

D R A F T

FOR DISCUSSION ONLY

REVISED UNIFORM DURABLE POWER OF ATTORNEY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM LAWS

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ON UNIFORM LAWS

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TABLE OF CONTENTS

ARTICLE 1

GENERAL PROVISIONS AND DEFINITIONS

SECTION 101. SHORT TITLE	1
SECTION 102. DEFINITIONS	1
SECTION 103. KNOWLEDGE	2
SECTION 104. EXECUTION	3
SECTION 105. RECORDING	3
SECTION 106. DURABLE POWER OF ATTORNEY EXECUTED IN FOREIGN JURISDICTION	3
SECTION 107. TWO OR MORE CONCURRENT AGENTS	3
SECTION 108. SUCCESSOR AGENTS	4
SECTION 109. NOMINATION OF GUARDIAN; RELATION OF AGENT TO COURT- APPOINTED FIDUCIARY	5
SECTION 110. DISSOLUTION OR ANNULMENT OF PRINCIPAL'S MARRIAGE TO AGENT	5
SECTION 111. CONTINGENT POWERS	6
SECTION 112. DURABLE POWER OF ATTORNEY NOT AFFECTED BY INCAPACITY OR LAPSE OF TIME	7
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	10
SECTION 119. AWARD OF ATTORNEY'S FEES TO PREVAILING PARTY	10
SECTION 120. AGENT'S RESIGNATION; NOTICE	10
SECTION 121. PRESUMPTION OF VALIDITY	10
SECTION 122. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S AUTHORITY	11
SECTION 123. DURABLE POWER OF ATTORNEY NOT TERMINATED UNTIL NOTICE	2
SECTION 124. COMMON LAW OF AGENCY; PRINCIPLES OF EQUITY	12
SECTION 125. UNIFORMITY OF APPLICATION AND CONSTRUCTION	13
SECTION 126. SEVERABILITY	13
SECTION 127. EFFECTIVE DATE; EFFECT ON EXISTING POWERS OF ATTORNEY .	13
SECTION 128. REPEAL	13

ARTICLE 2

SHORT FORM DURABLE POWER OF ATTORNEY

SECTION 201. FORM	14
-------------------------	----

ARTICLE 3

POWERS

SECTION 301. EXPRESS AUTHORITY REQUIRED	21
---	----

SECTION 302. PRESERVATION OF ESTATE PLAN	21
SECTION 303. INCORPORATION OF POWERS; SIMILAR OR OVERLAPPING POWERS; EXISTING, LATER ACQUIRED, AND FOREIGN INTERESTS; MODIFICATION .	22
SECTION 304. CONSTRUCTION OF POWERS GENERALLY	23
SECTION 305. REAL PROPERTY	24
SECTION 306. TANGIBLE PERSONAL PROPERTY	26
SECTION 307. STOCKS AND BONDS	27
SECTION 308. COMMODITIES AND OPTIONS	27
SECTION 309. BANKS AND OTHER FINANCIAL INSTITUTIONS	27
SECTION 310. OPERATION OF BUSINESS	29
SECTION 311. INSURANCE AND ANNUITIES	31
SECTION 312. ESTATES, TRUSTS, AND OTHER BENEFICIARY RELATIONSHIPS ...	32
SECTION 313. GIFTS	33
SECTION 314. CLAIMS AND LITIGATION	34
SECTION 315. PERSONAL AND FAMILY MAINTENANCE	36
SECTION 316. BENEFITS FROM SOCIAL SECURITY, MEDICARE, MEDICAID, OR OTHER GOVERNMENTAL PROGRAMS, OR MILITARY SERVICE	37
SECTION 317. RETIREMENT PLANS	38
SECTION 318. TAXES	38

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

2

3 **ARTICLE 1**

4

5 **GENERAL PROVISIONS AND DEFINITIONS**

6

7 **SECTION 101. SHORT TITLE.** This Act may be cited as the Uniform Durable Power

8 of Attorney Act.

9

10 **SECTION 102. DEFINITIONS.** In this Act:

11 (1) “Agent” means the person designated to act as an attorney in fact for the principal

12 under a durable power of attorney.

13 (2) “Durable power of attorney” means a record by which the principal grants to the

14 agent authority that is not revoked by the incapacity of the principal.

15 (3) “Incapacity” means inability to manage property and business affairs because of an

16 impairment in the ability to receive and evaluate information or make decisions even with the use

17 of appropriate technological assistance, or because the individual is missing, detained, or unable

18 to return to the United States.

19 (4) “Person” means an individual, corporation, business trust, estate, trust, partnership,

20 limited liability company, association, joint venture, governmental agency, public corporation, or

21 any other legal or commercial entity.

