105.

(b) A power of attorney executed in this state [before the effective date of this [act]] is valid and enforceable if its execution complied with the law of this state as it existed at the time of execution.

(c) A power of attorney executed other than in this state is valid and enforceable in this state if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction that the principal intended to govern the power of attorney;

(2) the law of the jurisdiction in which the power of attorney was

1 executed; or

2 (3) the requirements for a military power of attorney pursuant to 10
3 U.S.C. Section 1044b [as amended] for a military power of attorney.

4 **SECTION 107. INTERPRETATION OF POWER OF ATTORNEY.** A power of
5 attorney must be interpreted under the law of the jurisdiction which at the time of execution the
6 principal intended govern the power of attorney. If the law of that jurisdiction conflicts with this
7 [act], the law of that jurisdiction controls unless prohibited or restricted by the public policy of
8 this state. This [act] may not be applied to enlarge the scope of authority granted to an agent in a
9 power of attorney.

10 **SECTION 108. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**
11 **COURT-APPOINTED FIDUCIARY.**

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

17 (b) If, after a principal executes a power of attorney, a court appoints a
18 [conservator or guardian of the principal's estate] or other fiduciary charged with the
19 management of some or all of the principal's property, the agent is accountable to the fiduciary as
20 well as to the principal. [The power of attorney is not terminated and the agent's authority
21 continues unless limited, suspended, or terminated by the court.]

22 **SECTION 109. WHEN POWER OF ATTORNEY EFFECTIVE.**

1 (a) A power of attorney is effective when executed unless the principal provides
2 in the power of attorney that it is to become effective at a future date or upon the occurrence of a
3 future event or contingency.

4 (b) If a power of attorney is to become effective upon the occurrence of a future
5 event or contingency, the principal, in the power of attorney, may authorize one or more persons
6 to determine in a writing or other record that the event or contingency has occurred.

7 (c) If a power of attorney is to become effective upon the principal's incapacity
8 and the principal has not authorized a person to determine that the principal is incapacitated, or
9 the person authorized is unable or unwilling to make the determination, the power of attorney
10 becomes effective upon a determination in a writing or other record by:

11 (1) a physician [or licensed psychologist] that the principal is unable to
12 manage property or business affairs because of an impairment in the principal's ability to receive
13 and evaluate information or make or communicate decisions even with the use of technological
14 assistance; or

15 (2) an attorney at law, judge, or governmental official that the principal is:

16 (A) missing;

17 (B) detained; or

18 (C) outside the United States and unable to return.

19 (d) A person authorized by the principal in the power of attorney to determine
20 that the principal is incapacitated may act as the principal's personal representative pursuant to
21 the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the
22 Social Security Act, 42 U.S.C. Section 1320d [as amended] and applicable regulations, to obtain

1 access to the principal's health care information and communicate with the principal's health-
2 care provider.

3 **SECTION 110. TERMINATION OF POWER OF ATTORNEY.**

4 (a) A power of attorney terminates when:

- 5 (1) the principal dies;
- 6 (2) the principal becomes incapacitated, if the power of attorney is not
7 durable;
- 8 (3) the principal revokes the power of attorney;
- 9 (4) the power of attorney provides it will terminate;
- 10 (5) the purpose of the power of attorney is accomplished; or
- 11 (6) the principal revokes the agent's authority or the agent dies, becomes
12 incapacitated, or resigns and the power of attorney does not provide for another agent to act
13 under the power of attorney.

14 (b) An agent's authority terminates when:

- 15 (1) the principal revokes the agent's authority;
- 16 (2) the agent dies, becomes incapacitated, or resigns;
- 17 (3) proceedings are commenced for the [dissolution] or annulment of the
18 agent's marriage to the principal [or their legal separation], unless the power of attorney
19 otherwise provides; or
- 20 (4) the power of attorney terminates.

21 (c) Unless a power of attorney otherwise provides, an agent's authority is
22 exercisable until the power of attorney terminates notwithstanding a lapse of time since the

1 execution of the power of attorney.

2 (d) Termination of an agent's authority or of a power of attorney is not effective
3 as to an agent or other person that, without actual knowledge of the termination, acts in good
4 faith under the power of attorney. An act so performed, unless otherwise invalid or
5 unenforceable, binds the principal and the principal's successors in interest.

6 (e) Incapacity of the principal of a power of attorney that is not durable does not
7 revoke or terminate the power of attorney as to an agent or other person that, without actual
8 knowledge of the incapacity, acts in good faith under the power of attorney. An act so
9 performed, unless otherwise invalid or unenforceable, binds the principal and the principal's
10 successors in interest.

11 (f) The execution of a power of attorney does not revoke a power of attorney
12 previously executed by the principal unless the subsequent power of attorney provides that the
13 previous power of attorney is revoked or that all other powers of attorney are revoked.

14 **SECTION 111. COAGENTS AND SUCCESSOR AGENTS.**

15 (a) A principal may designate two or more persons to act as coagents. Unless a
16 power of attorney otherwise provides:

17 (1) authority granted to coagents is exercisable only by their majority
18 consent;

19 (2) if prompt action is required to accomplish a purpose of the power of
20 attorney and to avoid irreparable harm to the principal's interests and a coagent is unavailable
21 because of absence, illness, or other temporary incapacity, the other coagent or coagents may act
22 for the principal; and

1 (3) if a coagent resigns, dies, becomes incapacitated, is not qualified to
2 serve, or declines to serve, the remaining coagent or coagents may act for the principal.

3 (b) A principal may designate one or more successor agents to act if an agent
4 resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal
5 may grant to an agent or other person designated by name, office, or function, authority to
6 designate one or more successor agents. Unless a power of attorney otherwise provides, a
7 successor agent:

8 (1) has the same authority as that granted to the original agent; and

9 (2) may not act until all predecessor agents have resigned, died, become
10 incapacitated, are no longer qualified to serve, or have declined to serve.

