

D R A F T

FOR DISCUSSION ONLY

UNIFORM POWER OF ATTORNEY ACT*

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

Draft Dated October 27, 2004

CAVEAT: The Drafting Committee met on October 22-24, 2004, and decided to make extensive changes to the scope, language and organization of the act. Through the heroic efforts of the Reporter this revised draft of the act was produced very quickly so that it would be available to several interested groups whose meetings begin as early as October 29, 2004. This revised draft has not been reviewed or approved by the Drafting Committee Members, but was prepared by the Reporter and the Chair of the Drafting Committee. The Chair made the most recent revisions in the draft, so any errors are his. (He is also writing this caveat.) We believe that the draft reflects the substance of the changes decided upon by the Drafting Committee, but time has not allowed all of the attention to the language and the organization of the draft that we would have preferred.

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**Name Change of act from Revised Uniform Durable Power of Attorney Act is subject to approval of the Executive Committee of the National Conference of Commissioners on Uniform State Laws. The ideas, concepts and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the Drafting Committee. They do not necessarily reflect the views of the Conference and its Commissioners or the Drafting Committee and its Members and Reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.*

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UNIFORM POWER OF ATTORNEY ACT

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UNIFORM POWER OF ATTORNEY ACT

Prefatory Note

The catalyst for the new 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 Conference 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 listserves 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 a confirming affidavit to activate contingent powers;
- (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 repeals. The Conference 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 121 and 122 of the Act address the problem of persons refusing to honor an agent's authority. Section 121 provides protection from liability for persons who in good faith accept the agent's authority. This section also prohibits such persons from requiring a different form of power of attorney. Section 122 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 place upon persons who deal with an agent the duty to investigate the agent or the agent's actions. Safeguards against abuse are provided, instead, through heightened requirements for delegating authority that could dissipate the principal's property or alter the principal's estate plan (Section 108), provisions that set out the agent's duties and liabilities (Sections 115 and 118) and by specification of comprehensive categories of persons who have standing to request judicial review of the agent's conduct (Section 117). A provision that gives the reviewing court discretion to award attorney fees to the prevailing party (Section 117(b)) 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 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. Section 103 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 taken from 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.”

Another innovation is the presumption of durability contained in Section 105. 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 106 requires the principal’s acknowledged signature. Notwithstanding this execution requirement, Section 107 enumerates those powers executed in another state or country or under pre-existing law that will be considered valid under the Act.

Article 1 also addresses concerns about powers that have the potential of dissipating the principal’s property or altering the principal’s estate plan. Section 108(b) 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. Of particular note is Section 108(b)(6) which requires an express grant of authority to empower the agent to create in the agent or in a person to whom the agent owes a duty of support the right to receive the principal’s property.

Section 109 provides guidance on the relationship of the agent to a later court-appointed fiduciary. The Original Act conferred upon a 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 110. Unless the principal specifies that it is to become effective upon a future date, event, or contingency, a power of attorney becomes effective when executed. The principal is permitted under this section 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 110 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 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, the statute provides for determination by a physician or licensed psychologist as a default position.

The bases for termination of a power of attorney are covered in Section 111. In response to concerns expressed in the Conference 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 112 through 120 deal with matters related to the agent, including default rules for compensation, reimbursement, agent duties and liability. Section 116 provides that a principal may lower the standard of liability for agent conduct subject to a minimum level of accountability for actions taken in bad faith or with reckless indifference to the purposes of the power of attorney. Section 117 sets out a comprehensive list of persons who may petition the court to review the agent's conduct. An agent may resign by following the notice procedures described in Section 120.

Sections 121 and 122 are included in the Act to address the frequently reported problem of persons who refuse to accept an agent's authority. Section 121 protects persons who accept an agent's authority without knowledge that a power of attorney is revoked, terminated, or invalid or that the agent is exceeding or improperly exercising the agent's powers. A person who accepts an agent's authority in good faith is not required to make inquiry into the extent of the agent's powers or the propriety of their exercise, and may rely on an agent's certification as to any matter concerning the power of attorney or the principal. In exchange for this protection, Section 122(a) imposes liability for refusal to accept an agent's authority subject to limited exceptions in Section 122(b).

Section 123 clarifies that the Act is supplemented by existing bodies of law, including the common law and 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.

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 201 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 201 further states that these powers may be modified in the power of attorney.