22 (5) “Principal” means the individual who grants authority under a durable power of

1 attorney.

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

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

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

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

8 (8) “State” means a State of the United States, the District of Columbia, Puerto Rico, and
9 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
10 the United States. The term includes an Indian tribe or band recognized by federal law or
11 formally acknowledged by a State.

12
13 **SECTION 103. KNOWLEDGE.**

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

16 (1) has actual knowledge of it;

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

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

20 (b) An organization that conducts activities through employees has notice or knowledge
21 of a fact involving a durable power of attorney only from the time the information:

22 (1) was received by an employee having responsibility to act with respect to the

1 durable power of attorney; or

2 (2) would have been brought to the employee's attention if the organization had
3 exercised reasonable diligence.

4 (c) An organization exercises reasonable diligence if it maintains reasonable routines for
5 communicating significant information to employees having a responsibility to act with respect
6 to durable powers of attorney and there is reasonable compliance with the routines. Reasonable
7 diligence does not require an employee of the organization to communicate such information
8 unless the communication is part of the employee's regular duties or the employee knows a
9 matter involving the durable power of attorney would be materially affected by the information.

10
11 **SECTION 104. EXECUTION.** The principal must sign a durable power of attorney, or
12 direct another person to sign on behalf of the principal in the principal's presence, and
13 acknowledge the signature before a notary public.

14
15 **SECTION 105. RECORDING.** A durable power of attorney need not be recorded to
16 be valid.

17
18 **SECTION 106. DURABLE POWER OF ATTORNEY EXECUTED IN FOREIGN**
19 **JURISDICTION.** A durable power of attorney executed in another state or jurisdiction in
20 compliance with the law of that state or jurisdiction or the law of this state is valid in this state.

21
22 **SECTION 107. TWO OR MORE CONCURRENT AGENTS.**

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

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

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

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

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

17
18 **SECTION 108. SUCCESSOR AGENTS.**

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

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

3 (b) Unless the durable power of attorney otherwise provides, a successor agent has the
4 same authority as that granted to the initial agent.

5 (c) A successor agent is not liable for the actions of a predecessor agent.
6

7 **SECTION 109. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**
8 **COURT-APPOINTED FIDUCIARY.**

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

14 (b) If, after the execution of a durable power of attorney, a court appoints a conservator,
15 guardian of the estate, or other fiduciary charged with the management of all of the principal's
16 property or all of the property except specified exclusions, the agent is accountable to the
17 fiduciary as well as to the principal. The court may consider whether the authority of an agent
18 designated under a previously executed durable power of attorney should continue undisturbed or
19 be limited, suspended or terminated.
20

21 **SECTION 110. DISSOLUTION OR ANNULMENT OF PRINCIPAL'S**
22 **MARRIAGE TO AGENT.** Unless the durable power of attorney otherwise provides, authority

1 granted to the principal's spouse in a durable power of attorney is revoked if the marriage to the
2 principal is dissolved or annulled. If the agent's authority is revoked solely by reason of the
3 dissolution or annulment of the principal's marriage to the agent, the authority is revived by the
4 principal's remarriage to the agent.

5
6 **SECTION 111. CONTINGENT POWERS.**

7 (a) The agent's authority under a durable power of attorney may become effective
8 immediately or upon a future date or event.

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

15 (c) If the durable power of attorney will become effective upon the principal's incapacity
16 and the principal has not designated one or more persons who have the authority to determine
17 conclusively that the principal is incapacitated, the durable power of attorney will become
18 effective upon a record by two physicians that the principal is unable, by reason of incapacity, to
19 prudently manage property and business affairs. Other persons may rely on the physicians'
20 record as conclusive proof of the agent's authority to act under a durable power of attorney.

1 **SECTION 112. DURABLE POWER OF ATTORNEY NOT AFFECTED BY**
2 **INCAPACITY OR LAPSE OF TIME.** Except as otherwise provided in the durable power of
3 attorney, a durable power of attorney is not terminated by the incapacity of the principal. All acts
4 done by an agent pursuant to a durable power of attorney, including acts done during any period
5 of incapacity of the principal, have the same effect and inure to the benefit of and bind the
6 principal and the principal's successors in interest as if the principal had capacity and did the
7 acts. Unless the durable power of attorney states a time of termination, the authority of the agent
8 is exercisable notwithstanding the lapse of time.

9
10 **SECTION 113. COMPENSATION OF AGENT.** If the terms of a durable power of
11 attorney do not specify an agent's compensation, the agent is entitled to compensation that is
12 reasonable under the circumstances.