11 (c) An agent is not liable for the actions of another agent, including a predecessor
12 agent, unless the agent participates in or conceals a breach of fiduciary duty committed by the
13 other agent. An agent that has actual knowledge of a breach or imminent breach of fiduciary
14 duty by a coagent or another agent shall notify the principal and, if the principal is incapacitated,
15 take any action reasonably appropriate in the circumstances to safeguard the principal's best
16 interest.

17 **SECTION 112. REIMBURSEMENT AND COMPENSATION OF AGENT.** Unless
18 a power of attorney otherwise provides, an agent is entitled to reimbursement of expenses
19 reasonably incurred on behalf of the principal and to compensation that is reasonable under the
20 circumstances.

21 **SECTION 113. AGENT'S DUTIES.**

22 (a) A person accepts appointment as an agent under a power of attorney by

1 exercising powers or performing duties as an agent or by any other assertion or conduct
2 indicating acceptance.

3 (b) Except as otherwise provided in the power of attorney, an agent that has
4 accepted appointment shall:

5 (1) act loyally for the principal's benefit;

6 (2) act in accordance with the principal's reasonable expectations to the
7 extent actually known by the agent and, otherwise, in the principal's best interest;

8 (3) act with the care, competence, and diligence ordinarily exercised by
9 agents in similar circumstances;

10 (4) act only within the scope of authority granted in the power of attorney;

11 (5) not create a conflict of interest that impairs the agent's ability to act
12 impartially in the principal's best interest;

13 (6) keep a complete record of all receipts, disbursements, and transactions
14 made on behalf of the principal;

15 (7) cooperate with a person that has authority to make health-care
16 decisions for the principal to carry out the principal's reasonable expectations to the extent
17 actually known by the agent and, otherwise, to act in what the agent reasonably believes to be the
18 principal's best interest; and

19 (8) attempt to preserve the principal's estate plan, to the extent actually
20 known by the agent, if preserving the plan is consistent with the principal's best interest based on
21 all relevant factors, including:

22 (A) the value and nature of the principal's property;

1 (B) the principal's foreseeable obligations and need for
2 maintenance;

3 (C) minimization of taxes, including income, estate, inheritance,
4 generation-skipping transfer, or gift taxes; and

5 (D) eligibility for a benefit, program or assistance under a statute
6 or governmental regulation.

7 (c) An agent that acts in good faith is not liable to any beneficiary of the
8 principal's estate plan for failure to preserve the plan.

9 (d) An agent that acts with care, competence, and diligence for the best interest of
10 the principal is not liable solely because the agent also benefits from the act or has an individual
11 or conflicting interest in relation to the property or affairs of the principal.

12 (e) If an agent is selected by the principal because of special skills or expertise
13 possessed by the agent, the special skills or expertise must be considered in determining whether
14 the agent has acted with care, competence, and diligence under the circumstances.

15 (f) Absent a breach of duty to the principal, an agent is not liable if the value of
16 the principal's property declines.

17 (g) An agent that exercises authority to delegate to another person the authority
18 granted by the principal or that employs another person on behalf of the principal is not liable for
19 an error of judgment, act, or default of that person if the agent exercises care, competence, and
20 diligence in selecting and monitoring the person.

21 (h) Except as otherwise provided in the power of attorney, an agent is not
22 required to disclose receipts, disbursements, or transactions conducted on behalf of the principal

1 unless ordered by a court or requested by the principal, a guardian, conservator, other fiduciary
2 acting for the principal, a governmental agency having authority to protect the welfare of the
3 principal, or, upon the death of the principal, by the personal representative or successor in
4 interest of the principal's estate. If so requested, the agent shall comply within 30 days or
5 provide a writing or other record substantiating why additional time is needed and shall comply
6 within an additional 30 days.

7 **SECTION 114. EXONERATION OF AGENT.** A provision in a power of attorney
8 relieving the agent of liability for breach of duty is binding on the principal and the principal's
9 successors in interest except to the extent the provision:

10 (1) relieves the agent of liability for breach of duty committed dishonestly, with
11 an improper motive, or with reckless indifference to the purposes of the power of attorney or the
12 best interest of the principal; or

13 (2) was inserted as a result of an abuse of a confidential or fiduciary relationship
14 with the principal.

15 **SECTION 115. PETITION FOR JUDICIAL REVIEW.**

16 (a) A court may construe a power of attorney, review the agent's conduct, and
17 grant appropriate relief.

18 (b) The following persons may petition the court:

19 (1) the principal or the agent;

20 (2) a guardian, conservator, or other fiduciary acting for the principal;

21 (3) a person authorized to make health-care decisions for the principal;

22 (4) the principal's spouse, parent, or descendant;

(5) an individual who would qualify as a presumptive heir of the principal;

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

(7) a governmental agency having regulatory authority to protect the welfare of the principal;

(8) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

(9) a person asked to accept an agent's authority under a power of attorney.

(c) Upon motion by the principal, the court shall dismiss a petition filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

(d) The court may award reasonable attorney's fees and costs to the prevailing party in a proceeding under this section.

SECTION 116. AGENT'S LIABILITY. An agent that violates this [act] is liable to the principal or the principal's successors in interest for any of the following resulting from the violation:

(1) damages;

(2) reasonable attorney's fees and costs paid from the principal's estate; and

(3) any amount awarded under Section 115(d).

1 **SECTION 117. AGENT’S RESIGNATION; NOTICE.** If a power of attorney does
2 not provide the method for an agent’s resignation, an agent may resign by giving notice to the
3 principal and, if the principal is incapacitated:

4 (1) to the conservator or guardian, if one has been appointed for the principal, and
5 a coagent or successor agent;

6 (2) if there is no person described in paragraph (1), to the principal’s caregiver or
7 other person reasonably believed by the agent to have sufficient interest in the principal’s
8 welfare; or

9 (3) if neither paragraph (1) nor (2) applies, to a governmental agency having
10 authority to protect the welfare of the principal.