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 agent(s), and the grant of powers. In the grant of powers section, the principal must decide to cross out any of the general powers listed on the form that the principal does not wish to delegate to the agent. There is a separate list of the Section 108(b) powers for which the statute requires an express grant of authority. If the principal wishes to grant any of the Section 108(b) powers, the principal must initial each power to be granted.

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. The Act repeals 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 **[ARTICLE] 1**

3 **GENERAL PROVISIONS AND DEFINITIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Uniform Power of
5 Attorney Act.

6 **SECTION 102. SCOPE.** This [act] applies to all powers of attorney except:

7 (1) a power of attorney for health care;

8 (2) a power of attorney to the extent that it is coupled with an interest in the
9 subject of the power;

10 (3) a proxy given to another person to exercise voting rights;

11 (4) a power given to or for the benefit of a creditor in connection with a credit
12 transaction;

13 (5) a power contained in the governing document of a corporation, partnership,
14 limited liability company, association or other legal entity by which a director, partner or member
15 authorizes others to act on behalf of the entity; and

16 (6) a power of attorney created on a form prescribed by a government or
17 governmental subdivision, agency or other instrumentality.

18 **SECTION 103. DEFINITIONS.** In this [act]:

19 (1) “Agent” means the person granted authority to act as an attorney in fact for the
20 principal under a power of attorney and includes the original agent and any concurrent or
21 successor agent.

22 (2) “Court” means the [] court.

1 (3) “Health care power of attorney” means _____

2 _____ .

3 (4) “ Incapacity” means inability of an individual to manage property or business
4 affairs because of an impairment in the ability to receive and evaluate information or make or
5 communicate decisions even with the use of technological assistance, or because the individual is
6 missing, detained, or unable to return to the United States. “Incapacitated” has a corresponding
7 meaning.

8 (5) “Person” means an individual, corporation, business trust, estate, trust,
9 partnership, limited liability company, association, joint venture, public corporation, government,
10 governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

11 (6) “Power of attorney” means an instrument in which a principal grants authority
12 to an agent.

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

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

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

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

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

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

(11) “State” means a state of the United States, the District of Columbia, Puerto Rico, United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a Native American nation, tribe, pueblo or band recognized by federal law or formally acknowledged by a State.

SECTION 104. KNOWLEDGE; NOTICE.

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

- (1) has actual knowledge of it;
- (2) has received a notice or notification of it; or
- (3) from all the facts and circumstances known to the person at the time in question, has reason to know it.

(b) An organization has notice or knowledge of a fact involving a power of attorney from the time it is brought to the attention of the individual conducting a transaction involving the power of attorney and, in any event, from the time it would have been brought to the individual’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and the organization reasonably complies with the routines. Reasonable diligence does not require an individual acting for the organization to communicate information unless the communication is part of the individual’s duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

1 **SECTION 105. POWER OF ATTORNEY NOT AFFECTED BY INCAPACITY**
2 **OR LAPSE OF TIME.**

3 (a) A power of attorney is durable unless the power of attorney expressly
4 provides that it is terminated by the incapacity of the principal. Durable, with reference to a
5 power of attorney, means that the agent's authority survives the principal's incapacity or takes
6 effect upon the principal's incapacity.

7 (b) All acts performed by an agent pursuant to a power of attorney have the same
8 effect and inure to the benefit of and bind the principal and the principal's successors in interest
9 as if the principal had performed the acts. Unless the power of attorney provides a time of
10 termination, the authority of an agent is exercisable notwithstanding a lapse of time since the
11 execution of the power of attorney.

12 **SECTION 106. CREATION.**

13 (a) The principal must sign a power of attorney or direct another individual to
14 sign on behalf of the principal in the principal's presence, and, except as provided in subsection
15 (b) must acknowledge the signature before a notary public or another person authorized to take
16 acknowledgments.

17 (b) If the principal's signature is not acknowledged, the statutory presumption of
18 validity provided by Section 121(e) does not apply to the power of attorney.

19 **SECTION 107. POWER OF ATTORNEY EXECUTED IN ANOTHER STATE**
20 **OR COUNTRY; PRE-EXISTING POWERS OF ATTORNEY; INTERPRETATION.**

21 (a) A power of attorney executed in another state or country is valid and
22 enforceable in this state if its creation complies with:

(1) the law of the state or country in which the power of attorney was executed;

(2) the law of this state;

(3) the law of the state or country where the principal is domiciled, has a place of abode or business, or is a national; or

(4) the law of the state or country where the agent is domiciled or has a place of business.