13
14 **SECTION 114. REIMBURSEMENT OF AGENT.** Subject to Section 119 and
15 except as otherwise provided in a durable power of attorney, an agent is entitled to
16 reimbursement of all reasonable expenses advanced by the agent on behalf of the principal.

17
18 **SECTION 115. AGENT'S DUTIES.**

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

21 (b) Except as otherwise provided in the durable power of attorney, the duties of an agent
22 who has accepted or exercised authority granted by the principal include the duty to:

(1) act in good faith, with reasonable care for the best interest of the principal;

(2) subject to subsection (c), avoid conflicts 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; and

(4) take no action beyond the scope of the authority granted by the durable power of attorney.

(c) An agent who acts in good faith, with reasonable care for the best interest of the principal is not liable solely because the agent also benefits from the act or has individual or conflicting interests in relation to the property or affairs of the principal.

(d) Except as otherwise provided in the durable power of attorney, an agent is not required to report transactions conducted on behalf of the principal unless requested by the principal, a guardian, conservator, or other fiduciary appointed for the principal, any governmental agency having regulatory authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate, or ordered by a court. An agent who is requested to report under this subsection must comply within 30 days or provide a record substantiating why additional time is needed to produce the requested report.

SECTION 116. EXONERATION.

(a) Except as otherwise provided in subsection (b), a principal may specify in the durable power of attorney that an agent is liable only if the agent acts in bad faith, and that a person

1 challenging the performance of an agent shall have the burden of proof concerning breach of any
2 duty by the agent. The exoneration is binding on the principal and the principal's successors in
3 interest.

4 (b) A provision in the durable power of attorney relieving the agent of liability for breach
5 of duty is unenforceable to the extent that it:

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

9 (2) was inserted as a result of an abuse by the agent of the fiduciary or confidential
10 relationship to the principal.
11

12 **SECTION 117. JUDICIAL REVIEW.** The court may construe a durable power of
13 attorney and review the agent's conduct. Persons who may petition the court include:

14 (1) the principal;

15 (2) the principal's spouse, parent, or descendant;

16 (3) any person who would qualify as an intestate successor of the principal;

17 (4) any 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 (5) any governmental agency having regulatory authority to protect the welfare of the
20 principal; and

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

1 **SECTION 118. AGENT’S LIABILITY.** An agent who violates the terms of this [act],
2 the terms of the durable power of attorney, or the fiduciary duties under the durable power of
3 attorney and causes loss or damage to the principal or the principal’s successors in interest is
4 liable to the principal or the principal’s successors in interest for the loss or damage, together
5 with reasonable attorney’s fees.

6
7 **SECTION 119. AWARD OF ATTORNEY’S FEES TO PREVAILING PARTY.** In
8 an action to review the agent’s conduct, the court may award reasonable attorney’s fees to the
9 prevailing party. If an agent is found liable under Section 404, the agent may not seek
10 reimbursement from the principal’s assets for attorney’s fees incurred to defend against the
11 action or for fees owed to the prevailing party.

12
13 **SECTION 120. AGENT’S RESIGNATION; NOTICE.** An agent may resign by
14 giving notice to the principal, and if the principal is incapacitated, to any of the following
15 persons:

- 16 (1) the conservator or guardian, if one has been appointed for the principal;
17 (2) a remaining agent or successor agent if more than one agent is named; or
18 (3) the principal’s caregiver or other interested person, if the principal is incapacitated
19 and has neither a conservator nor a guardian, and has not named additional or successor agents.

20
21 **SECTION 121. PRESUMPTION OF VALIDITY.** A durable power of attorney that
22 purports to be signed by the principal named in the durable power of attorney is presumed valid.

1 No person with whom an agent seeks to act shall require an additional or different form of power
2 of attorney for authority granted under the durable power of attorney presented by the agent. A
3 photocopy or electronically transmitted facsimile of a duly executed original durable power of
4 attorney may be relied upon to the same extent as the original.

5
6 **SECTION 122. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S**
7 **AUTHORITY.**

8 (a) Except as otherwise provided in subsection (b), a person who refuses to accept the
9 authority of the agent to exercise a power granted under the durable power of attorney is liable to
10 the principal, the principal's heirs and assigns, and the personal representative or successor in
11 interest of the principal's estate in the same manner as the person would be liable had the person
12 refused to accept the authority of a principal who has capacity to act on the principal's own
13 behalf. The person found liable for refusing to accept the authority of an agent is liable for the
14 greater of actual damages or \$1000, and costs, including reasonable attorney's fees.