11 **SECTION 118. PROTECTION OF PERSON DEALING WITH AGENT.**

12 (a) A person that in good faith accepts an agent’s authority without actual
13 knowledge that the agent’s authority has been terminated, the power of attorney has been
14 terminated or is invalid, or the agent is exceeding or improperly exercising the agent’s powers, is
15 protected from liability as if the power of attorney were still in effect and valid and the agent had
16 properly exercised the power.

17 (b) A person may request and, without further investigation, rely upon an agent’s
18 certification under penalty of perjury of any matter concerning the principal or the power of
19 attorney.

20 (c) A person presented with a power of attorney that contains, in whole or in part,
21 language other than English may request that the agent obtain, at the principal’s expense, an
22 English translation of the power of attorney, and may, without further investigation, rely upon the

1 translation.

2 (d) A person presented with a power of attorney, other than a power of attorney
3 executed on a statutory form under the Uniform Power of Attorney Act, may request that the
4 agent obtain, at the principal's expense, an opinion of counsel as to any matter concerning the
5 principal or the power of attorney and, without further investigation, may rely upon the opinion.

6 (e) A request under this section for an agent's certification, a translation, or an
7 opinion of counsel must be made not later than three business days after presentation of a power
8 of attorney.

9 (f) Except when the refusal of an agent's authority is reasonable under Section
10 119(b), a person may not require an additional or different form of power of attorney for
11 authority granted in the power of attorney presented.

12 (g) Except as otherwise provided by law other than this [act], a photocopy or
13 electronically transmitted copy of an original power of attorney has the same effect as the
14 original.

15 **SECTION 119. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S**
16 **AUTHORITY.**

17 (a) A person that unreasonably refuses to accept a power of attorney is subject to:
18 (1) a court order mandating acceptance of the power of attorney; and
19 (2) liability for reasonable attorney's fees and costs incurred in any action
20 or proceeding necessary to confirm the validity of the power of attorney or to mandate acceptance
21 of the power of attorney.

22 (b) A person's refusal to accept a power of attorney is reasonable if:

1 (1) the person has actual knowledge of the termination of the agent's
2 authority or of the power of attorney before exercise of the power;

3 (2) the person reasonably believes that the power is not valid or that the
4 agent does not have the authority to perform the act requested;

5 (3) the person has made a report in good faith to the [local adult protective
6 services unit] alleging physical or financial abuse, neglect, exploitation, or abandonment of the
7 principal by the agent or has actual knowledge that such a report has been made by another
8 person; or

9 (4) the power of attorney is accepted within the later of five business days
10 after presentation of the power of attorney or the date of receipt of an agent's certification, a
11 translation, or an opinion of counsel if requested under Section 118.

12 (c) A person is not required to accept an agent's authority or to conduct business
13 with an agent if the person is not otherwise required to conduct business with the principal in the
14 same circumstances.

15 **SECTION 120. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a
16 provision of this [act], the principles of law and equity, including the law governing capacity to
17 contract, principal and agent, entity operation and interests, estoppel, fraud, misrepresentation,
18 duress, coercion, mistake, ratification, bankruptcy and other validating or invalidating cause,
19 supplement this [act].

20 **SECTION 121. REMEDIES UNDER OTHER LAW.** The remedies under this [act]
21 are not exclusive and do not abrogate any right or remedy under the law of this state.

1 [ARTICLE] 2

2 POWERS

3
4 SECTION 201. GRANT OF AUTHORITY; POWERS THAT REQUIRE
5 EXPRESS AUTHORIZATION.

6 (a) Subject to subsections (b), (c), (d), and (e), if a power of attorney grants to an
7 agent authority to do all acts that a principal could do, the agent has all the powers described in
8 Sections 204 through 216.

9 (b) Unless a power of attorney otherwise provides, an agent other than an
10 ancestor, spouse, or descendant of the principal may not exercise authority under a power of
11 attorney to create in the agent, or in a person to whom the agent owes a legal obligation of
12 support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary
13 designation, disclaimer, or otherwise.

14 (c) An agent under a power of attorney may do the following on behalf of the
15 principal or with the principal's property only if the power of attorney expressly grants the
16 authority to:

- 17 (1) create, amend, or revoke an inter vivos trust;
18 (2) make a gift;
19 (3) create or change rights of survivorship;
20 (4) create or change a beneficiary designation;
21 (5) make a revocable delegation of a power granted under the power of
22 attorney;

(6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; [or]

(7) exercise fiduciary powers that the principal has authority to delegate[; or

(8) disclaim property, including a power of appointment].

(d) Unless a power of attorney otherwise provides, a grant of authority to make a gift is subject to the limitations of Section 217.

(e) Subject to subsections (b), (c), and (d), if powers granted in a power of attorney are similar or overlap, the broadest power controls.

(f) Powers granted in a power of attorney are exercisable with respect to a property interest that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

SECTION 202. INCORPORATION OF POWERS.

(a) An agent has a power described in this [article] if the power of attorney incorporates the power by [referring to a descriptive title of Sections 204 through 217 or] citing to a section of Sections 204 through 217.

(b) A reference in a power of attorney to [a descriptive title of Sections 204 through 217 or] a citation to a section of Sections 204 through 217 incorporates the entire section

1 as if it were set out in full in the power of attorney.

2 (c) A principal may modify a power incorporated by reference.