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

(c) This [act] may not be applied to enlarge the scope of authority granted to an agent in a power of attorney executed in another state or country or under pre-existing law.

SECTION 108. AUTHORITY OF AGENT.

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

(b) An agent has authority under a power of attorney to do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the authority to:

(1) create, modify, or revoke a trust;

(2) fund a trust not created by the principal;

- 1 (3) make or revoke a gift;
- 2 (4) create or change rights of survivorship;
- 3 (5) designate or change the designation of a beneficiary;
- 4 (6) create a right to receive property in the agent or a person supported by
- 5 the agent or to whom the agent owes a legal duty of support;
- 6 (7) delegate to another person the agency authority granted under the
- 7 power of attorney; or
- 8 (8) disclaim property, including a power of appointment.

9 (c) If powers granted in a power of attorney are similar or overlap, the broadest

10 power controls.

11 (d) Powers granted in a power of attorney are exercisable with respect to property

12 the principal has when the power of attorney is executed or an interest acquired after execution,

13 whether or not the property is located in this State, and whether or not the powers are exercised

14 or the power of attorney is executed in this State.

15 (e) If the same power is granted to different agents under different powers of

16 attorney,_____.

17 (f) If the principal appoints an agent under a health care power of attorney that is

18 different from the agent under a power of attorney covered by this act,

19 _____.

20 **SECTION 109. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**

21 **COURT-APPOINTED FIDUCIARY.**

1 (a) In a power of attorney, a principal may nominate a conservator, guardian of the
2 principal's estate, or guardian of the principal's person for consideration by the court if protective
3 proceedings for the principal's estate or person are thereafter commenced. [The court shall make
4 its appointment in accordance with the principal's most recent nomination in a power of attorney
5 except for good cause or disqualification.]

6 (b) If, after the execution of a power of attorney, a court appoints a conservator or
7 guardian of the principal's estate, or other fiduciary charged with the management of all of the
8 principal's property or all of the property except specified exclusions, the agent is accountable to
9 the fiduciary as well as to the principal. [The agent's authority continues until limited, suspended,
10 or terminated by the court.]

11 **SECTION 110. WHEN EFFECTIVE.**

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

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

21 (c) If a power of attorney becomes effective upon the principal's incapacity and
22 the principal has not designated a person to have authority to determine conclusively that the

1 principal is incapacitated, the power of attorney becomes effective upon a determination in a
2 writing or other record by a physician [or licensed psychologist] that the principal is
3 incapacitated. Other persons may rely on the determination of the physician [or licensed
4 psychologist] without liability to the principal or to any other person.

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

11 **SECTION 111. TERMINATION.**

12 (a) Subject to subsections (b), (c) and (d), a power of attorney is terminated when:

13 (1) the principal dies;

14 (2) the principal becomes incapacitated, if the power of attorney is not
15 durable;

16 (3) the principal revokes the power of attorney or terminates the agent's
17 authority;

18 (4) the agent dies or is adjudged incapacitated;

19 (5) the agent resigns pursuant to the provisions of Section 120;

20 (6) proceedings are commenced for the [legal separation or divorce of the
21 principal and agent] [dissolution or annulment of the agent's marriage to the principal]; or

22 (7) the power of attorney states that it is terminated.

1 (b) A power of attorney is not terminated by the termination of an agent's
2 authority if the power of attorney provides for a concurrent or successor agent.

3 (c) Termination of the agent's authority or of the power of attorney by the
4 principal or the death of the principal does not terminate the agency as to the agent or other
5 person that, without knowledge of the revocation by the principal or the death of the principal,
6 acts in good faith under the power. An act so performed, unless otherwise invalid or
7 unenforceable, binds the principal and the successors in interest of the principal.

8 (d) The incapacity of a principal who has previously executed a power of attorney
9 that is not a durable power does not revoke or terminate the agency as to the agent or other
10 person that, without knowledge of the incapacity, acts in good faith under the power. An act so
11 performed, unless otherwise invalid or unenforceable, binds the principal and the successors in
12 interest of the principal.

13 (e) [To be added: Provisions to protect innocent parties who act without
14 knowledge of the other events of termination listed in subsection (a), and a provision reinstating
15 the agency authority upon the remarriage of the principal and agent.]