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

17 (1) the person has knowledge of the revocation of the durable power of attorney
18 before the exercise of the power;

19 (2) the duration of the authority specified in the durable power of attorney has
20 expired;

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

22 (4) the person reasonably believes that the durable power of attorney is not valid

1 under the law of this state and provides the agent with a record not more than 10 business days
2 after the refusal, describing the reason that the durable power of attorney is not valid under the
3 law of this state; or

4 (5) the person reasonably believes that the agent does not have authority to
5 perform the transaction requested and provides the agent with a record not more than 10 business
6 days after the refusal, describing the reason the person believes the durable power of attorney is
7 deficient under the law of this state.

8 (c) This section does not abrogate any other causes of action or relief at law or equity or
9 to which the principal or agent is entitled under other statutes or at common law.

10
11 **SECTION 123. DURABLE POWER OF ATTORNEY NOT TERMINATED**
12 **UNTIL NOTICE.**

13 (a) Except as otherwise stated in a durable power of attorney, the durable power of
14 attorney continues until revocation by the principal or the death of the principal. Revocation by
15 the principal or the death of a principal does not, however, terminate the agency as to the agent or
16 other person, who, without knowledge of the revocation by the principal or the death of the
17 principal, acts in good faith under the power. Any action so taken, unless otherwise invalid or
18 unenforceable, binds successors in interest of the principal.

19
20 **SECTION 124. COMMON LAW OF AGENCY; PRINCIPLES OF EQUITY.**

21 The common law of agency and principles of equity supplement this [act], except to the extent
22 modified by this [act] or another statute of this state.

1 **SECTION 125. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This
2 [act] shall be applied and construed to effectuate its general purpose to make uniform the law
3 with respect to the subject matter of this [act] among states enacting it.

4
5 **SECTION 126. SEVERABILITY.** If any provision of this [act] or its application to
6 any person or circumstance is held invalid, the invalidity does not affect other provisions or
7 applications of this [act] which can be given effect without the invalid provision or application,
8 and to this end the provisions of this [act] are severable.

9
10 **SECTION 127. EFFECTIVE DATE; EFFECT ON EXISTING POWERS OF**
11 **ATTORNEY.** A durable power of attorney is valid if it:

- 12 (1) complies with the terms of this [act]; or
13 (2) is executed before [the date of enactment of this Act] and valid under common law or
14 statute existing at the time of execution.

15
16 **SECTION 128. REPEAL.** The following acts and parts of acts are repealed:

- 17 (1)
18 (2)
19 (3)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

SECTION 201. FORM. The following statutory form of durable power of attorney is sufficient:

1. NOTICE TO PRINCIPAL:

2. DESIGNATION OF AGENT:

I _____
[Insert your full name and address.] designate:

1
2
3 **[Insert full name and address of the person appointed, or of each person appointed**
4 **if you want to designate more than one agent.]**

5
6 as my agent to act for me in any lawful way with respect to the subjects and acts that I
7 have initialed in this durable power of attorney. If I have designated more than one agent,
8 I instruct that:
9

10 **[Initial the blank space () to the left of your choice. If neither blank space is**
11 **initialed, the agents are required to act TOGETHER.]**

12
13 () each agent may act INDEPENDENTLY. () all agents must act TOGETHER.
14

15 **3. DESIGNATION OF SUCCESSOR AGENT:**

16
17 If every agent named above is unable or unwilling to serve, I designate:
18
19
20
21
22

23 **[Insert full name and address of the person appointed, or of each person appointed**
24 **if you want to designate more than one successor agent.]**

25
26 as my successor agent to act for me with the same authority as granted to my agent.
27 If I have designated more than one successor agent, I instruct that:
28

29 **[Initial the blank space () to the left of your choice. If neither blank space is**
30 **initialed, the successor agents are required to act TOGETHER.]**

31
32 () each successor agent may act INDEPENDENTLY.
33 () all successor agents must act TOGETHER.
34

35 **4. GRANT OF POWERS.**

36
37 I grant to my agent power with respect to the following subjects as further defined in
38 Article 3 of the Uniform Durable Power of Attorney Act [, insert citation to state statute
39 here]:
40

41 **[Instructions:**

42
43 **To grant power with respect to ALL of the following subjects designated (A) through**

1 (M), initial the blank space () in front of N and ignore the blank spaces () in
2 front of the other subjects.
3

4 To grant power with respect to one or more, but fewer than all, of the following
5 subjects, initial the blank space () in front of each power you are granting.
6

7 To withhold a power, do not initial the blank space () in front of it. You may, but
8 need not, cross out each power withheld.]
9