3 **SECTION 203. CONSTRUCTION OF POWERS GENERALLY.** Except as
4 otherwise provided in the power of attorney, by executing a power of attorney that incorporates
5 by reference a power described in Sections 204 through 217, a principal authorizes the agent with
6 respect to that subject to:

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

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

13 (3) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, security
14 agreement, lease, notice, check, draft, promissory note, electronic funds transfer, release, or other
15 instrument or communication the agent considers desirable to accomplish a purpose of a
16 transaction, including creating at any time a schedule listing some or all of the principal's
17 property and attaching it to the power of attorney;

18 (4) prosecute, defend, submit to alternative dispute resolution, settle, and propose
19 or accept a compromise with respect to a claim existing in favor of or against the principal or
20 intervene in litigation relating to the claim;

21 (5) seek on the principal's behalf the assistance of a court or other governmental
22 agency to carry out an act authorized in the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other assistant;

(7) prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or governmental regulation;

(8) communicate with any representative or employee of a government, governmental subdivision, agency, or instrumentality on behalf of the principal;

(9) access communications intended for and communicate on behalf of the principal, whether by mail, electronic mail, facsimile, telephone, or other means; and

(10) in general, do any other lawful act with respect to the power and all property related to the power.

SECTION 204. REAL PROPERTY. Language in a power of attorney granting power with respect to real property authorizes the agent to:

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

(2) sell; exchange; convey with or without covenants, representations or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning, rezoning, or other governmental permits; plat or consent to platting; develop; grant options concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real

1 property as security in order to borrow money or pay, renew, or extend the time of payment of a
2 debt of the principal;

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

6 (5) manage or conserve an interest in real property or a right incident to real
7 property owned or claimed to be owned by the principal, including:

8 (A) insuring against liability, or casualty or other loss;

9 (B) obtaining or regaining possession or protecting the interest or right by
10 litigation or otherwise;

11 (C) paying, assessing, compromising, or contesting taxes or assessments
12 or applying for and receiving refunds in connection with them; and

13 (D) purchasing supplies, hiring assistance or labor, and making repairs or
14 alterations to the real property;

15 (6) use, develop, alter, replace, remove, erect, or install structures or other
16 improvements upon real property in or incident to which the principal has, or claims to have, an
17 interest or right;

18 (7) participate in a reorganization with respect to real property or an entity that
19 owns an interest in or right incident to real property and receive and hold, directly or indirectly,
20 shares of stock, obligations, other evidences of ownership or debt, or other property received in a
21 plan of reorganization, and act with respect to them, including:

22 (A) selling or otherwise disposing of them;

1 (B) exercising or selling an option, conversion, or similar right with
2 respect to them; and

3 (C) exercising any voting rights in person or by proxy;

4 (8) change the form of title of an interest in or right incident to real property; and

5 (9) dedicate to public use, with or without consideration, easements or other real
6 property in which the principal has, or claims to have, an interest.

7 **SECTION 205. TANGIBLE PERSONAL PROPERTY.** Language in a power of
8 attorney granting power with respect to tangible personal property authorizes the agent to:

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

12 (2) sell; exchange; convey with or without covenants, representations or
13 warranties; quitclaim; release; surrender; create a security interest in; grant options concerning;
14 lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible
15 personal property;

16 (3) pledge tangible personal property or an interest in tangible personal property
17 as security in order to borrow money or pay, renew, or extend the time of payment of a debt of
18 the principal;

19 (4) release, assign, satisfy, or enforce by litigation or otherwise, a security
20 interest, lien, or other claim on behalf of the principal, with respect to tangible personal property
21 or an interest in tangible personal property;

22 (5) manage or conserve tangible personal property or an interest in tangible

personal property on behalf of the principal, including:

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

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

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

(D) moving the property from place to place;

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

(F) using and making repairs, alterations, or improvements to the property; and

(6) change the form of title of an interest in tangible personal property.

SECTION 206. STOCKS AND BONDS.

(a) In this section, “stocks and bonds” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner, except commodity futures contracts and call and put options on stocks and stock indexes.

(b) Language in a power of attorney granting power with respect to stocks and bonds authorizes the agent to:

(1) buy, sell, and exchange securities;

(2) establish, continue, modify, or terminate a securities account;

(3) pledge securities as security in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) receive certificates and other evidences of ownership with respect to securities; and

(5) exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

SECTION 207. COMMODITIES AND OPTIONS. Language in a power of attorney granting power with respect to commodities and options authorizes the agent to:

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated option exchange; and

(2) establish, continue, modify, and terminate option accounts.

SECTION 208. BANKING AND OTHER FINANCIAL TRANSACTIONS.

Language in a power of attorney granting power with respect to banking and other financial transactions authorizes the agent to:

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

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

(3) contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) receive statements of account, vouchers, notices, and similar documents from

1 a financial institution and act with respect to them;

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

3 (7) borrow money and pledge as security personal property of the principal
4 necessary in order to borrow money or pay, renew, or extend the time of payment of a debt of the
5 principal;

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

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

12 (10) apply for, receive, and use letters of credit, credit and debit cards, electronic
13 transaction authorizations, and traveler's checks from a financial institution and give an
14 indemnity or other agreement in connection with letters of credit; and

15 (11) consent to an extension of the time of payment with respect to commercial
16 paper or a financial transaction with a financial institution.