16 **SECTION 112. CONCURRENT AND SUCCESSOR AGENTS.**

17 (a) Unless the power of attorney or this section otherwise provides, authority
18 granted to two or more concurrent agents is exercisable only by their majority consent.
19 However, if prompt action is required to accomplish the purposes of the power of attorney or to
20 avoid irreparable injury to the principal's interests and an agent is unavailable because of
21 absence, illness, or other temporary incapacity, the other agents may act for the principal. If a

1 vacancy occurs in one or more of the designations of agent under a power of attorney, the
2 remaining agents may act for the principal.

3 (b) A principal may designate one or more successor agents to act if an initial or
4 predecessor agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to
5 serve. A principal may grant authority to another person, designated by name, by office, or by
6 function, including an initial or successor agent, to designate one or more successor agents.
7 Unless a power of attorney otherwise provides, a successor agent has the same authority as that
8 granted to an initial agent.

9 (c) An agent is not liable for the actions of another agent, including a predecessor
10 agent, unless the agent participates in, knowingly acquiesces in, or conceals a breach of fiduciary
11 duty committed by the other agent.

12 (d) [Add a provision stating that an agent must notify the principal and
13 _____ if the agent knows of another agent's serious breach of duty or imminent
14 breach of duty.]

15 **SECTION 113. COMPENSATION AND REIMBURSEMENT OF AGENT.** If a
16 power of attorney does not specify an agent's compensation, the agent is entitled to compensation
17 that is reasonable under the circumstances. Except as otherwise provided in a power of attorney,
18 an agent is entitled to reimbursement of reasonable expenses advanced by the agent on behalf of
19 the principal.

20 **SECTION 114. [RESERVED]**

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

22 (a) An agent's acceptance of authority under a power of attorney creates an

1 agency relationship. [Add provision stating how acceptance may be evidenced. See Section
2 701(c) of Uniform Trust Code.]

3 (b) Except as otherwise provided in subsection (d) and in the power of attorney,
4 an agent must:

5 (1) act as a fiduciary in accordance with the reasonable expectations of the
6 principal and the agent, and, otherwise, in good faith, with the competence, diligence and
7 prudence normally exercised by agents in similar circumstances, and for the best interest of the
8 principal;

9 (2) subject to subsection (c), avoid a conflict of interest that would impair
10 the agent's ability to act in the best interest of the principal;

11 (3) keep a complete record of all receipts, disbursements, and transactions
12 conducted on behalf of the principal;

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

14 (5) take the principal's estate plan into account to the extent known to the
15 agent and attempt to preserve the plan if consistent with the principal's best interest based on all
16 relevant factors, including the principal's foreseeable obligations and need for maintenance;
17 minimization of income, estate, inheritance, generation-skipping transfer or gift taxes; and
18 eligibility for public benefits or assistance under a statute or governmental regulation. An agent
19 is not liable to any beneficiary of the plan for failure to preserve the principal's estate plan unless
20 the agent acts in bad faith.

21 (c) [Note: To be revised in form and substance following consultation with
22 observers: An agent who acts in good faith, with competence, diligence and prudence for the

1 best interest of the principal is not liable solely because the agent also benefits from the act or has
2 an individual or conflicting interest in relation to the property or affairs of the principal.]

3 (d) [Add provision about agents with special skills and knowledge]

4 (e) Absent a breach of duty to the principal, an agent is not liable if the value of
5 the principal's property declines.

6 (f) Subject to Section 108, an agent that has delegated to another person the
7 agency authority granted under the power of attorney remains responsible to the principal for the
8 exercise or nonexercise of the delegated authority.

9 (g) [Insert a provision similar to that of the Uniform Management of Institutional
10 Funds Act providing that an agent that exercises reasonable care in selecting and monitoring
11 employees and professionals on behalf of the principal is not responsible for their errors.]

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

20 **SECTION 116. EXONERATION.** A provision in a power of attorney relieving the
21 agent of liability for breach of duty is binding on the principal and the principal's successors in
22 interest except to the extent that the provision:

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

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

5 **SECTION 117. JUDICIAL REVIEW.**

6 (a) The court may construe a power of attorney, review the agent's conduct, and
7 grant appropriate relief. Persons who may petition the court include:

8 (1) the principal or the agent;

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

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

12 (4) a person who would qualify as an intestate successor of the principal;

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

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

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

20 (b) The court may award reasonable attorneys' fees and expenses to the prevailing
21 party.