- 10 () (A) Real Property
11 () (B) Tangible Personal Property
12 () (C) Stocks and Bonds
13 () (D) Commodities and Options
14 () (E) Banks and Other Financial Institutions
15 () (F) Operation of Business
16 () (G) Insurance and Annuities
17 () (H) Estates, Trusts, and Other Beneficiary Relationships
18 () (I) Claims and Litigation
19 () (J) Personal and Family Maintenance
20 () (K) Benefits from Social Security, Medicare, Medicaid, or Other Government
21 Programs, or Military Service
22 () (L) Retirement Plans
23 () (M) Taxes
24 () (N) All of the Powers Listed Above [You need not initial any other blank
25 spaces () if you initial the blank space () in front of N.]
26

27 I understand that the grant of powers initialed above DOES NOT authorize my agent to
28 do any of the following specific acts designated (1) through (7) UNLESS I have also
29 initialed the blank space () in front of each such act. I grant power to my agent to
30 perform ONLY the specific acts initialed, as those acts may be further defined or limited
31 by the Uniform Durable Power of Attorney Act [, insert citation to state statute here]:
32
33

- 34 () (1) create, modify, or revoke a trust
35 () (2) fund with the principal's property a trust not created by the principal or a
36 person authorized to create a trust on behalf of the principal
37 () (3) make or revoke a gift of the principal's property in trust or otherwise
38 () (4) create or change rights of survivorship in the principal's property or in
39 property in which the principal may have an interest
40 () (5) designate or change the designation of a beneficiary to receive any property,
41 benefit, or contractual right on the principal's death
42 () (6) create in the agent or a person to whom the agent owes a legal duty of support
43 the right to receive property, a benefit, or a contractual right in which the

1 principal has an interest
2 () (7) delegate any or all of the powers granted to my agent under this durable
3 power of attorney to any person or persons whom my agent selects
4

5 I also understand that I may give SPECIAL INSTRUCTIONS limiting or extending any
6 of the powers granted to my agent.
7

8 **[Initial the blank space () to the left of your choice. If you choose to add special**
9 **instructions, you must give those instructions on the lines provided. If neither blank**
10 **space is initialed, the durable power of attorney is not subject to any special**
11 **instructions. Special instructions may include limiting or extending the powers**
12 **granted to your agent, or modifying the duties your agent owes to you to the extent**
13 **permitted by Article 1 of the Uniform Durable Power of Attorney Act (insert**
14 **citation to state statute here)]**
15

16 () The powers granted above to my agent ARE NOT subject to any special instructions.
17

18 () The powers granted above to my agent ARE SUBJECT to the following special
19 instructions:
20

21 _____
22 _____
23 _____
24 _____
25

26 **5. NOTICE TO AGENT.**
27

28 **AS THE AGENT, ONCE YOU ACCEPT DESIGNATION UNDER THIS**
29 **DURABLE POWER OF ATTORNEY OR EXERCISE AUTHORITY GRANTED**
30 **TO YOU BY THE PRINCIPAL, A FIDUCIARY RELATIONSHIP IS CREATED**
31 **BETWEEN YOU AND THE PRINCIPAL. UNLESS OTHERWISE MODIFIED IN**
32 **THIS POWER OF ATTORNEY, YOUR DUTIES INCLUDE THE DUTY TO:**
33

- 34 (1) **ACT IN GOOD FAITH, WITH REASONABLE CARE FOR THE BEST**
35 **INTEREST OF THE PRINCIPAL;**
36 (2) **AVOID CONFLICTS OF INTEREST THAT WOULD IMPAIR YOUR**
37 **ABILITY TO ACT IN THE BEST INTEREST OF THE PRINCIPAL;**
38 (3) **KEEP A COMPLETE RECORD OF ALL RECEIPTS, DISBURSEMENTS,**
39 **AND TRANSACTIONS CONDUCTED ON BEHALF OF THE**
40 **PRINCIPAL;**
41 (4) **TAKE NO ACTION BEYOND THE SCOPE OF THE AUTHORITY**
42 **GRANTED IN THIS DURABLE POWER OF ATTORNEY; AND**
43 (5) **PRESERVE THE PRINCIPAL'S ESTATE PLAN TO THE EXTENT**

**KNOWN TO YOU WHEN SUCH ACTION IS CONSISTENT WITH THE
PRINCIPAL'S BEST INTEREST.**

**IF YOU VIOLATE THE TERMS OF THE UNIFORM DURABLE POWER OF
ATTORNEY ACT, THE TERMS OF THIS DURABLE POWER OF ATTORNEY,
OR THE FIDUCIARY DUTIES CREATED BY THIS RELATIONSHIP, YOU
WILL BE LIABLE TO THE PRINCIPAL OR THE PRINCIPAL'S SUCCESSORS
FOR THE LOSS OR DAMAGE CAUSED BY YOUR VIOLATION TOGETHER
WITH REASONABLE ATTORNEY'S FEES.**