17 **SECTION 209. OPERATION OF AN ENTITY OR BUSINESS.** Subject to the
18 terms of a document or an agreement governing an entity or an entity ownership interest,
19 language in a power of attorney granting power with respect to operation of an entity or business
20 authorizes the agent to:

21 (1) operate, buy, sell, enlarge, reduce, and terminate an ownership interest;

22 (2) perform a duty or discharge a liability and exercise in person or by proxy a

1 right, power, privilege, or option that the principal has, may have, or claims to have;

2 (3) enforce the terms of an ownership agreement;

3 (4) defend, submit to alternative dispute resolution, settle, or compromise
4 litigation to which the principal is a party because of an ownership interest;

5 (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right,
6 power, privilege, or option the principal has or claims to have as the holder of a bond, share, or
7 other instrument of similar character; and

8 (6) defend, submit to alternative dispute resolution, settle, or compromise
9 litigation to which the principal is a party because of a bond, share, or similar instrument;

10 (7) with respect to an entity or business controlled by the principal:

11 (A) continue, modify, renegotiate, extend, and terminate a contract made
12 by or on behalf of the principal with respect to the entity or business before execution of the
13 power of attorney;

14 (B) determine:

15 (i) the location of its operation;
16 (ii) the nature and extent of its business;
17 (iii) the methods of manufacturing, selling, merchandising,
18 financing, accounting, and advertising employed in its operation;

19 (iv) the amount and types of insurance carried; and
20 (v) the mode of engaging, compensating, and dealing with its
21 employees and accountants, attorneys or other agents;

22 (C) change the name or form of organization under which the entity or

1 business is operated and enter into an ownership agreement with other persons to take over all or
2 part of the operation of the entity or business; and

3 (D) demand and receive money due or claimed by the principal or on the
4 principal's behalf in the operation of the entity or business and control and disburse the money in
5 the operation of the entity or business;

6 (8) put additional capital into an entity or business in which the principal has an
7 interest;

8 (9) join in a plan of reorganization, consolidation, conversion, domestication, or
9 merger of the entity or business;

10 (10) sell or liquidate an entity or business or part of it;

11 (11) establish the value of an entity or business under a buy-out agreement to
12 which the principal is a party;

13 (12) prepare, sign, file, and deliver reports, compilations of information, returns,
14 or other papers with respect to an entity or business and make related payments; and

15 (13) pay, compromise, or contest taxes or assessments and perform any other act
16 to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with
17 respect to an entity or business, including attempts to recover, in any manner permitted by law,
18 money paid before or after the execution of the power of attorney.

19 **SECTION 210. INSURANCE AND ANNUITIES.** Language in a power of attorney
20 granting power with respect to insurance and annuities authorizes the agent to:

21 (1) continue, pay the premium or assessment on, modify, exchange, rescind,
22 release, or terminate a contract procured by or on behalf of the principal which insures or

1 provides an annuity to either the principal or another person, whether or not the principal is a
2 beneficiary under the contract;

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

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

8 (4) apply for and receive a loan secured by a contract of insurance or annuity;

9 (5) surrender and receive the cash surrender value on a contract of insurance or
10 annuity;

11 (6) exercise an election;

12 (7) change the manner of paying premiums on a contract of insurance or annuity;

13 (8) change or convert the type of insurance or annuity with respect to which the
14 principal has or claims to have a power described in this section;

15 (9) apply for and procure a benefit or assistance under a statute or governmental
16 regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

17 (10) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
18 principal in a contract of insurance or annuity;

19 (11) select the form and timing of the payment of proceeds from a contract of
20 insurance or annuity; and

21 (12) pay from proceeds or otherwise, compromise or contest, and apply for
22 refunds in connection with, a tax or assessment levied by a taxing authority with respect to a

1 contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or
2 assessment.

3 **SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS.**

4 Language in a power of attorney granting power with respect to estates, trusts, and other
5 beneficial interests authorizes the agent to act for the principal in all matters that affect a trust,
6 probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the
7 principal is, may become, or claims to be, entitled to a share or payment, including the power to:

8 (1) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or
9 payment from the fund;

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

12 (3) exercise for the benefit of the principal a presently exercisable general power
13 of appointment held by the principal;

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

17 (5) initiate, participate in, and oppose litigation to remove, substitute, or
18 surcharge a fiduciary;

19 (6) conserve, invest, disburse, and use anything received for an authorized
20 purpose; [and]

21 (7) transfer an interest of the principal in real property, stocks, bonds, accounts
22 with financial institutions or securities intermediaries, insurance, annuities, and other property to

1 the trustee of a revocable trust created by the principal as settlor [; and

2 (8) reject, renounce, disclaim, release, or consent to a reduction in or
3 modification of a share in or payment from the fund].

4 **SECTION 212. CLAIMS AND LITIGATION.** Language in a power of attorney
5 granting power with respect to claims and litigation authorizes the agent to perform any lawful
6 act on behalf of the principal in connection with claims and litigation, including:

7 (1) assert and maintain before a court or administrative agency a claim, claim for
8 relief, cause of action, counterclaim, offset, or defense, including an action to recover property or
9 other thing of value, recover damages sustained by the principal, eliminate or modify tax liability,
10 or seek an injunction, specific performance, or other relief;

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

13 (3) seek an attachment, garnishment, order of arrest, or other preliminary,
14 provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment,
15 order, or decree;

16 (4) perform any lawful act, including make or accept a tender, offer of judgment,
17 or admission of facts, submit a controversy on an agreed statement of facts, and consent to
18 examination before trial;

19 (5) submit to alternative dispute resolution, settle, and propose or accept a
20 compromise;

21 (6) waive the issuance and service of process upon the principal, accept service of
22 process, appear for the principal, designate persons upon which process directed to the principal

1 may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings,
2 seek appellate review, procure and give surety and indemnity bonds, contract and pay for the
3 preparation and printing of records and briefs, receive, execute, and file or deliver a consent,
4 waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other
5 instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

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

10 (8) pay a judgment, award, or order against the principal or a settlement made in
11 connection with litigation or alternative dispute resolution; and

12 (9) receive money or another thing of value paid in settlement of or as proceeds
13 of a claim or litigation.