1 **SECTION 118. AGENT’S LIABILITY.** An agent that violates this [act] is liable to
2 the principal or the principal’s successors in interest for (i) the damages and (ii) attorneys’ fees
3 and expenses paid from the principal’s estate, resulting from the violation and for any amounts
4 awarded under Section 117(b).

5 **SECTION 119. [RESERVED]**

6 **SECTION 120. AGENT’S RESIGNATION; NOTICE.** An agent may resign by
7 giving notice to the principal and, if the principal is incapacitated, to:

8 (1) the conservator or guardian, if one has been appointed for the principal, and a
9 concurrent agent or successor agent, if any; or

10 (2) the principal’s caregiver or other person reasonably believed by the agent to
11 have sufficient interest in the principal’s welfare, if the principal has neither a conservator nor a
12 guardian, and has not named concurrent or successor agents; or

13 (3) a governmental agency having authority to protect the welfare of the principal,
14 if the principal has neither a conservator nor a guardian, has not named concurrent or successor
15 agents, and has no caregiver or other person with sufficient interest in the principal’s welfare..

16 **SECTION 121. PROTECTION OF PERSONS DEALING WITH AN AGENT.**

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

1 (b) A person who in good faith accepts an agent's authority is not required to
2 inquire into the extent of the agent's powers or the propriety of their exercise, and may rely
3 without further investigation on the agent's certification as to any matters concerning the power
4 of attorney or the principal.

5 (c) A person with which an agent seeks to act may not require an additional or
6 different form of power of attorney for authority granted in the power of attorney presented.

7 (d) A photocopy or electronically transmitted copy of an original power of
8 attorney is as valid as the original.

9 (e) A signature on a power of attorney that purports to be that of the principal is
10 presumed to be valid if the signature is acknowledged, except as to any person that knows the
11 signature is invalid.

12 **SECTION 122. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S**
13 **AUTHORITY.**

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

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

1 (1) the person has knowledge of the revocation of the power of attorney
2 before the exercise of the power;

3 (2) the duration of the authority specified in the power of attorney has
4 expired;

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

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

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

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

16 **SECTION 123. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by the
17 particular provisions of this [act], the principles of law and equity, including the law relative to
18 capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion,
19 mistake, ratification, bankruptcy and other validating or invalidating cause supplement its
20 provisions.

21 [NOTE: Add sections dealing with the application of the act, except for identified
22 sections and subsections, to powers of attorney executed in this state prior to its effective date,

1 and identifying which sections and subsections may not be modified in a power of attorney.]

1 [ARTICLE] 2

2 POWERS

3 SECTION 201. INCORPORATION OF POWERS.

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

6 (1) referring to a descriptive caption in Sections 203 through 217; or

7 (2) citing to a specific section of Sections 203 through 217.

8 (b) A reference in a power of attorney to a descriptive caption in Sections 203
9 through 217 or a citation to a specific section of Sections 203 through 217 incorporates the entire
10 section as if it were set out in full in the power of attorney.

11 (c) The principal may modify a power incorporated by reference.

12 (d) All powers in this [Article] are subject to the provisions of Section 108.

13 SECTION 202. CONSTRUCTION OF POWERS GENERALLY. By executing a
14 power of attorney that incorporates by reference a power described in Sections 203 through 217,
15 except as provided in Section 108 or modified in the power of attorney, the principal authorizes
16 the agent with respect to that subject to:

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

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

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

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

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

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

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

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

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

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

21 **SECTION 203. REAL PROPERTY.** Language granting power with respect to real
22 property authorizes the agent to:

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

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

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

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

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

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

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

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

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

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

8 (A) selling or otherwise disposing of them;

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

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

12 (7) change the form of title of an interest in or right incident to real property,
13 except as otherwise provided in Section 108(b); and

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

16 **SECTION 204. TANGIBLE PERSONAL PROPERTY.** Language granting power
17 with respect to tangible personal property authorizes the agent to:

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

21 (2) sell, exchange, convey with or without covenants, release, surrender, create a
22 security interest in, grant options concerning, lease, sublease to others, or otherwise dispose of

1 tangible personal property or an interest in tangible personal property;

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

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

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

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

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

12 (D) moving from place to place;

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

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

15 (5) change the form of title of an interest in tangible personal property, except as
16 otherwise provided in Section 108(b).