**IN ANY TRANSACTION WHERE YOU ARE ACTING UNDER THE
AUTHORITY OF THE DURABLE POWER OF ATTORNEY AS AN AGENT FOR
THE PRINCIPAL, YOU MUST DISCLOSE YOUR DESIGNATION AS THE
AGENT OF THE PRINCIPAL BY WRITING OR PRINTING THE NAME OF
THE PRINCIPAL AND SIGNING YOUR OWN NAME AS "AGENT" IN THE
FOLLOWING MANNER: PRINCIPAL'S NAME BY (YOUR SIGNATURE) AS
AGENT.**

**IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES THAT
YOU DO NOT UNDERSTAND, YOU SHOULD OBTAIN COMPETENT LEGAL
ADVICE.**

6. EFFECTIVE DATE.

This durable power of attorney is effective:

**[Initial the blank space () to the left of your choice. If you do not initial any blank
space, this durable power of attorney will become effective when you sign it.]**

() immediately.

() upon my incapacity as determined by the following person or persons:

_____.

[Insert the full name and address of the person or persons designated.]

() upon my incapacity as determined by two physicians.

() upon the following future date or event:

_____.

1
2 [State the future date or event that you intend to activate this durable power of
3 attorney.]
4

5 **7. DURABILITY.**
6

7 I UNDERSTAND THAT ONCE THIS DURABLE POWER OF ATTORNEY IS
8 EFFECTIVE IT WILL CONTINUE EVEN IF I AM INCAPACITATED UNLESS I
9 HAVE EARLIER REVOKED IT.
10

11 **8. TERMINATION.**
12

13 Unless otherwise stated, this durable power of attorney continues until I have revoked it
14 or it is terminated by my death.
15

16 **9. INDEMNIFICATION OF PERSONS WHO RELY ON THIS DURABLE**
17 **POWER OF ATTORNEY.**
18

19 I agree that any person who receives a photocopy or electronically transmitted facsimile
20 of this durable power of attorney may rely upon its validity. Termination of this durable
21 power of attorney is not effective as to my agent or other person who relies upon it without
22 knowledge of termination. I agree to indemnify any person for claims that may arise
23 against that person because of reliance on my durable power of attorney.
24
25

26 **10. SIGNATURE AND ACKNOWLEDGMENT.**
27

28
29 SIGNED THIS _____ DAY OF _____, 20____.
30
31

32 _____
33 Principal's Signature
34

35 _____
36 Principal's name printed
37

38 _____
39 Principal's address
40
41

42
43 State of _____

County of _____

This document was acknowledged before me on _____ (date),
by _____ (name of Principal).

Signature of Notarial Officer (Seal, if any)

Title and Residence
[My Commission expires: _____]

This document prepared by:

ARTICLE 3

POWERS

SECTION 301. EXPRESS AUTHORITY REQUIRED.

Unless expressly authorized in the durable power of attorney, a durable power of attorney does not grant authority to an agent to:

- (1) create, modify, or revoke a trust;
- (2) fund with the principal's property a trust not created by the principal or a person authorized to create a trust on behalf of the principal;
- (3) make or revoke a gift of the principal's property in trust or otherwise;
- (4) create or change rights of survivorship in the principal's property or in property in 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 the powers granted under the durable power of attorney to another person.

SECTION 302. PRESERVATION OF ESTATE PLAN. The agent, in exercising authority under a durable power of attorney, shall take the principal's estate plan into account to the extent known to the agent and shall attempt to preserve the plan if consistent with the

1 principal's best interest based on all relevant factors, including the principal's obligations, need
2 for maintenance, and eligibility for public benefits or assistance under a statute or governmental
3 regulation. The agent is not liable under this section to any beneficiary of the plan unless the
4 agent acts in bad faith.

5
6 **SECTION 303. INCORPORATION OF POWERS; SIMILAR OR**
7 **OVERLAPPING POWERS; EXISTING, LATER ACQUIRED, AND FOREIGN**
8 **INTERESTS; MODIFICATION.**

9 (a) An agent has a power granted under this article if the durable power of attorney
10 incorporates the power by:

11 (1) referring to a descriptive caption in Sections 305 through 318; or

12 (2) citing to a specific section of Sections 305 through 318.