14 **SECTION 213. PERSONAL AND FAMILY MAINTENANCE.**

15 (a) Language in a power of attorney granting power with respect to personal and
16 family maintenance authorizes the agent to:

17 (1) perform the acts necessary to maintain the customary standard of
18 living of the principal, the principal's spouse, and the following individuals, whether living when
19 the power of attorney is executed or later born:

20 (A) the principal's children;
21 (B) other individuals legally entitled to be supported by the
22 principal; and

1 (C) those individuals whom the principal has customarily
2 supported or indicated the intent to support;

3 (2) provide living quarters for those individuals described in paragraph (1)
4 by purchase, lease, or other contract or pay the operating costs, including interest, amortization
5 payments, repairs, and taxes, on premises owned by the principal or occupied by those
6 individuals;

7 (3) provide normal domestic help, usual vacations and travel expenses,
8 and funds for shelter, clothing, food, appropriate education, including post-secondary and
9 vocational education, and other current living costs for those individuals described in paragraph
10 (1);

11 (4) pay expenses for necessary health care and custodial care on behalf of
12 the individuals described in paragraph (1);

13 (5) act as the principal's personal representative pursuant to the Health
14 Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security
15 Act, 42 U.S.C. Section 1320d [as amended] and applicable regulations, in making decisions
16 related to the past, present, or future payment for the provision of health care consented to by the
17 principal or anyone authorized under the law of this state to consent to health care on behalf of
18 the principal;

19 (6) continue any provision made by the principal for automobiles or other
20 means of transportation, including registering, licensing, insuring, and replacing them for the
21 individuals described in paragraph (1);

22 (7) maintain credit and debit accounts for the convenience of the

1 individuals described in paragraph (1) and open new accounts to accomplish a lawful purpose;
2 and

3 (8) continue payments incidental to the membership or affiliation of the
4 principal in a religious institution, club, society, order, or other organization or to continue
5 contributions to those organizations.

6 (b) Authority with respect to personal and family maintenance is neither
7 dependent upon nor limited by authority that an agent may or may not have with respect to gifts
8 under this [act].

9 **SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL**
10 **OR MILITARY SERVICE.**

11 (a) In this section, “benefits from governmental programs or civil or military
12 service” means any benefit, program or assistance provided under a statute or governmental
13 regulation including Social Security, Medicare, and Medicaid.

14 (b) Language in a power of attorney granting power with respect to benefits from
15 governmental programs or civil or military service authorizes the agent to:

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

20 (2) take possession and order the removal and shipment of property of the
21 principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either
22 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,

1 shipping ticket, certificate, or other instrument for that purpose;

2 (3) enroll in, apply for, select, reject, change, amend, or discontinue, on
3 the principal's behalf, a benefit or program;

4 (4) prepare, file, and maintain a claim of the principal for a benefit or
5 assistance, financial or otherwise, to which the principal claims to be entitled under a statute or
6 governmental regulation;

7 (5) prosecute, defend, submit to alternative dispute resolution, settle, and
8 propose or accept a compromise with respect to any benefit or assistance the principal may be
9 entitled to receive under a statute or governmental regulation; and

10 (6) receive the financial proceeds of a claim of the type described in
11 paragraph (4) and conserve, invest, disburse, or use anything so received for a lawful purpose.

12 **SECTION 215. RETIREMENT PLANS.**

13 (a) In this section, "retirement plan" means any plan or account created by an
14 employer, the principal, or another individual for the purpose of providing retirement benefits or
15 deferred compensation of which the principal is a participant, beneficiary, or owner including a
16 plan or account under the following sections of the Internal Revenue Code:

17 (1) an individual retirement account under Internal Revenue Code Section
18 408, 26 U.S.C. Section 408 [as amended];

19 (2) a Roth individual retirement account under Internal Revenue Code
20 Section 408A, 26 U.S.C. Section 408A [as amended];

21 (3) a deemed individual retirement account under Internal Revenue Code
22 Section 408(q), 26 U.S.C. Section 408 (q) [as amended];

1 (4) an annuity or mutual fund custodial account under Internal Revenue
2 Code Section 403(b), 26 U.S.C. Section 403(b) [as amended];

3 (5) a pension, profit-sharing, stock bonus, or other retirement plan
4 qualified under Internal Revenue Code Section 401(a), 26 U.S.C. Section 401(a) [as amended];

5 (6) a plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section
6 457(b) [as amended]; and

7 (7) a nonqualified deferred compensation plan under Internal Revenue
8 Code Section 409A, 26 U.S.C. Section 409A [as amended].

9 _____(b) Language in a power of attorney granting power with respect to retirement
10 plans authorizes the agent to:

11 (1) select the form and timing of payments under a retirement plan and
12 withdraw benefits from a plan;

13 (2) make a rollover, including a direct trustee to trustee rollover, of
14 benefits from one retirement plan to another;

15 (3) establish a retirement plan in the principal's name;

16 (4) make contributions to a retirement plan;

17 (5) exercise investment powers available under a retirement plan; and

18 (6) borrow from, sell assets to, or purchase assets from a retirement plan.

19 **SECTION 216. TAXES.** Language in a power of attorney granting power with respect
20 to tax matters authorizes the agent to:

21 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
22 property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests

1 for extension of time, petitions regarding tax matters, and any other tax-related documents,
2 including receipts, offers, waivers, consents, including consents and agreements under Internal
3 Revenue Code Section 2032A, 26 U.S.C. Section 2032A [as amended], closing agreements, and
4 any power of attorney required by the Internal Revenue Service or other taxing authority with
5 respect to a tax year upon which the statute of limitations has not run and the following 25 tax
6 years;

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

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

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

13 **SECTION 217. GIFTS.**

14 (a) Language in a power of attorney granting power with respect to gifts
15 authorizes the agent to:

16 (1) make a gift to a person of any of the principal's property, including by
17 the exercise of a presently exercisable general power of appointment held by the principal, in an
18 amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under
19 Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b) [as amended] without regard
20 to whether the federal gift tax exclusion applies to the gift, and if the principal's spouse agrees to
21 consent to a split gift pursuant to Internal Revenue Code Section 2513, 26 U.S.C. 2513 [as
22 amended], in an amount per donee not to exceed twice the annual federal gift tax exclusion limit;

1 and

2 (2) consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C.
3 Section 2513 [as amended], to the splitting of a gift made by the principal's spouse in an amount
4 per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

5 (b) Unless a power of attorney otherwise provides, an agent shall make a gift of
6 the principal's property only as the agent determines to be consistent with the principal's
7 objectives if actually known by the agent and, if unknown, as the agent determines to be
8 consistent with the principal's best interest based on all relevant factors, including:

- 9 (1) the value and nature of the principal's property;
10 (2) the principal's foreseeable obligations and need for maintenance;
11 (3) minimization of taxes, including income, estate, inheritance,
12 generation-skipping transfer, or gift taxes;
13 (4) eligibility for a benefit, program, or assistance under a statute or
14 governmental regulation; and
15 (5) the principal's personal history of making or joining in making gifts.