17 **SECTION 205. STOCKS AND BONDS.** Language granting power with respect to
18 transactions concerning stocks and bonds authorizes the agent to buy, sell, and exchange stocks,
19 bonds, mutual funds, and all other types of securities and financial instruments, whether held
20 directly or indirectly, except commodity futures contracts and call and put options on stocks and
21 stock indexes, receive certificates and other evidences of ownership with respect to securities,

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

3 **SECTION 206. COMMODITIES AND OPTIONS.** Language granting power with
4 respect to transactions concerning commodities and options authorizes the agent to buy, sell,
5 exchange, assign, settle, and exercise commodity futures contracts and call and put options on
6 stocks and stock indexes traded on a regulated option exchange, and establish, continue, modify,
7 and terminate option accounts with a broker.

8 **SECTION 207. BANKS AND OTHER FINANCIAL INSTITUTIONS.** Except as
9 otherwise provided in Section 108(b), language granting power with respect to transactions
10 concerning banks and other financial institutions authorizes the agent to:

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

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

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

17 (4) contract for other services available from a financial institution as the agent
18 considers desirable;

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

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

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

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

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

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

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

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

16 **SECTION 208. OPERATION OF BUSINESS.** Language granting power with respect
17 to operating a business authorizes the agent to:

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

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

21 (A) perform a duty or discharge a liability and exercise a right, power,
22 privilege, or option that the principal has, may have, or claims to have, under the partnership

1 agreement or operating agreement, whether or not the principal is a partner in a partnership or
2 member of a limited liability company;

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

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

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

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

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

16 (B) determine:

- 17 (i) the location of its operation;
- 18 (ii) the nature and extent of its business;
- 19 (iii) the methods of manufacturing, selling, merchandising,
20 financing, accounting, and advertising employed in its operation;
- 21 (iv) the amount and types of insurance carried; and
- 22 (v) the mode of engaging, compensating, and dealing with its

1 accountants, attorneys, other agents, and employees;

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

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

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

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

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

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

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

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

1 **SECTION 209. INSURANCE AND ANNUITIES.** Language granting power with
2 respect to insurance and annuities authorizes the agent to:

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

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

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

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

14 (5) surrender and receive the cash surrender value;

15 (6) exercise an election;

16 (7) change the manner of paying premiums;

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

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

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

(11) 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 210. ESTATES, TRUSTS, AND OTHER BENEFICIARY

RELATIONSHIPS. Except as otherwise provided in Section 108(b), language granting power with respect to estates, trusts, and other relationships in which the principal is a beneficiary, authorizes the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:

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

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

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

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

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

(6) transfer an interest of the principal in real property, stocks, bonds, accounts

1 with financial institutions or securities intermediaries, insurance, annuities, and other property, to
2 the trustee of a revocable trust created by the principal as settlor.

3 **SECTION 211. CLAIMS AND LITIGATION.** Language granting power with respect
4 to claims and litigation authorizes the agent to:

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

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

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

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

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

20 (6) waive the issuance and service of process upon the principal, accept service of
21 process, appear for the principal, designate persons upon whom process directed to the principal
22 may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings,

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

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

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

12 **SECTION 212. PERSONAL AND FAMILY MAINTENANCE.** Language granting
13 power with respect to personal and family maintenance authorizes the agent to:

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

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

22 (3) pay on behalf of the individuals described in paragraph (1) expenses for

1 necessary medical, dental, and surgical care, hospitalization, and custodial care;

2 (4) act as the principal's personal representative pursuant to sections 1171 through
3 1179 of the Social Security Act, 42 U.S.C. Section 1320d (sections 262 and 264 of Public Law
4 104-191) [or successor provisions] and applicable regulations, in making decisions related to the
5 past, present, or future payment for the provision of health care consented to by the principal or
6 anyone authorized under the law of this state to consent to health care on behalf of the principal;

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

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

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

16 **SECTION 213. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL**
17 **OR MILITARY SERVICE.** Language granting power with respect to benefits from social
18 security, medicare, medicaid, other governmental programs, or civil or military service,
19 authorizes the agent to:

20 (1) execute vouchers in the name of the principal for allowances and
21 reimbursements payable by the United States or a foreign government or by a state or subdivision
22 of a state to the principal, including allowances and reimbursements for transportation of the
23 individuals described in Section 212(1), and for shipment of their household effects;