13 (b) A reference in a durable power of attorney to a descriptive caption in Sections 305
14 through 318 must be construed as if the entire section were set out in full in the durable power of
15 attorney.

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

17
18 (d) The powers described in Sections 305 through 318 are exercisable with respect to an
19 interest the principal has when the durable power of attorney is executed or an interest acquired
20 after execution, whether or not the property is located in this state, and whether or not the powers
21 are exercised or the durable power of attorney is executed in this state.

22 (e) A durable power of attorney may modify a power incorporated by reference.

1 **SECTION 304. CONSTRUCTION OF POWERS GENERALLY.** By executing a
2 durable power of attorney that incorporates by reference a power in Sections 305 through 318,
3 the principal, except as modified in the durable power of attorney, authorizes the agent with
4 respect to that power to:

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

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

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

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

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

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

22 (7) keep appropriate records of each transaction, including an accounting of receipts and

1 disbursements;

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

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

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

8
9 **SECTION 305. REAL PROPERTY.** Language granting power with respect to
10 transactions concerning real property authorizes the agent to:

11 (1) accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or
12 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, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or
15 other governmental permits, plat or consent to platting, develop, grant options concerning, lease,
16 sublease, or otherwise dispose of, an interest in real property or a right incident to real property;

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

19 (4) do any act of management or of conservation with respect to an interest in real
20 property, or a right incident to real property, owned or claimed to be owned by the principal,
21 including:

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

1 (B) obtaining or regaining possession, or protecting the interest or right, by
2 litigation or otherwise;

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

5 (D) purchasing supplies, hiring assistance or labor, and making repairs or
6 alterations in the real property;

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

9 (6) participate in a reorganization with respect to real property or a legal entity that owns
10 an interest in or right incident to real property and receive and hold, directly or indirectly, shares
11 of stock or obligations received in a plan of reorganization, and act with respect to them,
12 including:

13 (A) selling or otherwise disposing of them;

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

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

17 (7) change the form of title of an interest in or right incident to real property, except as
18 otherwise provided in Section 301(a) (4); and

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

1 **SECTION 306. TANGIBLE PERSONAL PROPERTY.** Language granting power
2 with respect to transactions concerning tangible personal property authorizes the agent to:

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

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

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

12 (4) do an act of management or conservation with respect to tangible personal property or
13 an interest in tangible personal property on behalf of the principal, including:

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

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

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

19 (D) moving from place to place;

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

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

1 (5) change the form of title of an interest in or right incident to tangible personal property,
2 except as otherwise provided in Section 301(a)(4).
3

4 **SECTION 307. STOCKS AND BONDS.** Language granting power with respect to
5 transactions concerning stocks and bonds authorizes the agent to buy, sell, and exchange stocks,
6 bonds, mutual funds, and all other types of securities and financial instruments, whether held
7 directly or indirectly, except commodity futures contracts and call and put options on stocks and
8 stock indexes, receive certificates and other evidences of ownership with respect to securities,
9 exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and
10 consent to limitations on the right to vote.
11

12 **SECTION 308. COMMODITIES AND OPTIONS.** Language granting power with
13 respect to transactions concerning commodities and options authorizes the agent to buy, sell,
14 exchange, assign, settle, and exercise commodity futures contracts and call and put options on
15 stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify,
16 and terminate option accounts with a broker.
17

18 **SECTION 309. BANKS AND OTHER FINANCIAL INSTITUTIONS.** Language
19 granting power with respect to transactions concerning banks and other financial institutions
20 authorizes the agent to:

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

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

4 (3) hire a safe deposit box or space in a vault;

5 (4) contract to procure other services available from a financial institution as the agent
6 considers desirable;

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

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

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

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

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

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

21 (11) apply for and receive letters of credit, credit and debit cards, and traveler's checks

1 from a financial institution, and give an indemnity or other agreement in connection with letters
2 of credit; and

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

5
6 **SECTION 310. OPERATION OF BUSINESS.** Language granting power with respect
7 to operating a business authorizes the agent to:

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

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

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

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

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

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

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

2 (A) continue, modify, renegotiate, extend, and terminate a contract made with an
3 individual or a legal entity by or on behalf of the principal with respect to the business before
4 execution of the durable power of attorney;

5 (B) determine:

6 (i) the location of its operation;

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

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

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

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

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

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

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

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

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

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

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

(10) pay, compromise, or contest taxes or assessments and do any other act which the agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the durable power of attorney.