16 (c) A gift under this section may be made outright or for the benefit of a donee,
17 including to a trust, an account under the Uniform Transfers to Minors Act, or a tuition savings
18 account or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 U.S.C.
19 Section 529 [as amended].

1 [ARTICLE] 3

2 STATUTORY FORM POWER OF ATTORNEY

3
4 SECTION 301. OPTIONAL FORM. The following form may be used to create a
5 power of attorney that has the meaning and effect prescribed by this [act].

6 STATUTORY FORM POWER OF ATTORNEY

7
8 IMPORTANT INFORMATION

9
10 This power of attorney authorizes another person (your agent) to make decisions concerning your
11 property for you (the principal). Your agent can make decisions and act with respect to your
12 property (including your money) whether or not you are able to act for yourself. The meaning of
13 powers listed in this form is explained in the Uniform Power of Attorney Act.

14
15 This power of attorney does not authorize the agent to make health-care decisions for you.

16
17 You should select someone you trust to serve as your agent. The agent's authority will continue
18 until your death unless you revoke the power of attorney or the agent resigns. If your agent is
19 unable or unwilling to act for you, your power of attorney will end unless you have named a
20 successor agent. You may also name a second successor agent.

21
22 This power of attorney becomes effective immediately unless you state otherwise in the Special
23 Instructions.

24
25 BEFORE SIGNING THIS FORM, YOU SHOULD SEEK LEGAL ADVICE IF YOU HAVE
26 QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE AUTHORITY YOU ARE
27 GRANTING TO YOUR AGENT.

28
29
30 DESIGNATION OF AGENT

31
32 Name of Principal: _____

33
34 I name the following person as my agent:

35
36 Name of Agent: _____

37 Agent's Address: _____

38 Agent's Phone Number: _____

1
2
3 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**
4

5 If my agent is unable or unwilling to act for me, I name as my successor agent:

6
7 Name of Successor Agent: _____

8 Successor Agent's Address: _____

9 Successor Agent's Phone Number: _____
10

11 If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

12
13 Name of Second Successor Agent: _____

14 Second Successor Agent's Address: _____

15 Second Successor Agent's Phone Number: _____
16

17
18 **GRANT OF GENERAL AUTHORITY**
19

20 I grant my agent and any successor agent general authority to act for me with respect to the
21 following subjects as defined in the Uniform Power of Attorney Act:

22
23 (INITIAL all of the subjects you want to include in the agent's general authority. If you wish to
24 grant all of the powers you may initial next to the phrase "All of Preceding Powers" instead of
25 initialing each subject.)
26

27 ☐ Real Property

28 ☐ Tangible Personal Property

29 ☐ Stocks and Bonds

30 ☐ Commodities and Options

31 ☐ Banking and Other Financial Transactions

32 ☐ Operation of an Entity or Business

33 ☐ Insurance and Annuities

34 ☐ Estates, Trusts, and Other Beneficial Interests

35 ☐ Claims and Litigation

36 ☐ Personal and Family Maintenance

37 ☐ Benefits from Governmental Programs or Civil or Military Service

38 ☐ Retirement Plans

39 ☐ Taxes
40

41 ☐ All of Preceding Powers
42
43

1
2
3 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**
4

5 My agent MAY NOT do any of the following specific acts for me UNLESS I have also
6 INITIALED the blank space () in front of the specific power:
7

8 (CAUTION: Granting any of the following powers will give your agent the authority to take
9 actions that could significantly reduce your property or change how your property is distributed at
10 your death. INITIAL ONLY the specific powers you WANT to include in the agent's authority.)
11

- 12 () Create, amend, or revoke an inter vivos trust
13 () Make a gift, subject to the limitations of the Uniform Power of Attorney Act and any
14 special instructions in this power of attorney
15 () Create or change rights of survivorship
16 () Create or change a beneficiary designation
17 () Authorize another person to exercise the authority granted under this power of attorney
18 () Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
19 survivor benefit under a retirement plan
20 () Exercise fiduciary powers that the principal has authority to delegate
21 [() Disclaim or refuse an interest in property, including a power of appointment]
22

23 **LIMITATION ON AGENT'S AUTHORITY**
24

25 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit
26 the agent or a person to whom the agent owes an obligation of support unless I have included
27 special instructions in this power of attorney to permit such an action.
28

29 **SPECIAL INSTRUCTIONS (OPTIONAL)**
30

31 (On the following lines you may give special instructions limiting or extending the powers
32 granted to your agent.)
33
34
35
36
37
38
39
40
41

1 **EFFECTIVE DATE**

2
3 This power of attorney is effective immediately unless I have stated otherwise in the Special
4 Instructions.

5
6 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

7
8 If it becomes necessary for a court to appoint a conservator or guardian of my estate or person, I
9 nominate the following person(s) for appointment:

10
11 Name of Nominee for conservator or guardian of my estate:

12 _____
13 Nominee's Address: _____

14 Nominee's Phone Number: _____
15

16 Name of Nominee for guardian of my person:

17 _____
18 Nominees's Address: _____

19 Nominee's Phone Number: _____
20

21 **RELIANCE ON THIS POWER OF ATTORNEY**

22
23 Any person, including my agent, may rely upon the validity of this power of attorney or a copy of
24 it unless that person knows it is terminated or invalid.