SECTION 311. INSURANCE AND ANNUITIES. Language granting power with respect to insurance and annuities authorizes the agent to:

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

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

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

(4) designate the beneficiary of the contract, except as otherwise provided in Section 301(a)(5);

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

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

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

(10) change the beneficiary of a contract of insurance or annuity, except as otherwise provided in Section 301(a)(5);

(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 312. ESTATES, TRUSTS, AND OTHER BENEFICIARY RELATIONSHIPS.

(a) Except as otherwise provided in Section 301(a)(5), 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,

1 or claims to be entitled, as a beneficiary, to a share or payment, including to:

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

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

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

9 (4) initiate, participate in, and oppose litigation to remove, substitute, or surcharge
10 a fiduciary;

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

13 (6) transfer an interest of the principal in real property, stocks, bonds, accounts
14 with financial institutions, insurance, and other property, to the trustee of a revocable trust
15 created by the principal as settlor.

16 (b) Unless expressly authorized in the durable power of attorney, language granting
17 power with respect to estate, trust, and other beneficiary transactions does not include authority
18 to create, modify, or revoke a trust, or fund with the principal's property a trust not created by the
19 principal or a person authorized to create a trust on behalf of the principal.

20
21 **SECTION 313. GIFTS.** Except as otherwise provided in Section 301, language
22 granting power with respect to gifts authorizes the agent to make gifts of any of the principal's

1 property to individuals or organizations within the limits of the annual exclusion under Section
2 2503(b) of the United States Internal Revenue Code[, or corresponding future provisions of
3 federal tax law,] as the agent determines to be in the principal's best interest based on all relevant
4 factors, including:

5 (1) the value and nature of the principal's property;

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

7 (3) minimization of income, estate, inheritance, generation-skipping transfer or gift taxes;

8 (4) eligibility for public benefits or assistance under a statute or governmental regulation;

9 and

10 (5) the principal's personal history of making or joining in the making gifts while living.

11
12 **SECTION 314. CLAIMS AND LITIGATION.** Language granting power with respect
13 to claims and litigation authorizes the agent to:

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

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

21 (3) in connection with litigation, procure an attachment, garnishment, libel, order of
22 arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to

1 effect or satisfy a judgment, order, or decree;

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

5 (5) submit to arbitration, settle, and propose or accept a compromise with respect to a
6 claim or litigation;

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

14 (7) act for the principal with respect to bankruptcy or insolvency proceedings, whether
15 voluntary or involuntary, concerning the principal or some other person, with respect to a
16 reorganization proceeding, or a receivership or application for the appointment of a receiver or
17 trustee which affects an interest of the principal in property or other thing of value; and

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

1 **SECTION 315. PERSONAL AND FAMILY MAINTENANCE.** Language granting
2 power with respect to personal and family maintenance authorizes the agent to:

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

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

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

13 (4) act as the principal's personal representative pursuant to sections 1171 through 1179
14 of the Social Security Act as added by sections 262 and 264 of Public Law 104-191 [or successor
15 sections] and applicable regulations, in making decisions related to the past, present, or future
16 payment for the provision of health care consented to by the principal or anyone authorized under
17 the law of this state to consent to health care on behalf of the principal;

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

21 (6) maintain or open charge accounts for the convenience of the individuals described in
22 paragraph (1) and open new accounts the agent considers desirable to accomplish a lawful

1 purpose; and

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

5
6 **SECTION 316. BENEFITS FROM SOCIAL SECURITY, MEDICARE,**
7 **MEDICAID, OR OTHER GOVERNMENTAL PROGRAMS, OR MILITARY SERVICE.**

8 Language granting power with respect to benefits from social security, medicare, medicaid or
9 other governmental programs, or civil or military service, empowers the agent to:

10 (1) execute vouchers in the name of the principal for allowances and reimbursements
11 payable by the United States or a foreign government or by a state or subdivision of a state to the
12 principal, including allowances and reimbursements for transportation of the individuals
13 described in Section 314(1), and for shipment of their household effects;

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

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

21 (4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise
22 with respect to any benefits the principal may be entitled to receive; and

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

SECTION 317. RETIREMENT PLANS. Except as otherwise provided in Section 301, language granting power with respect to retirement plans authorizes the agent to:

(1) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;

(2) make voluntary contributions to those plans;

(3) exercise the investment powers available under any self-directed retirement plan;

(4) make “rollovers” of benefits into other retirement plans;

(5) if authorized by the plan, borrow from, sell assets to, purchase assets from, and 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 318. 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 Internal Revenue Code Section 2032A [or any successor section], closing agreements, and any power of attorney

1 required by the Internal Revenue Service or other taxing authority with respect to a tax year upon
2 which the statute of limitations has not run and the following 25 tax years;

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

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

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