25
26 **SIGNATURE AND ACKNOWLEDGMENT**

27
28 _____
29 Your signature

_____ Date

30
31 _____
32 Your name printed

33 _____
34 _____
35 Your address

36
37 _____
38 Your phone number

39
40
41 State of _____
42 [County] of _____
43

1 This document was acknowledged before me on _____,
2 (date)
3 by_____.
4 (name of Principal)

5
6 _____ (Seal, if any)
7 Signature of Notary
8 My commission expires: _____
9

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

15 16 **IMPORTANT INFORMATION FOR AGENT** 17

18 When you accept the authority granted under this power of attorney a special legal
19 relationship is created between you and the principal. This relationship imposes upon you duties
20 that continue until you resign or the power of attorney is terminated or revoked. You must:
21

- 22 (1) do what you know the principal reasonably expects you to do with the principal's
23 property;
- 24 (2) act in good faith with care, competence, and diligence for the best interest of the
25 principal;
- 26 (3) avoid conflicts that would impair your ability to act in the principal's best interest;
- 27 (4) keep a complete record of all receipts, disbursements, and transactions conducted for the
28 principal;
- 29 (5) do nothing beyond the authority granted in this power of attorney;
- 30 (6) preserve the principal's estate plan to the extent you know the plan, unless preserving the
31 estate plan is inconsistent with the principal's best interest; and
- 32 (7) stop acting on behalf of the principal if you learn of any event that terminates this power
33 of attorney or your authority under this power of attorney.
34

35 You must disclose your identity as an agent whenever you act for the principal by writing
36 or printing the name of the principal and signing your own name as "agent" in the following
37 manner:
38

39 (Principal's Name) by (Your Signature) as Agent
40

41 The meaning of the powers granted to you is defined in the Uniform Power of Attorney
42 Act. If you violate the Uniform Power of Attorney Act or act outside the authority granted, you
43 may be liable for any damages, including reasonable attorney's fees and costs, caused by your

1 violation.

2
3 YOU SHOULD SEEK LEGAL ADVICE IF THERE IS ANYTHING ABOUT THIS
4 DOCUMENT OR YOUR DUTIES THAT YOU DO NOT UNDERSTAND.

5
6 **AGENT'S ACCEPTANCE**

7
8 (This statement of acceptance may be signed any time after the principal signs the power of
9 attorney.)

10
11 I accept appointment as agent under this power of attorney.

12
13 _____
14 Agent's signature

_____ Date

15
16 Agent's name printed
17
18

19 **SECTION 302. AGENT'S CERTIFICATION.** The following optional form may be
20 used by an agent to certify facts concerning a power of attorney.

21 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY**
22 **AND AGENT'S AUTHORITY**

23
24 State of _____
25 [County] of _____

26
27 I, _____ (name of Agent), [certify] under
28 penalty of perjury that _____ (name of Principal)
29 signed a Power of Attorney (a copy of the Power of Attorney is attached to this certification) on
30 _____ (date), naming the undersigned as an agent or successor agent.

31
32 I further [certify] that to my knowledge:

33
34 (1) the Principal is alive and has not revoked the Power of Attorney or my authority to act
35 under the Power of Attorney and the Power of Attorney remains in full force and effect;

36
37 (2) if the Power of Attorney was drafted to become effective upon the happening of an
38 event or contingency, the event or contingency has occurred;

39
40 (3) if I was named as a successor agent, that the predecessor agent is no longer able or
41 willing to serve; and

1 (4) _____
2 _____
3 _____
4 _____

5 (Insert other relevant statements)

6
7 **SIGNATURE AND ACKNOWLEDGMENT**
8

9 _____
10 Agent's signature

_____ Date

11 _____
12 Agent's name printed

13 _____
14 _____
15 Agent's address

16 _____
17 _____
18 This document was acknowledged before me on _____,
19 (date)
20 by _____.
21 (name of Agent)
22 _____
23 _____
24 _____

25 _____
26 Signature of Notary

(Seal, if any)

27 My commission expires: _____
28 _____
29 [This document prepared by:

30 _____
31 _____
32 _____]

1 **[ARTICLE] 4**

2 **MISCELLANEOUS PROVISIONS**

3
4 **SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
5 applying and construing this uniform act, consideration must be given to the need to promote
6 uniformity of the law with respect to its subject matter among the states that enact it.

7 **SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**
8 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal
9 Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but
10 does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or
11 authorize electronic delivery of any of the notices described in Section 103(b) of that act (15
12 U.S.C. Section 7003(b)).

13 **SECTION 403. EFFECT ON EXISTING POWERS OF ATTORNEY.** Except as
14 otherwise provided in this [act], on [the effective date of this [act]]:

15 (1) this [act] applies to a power of attorney created before, on, or after [the
16 effective date of this [act]];

17 (2) this [act] applies to a judicial proceeding concerning a power of attorney
18 commenced on or after [the effective date of this [act]];

19 (3) this [act] applies to a judicial proceeding concerning a power of attorney
20 commenced before [the effective date of this [act]] unless the court finds that application of a
21 provision of this [act] would substantially interfere with the effective conduct of the judicial
22 proceeding or prejudice the rights of a party, in which case that provision does not apply and the

1 superseded law applies; and

2 (4) an act done before [the effective date of this [act]] is not affected by this [act].

3 **SECTION 404. REPEAL.** The following are repealed:

4 (1) [Uniform Durable Power of Attorney Act]

5 (2) [Uniform Statutory Form Power of Attorney Act]

6 (3) [Article 5, Part 5 of the Uniform Probate Code]

7 **SECTION 405. EFFECTIVE DATE.** This [act] takes effect _____.