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

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

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

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

SECTION 214. RETIREMENT PLANS. Except as otherwise provided in Section 108(b), language granting power with respect to retirement plans authorizes the agent to:

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

(2) make voluntary contributions to those plans;

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

(4) make a rollover of benefits into another retirement plan;

(5) if authorized by the plan, borrow from, sell assets to, purchase assets from, or request distributions from the plan; and

(6) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

SECTION 215. TAXES. Language granting power with respect to tax matters authorizes the agent to:

- (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under the Internal Revenue Code, 26 U.S.C. Section 2032A [or successor provisions], closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
- (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- (3) exercise any election available to the principal under federal, state, local, or foreign tax law; and
- (4) act for the principal in all tax matters for all periods before the Internal Revenue Service, and any other taxing authority.

SECTION 216. GIFTS. Except as otherwise provided in Section 108(b), language granting power with respect to gifts authorizes the agent to make gifts of any of the principal's property to individuals or organizations within the limits of the annual exclusion under the Internal Revenue Code, 26 U.S.C. Section 2503(b) [or successor provisions], as the agent determines to be in the principal's best interest based on all relevant factors, including:

- (1) the value and nature of the principal's property;
- (2) the principal's foreseeable obligations and need for maintenance;
- (3) minimization of income, estate, inheritance, generation-skipping transfer or

1 gift taxes;

2 (4) eligibility for public benefits or assistance under a statute or governmental
3 regulation; and

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

5 **SECTION 217. DELEGATION OF AGENCY AUTHORITY.** Language granting
6 power with respect to delegation of agency authority authorizes the agent to delegate revocably
7 by writing or other record to one or more persons a power granted to the agent by the principal.

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 property decisions
11 for you, the principal. Your agent can make decisions and act with respect to your
12 property (including your money) even if you lose capacity to act for yourself. The meaning
13 of powers listed in this document is explained in the Uniform Power of Attorney Act. This
14 power of attorney does not authorize the agent to make medical or health care decisions for
15 you.

16
17 You should select someone you trust to serve as your agent. The agent's authority will
18 continue until your death unless you revoke the power of attorney or the agent resigns. If
19 your agent can no longer act for you, your power of attorney will end unless you have
20 named a successor agent. You may also name a second successor agent.

21
22 Before signing this document, you should seek legal advice if you have questions about the
23 power of attorney or the authority you are granting to your agent.

24
25 DESIGNATION OF AGENT

26
27 I, _____ (principal's full name), of
28 _____
29 _____ (principal's address)

30 name the following person as my agent:

31 _____
32 _____
33 (full name and address of agent)

34
35
36 OPTIONAL DESIGNATION OF SUCCESSOR AGENT(S)

37
38 If my agent can no longer act for me, I name as my successor agent:

39 _____
40 _____
41 (full name and address of successor agent)

1
2 If my successor agent can no longer act for me, I name as my second successor agent:

3
4
5
6 (full name and address of second successor agent)

7
8 **GRANT OF GENERAL AUTHORITY**

9
10 I grant my agent and any successor agent general authority to act for me with respect to the
11 following subjects as defined in the Uniform Power of Attorney Act:

12
13 **(CROSS OUT any subject you DO NOT want to include in the agent's general authority.)**

- 14
15 • Real Property
16 • Tangible Personal Property
17 • Stocks and Bonds
18 • Commodities and Options
19 • Banks and Other Financial Institutions
20 • Operation of Business
21 • Insurance and Annuities
22 • Estates, Trusts, and Other Beneficiary Relationships
23 • Claims and Litigation
24 • Personal and Family Maintenance
25 • Benefits from Government Programs or Military Service
26 • Retirement Plans
27 • Taxes

28
29 **GRANT OF SPECIFIC AUTHORITY**

30
31 Neither my agent nor a successor agent may do any of the following specific acts for me
32 UNLESS I have also INITIALED the blank space () in front of the specific power to act:

33
34 **(INITIAL ONLY the specific powers you WANT to include in the agent's authority.)**

- 35
36 () Create, modify, or revoke a trust
37 () Fund a trust created by someone other than me
38 () Make or revoke a gift
39 () Create or change rights of survivorship
40 () Create or change a beneficiary designation to receive property on my death
41 () Create in the agent or in a person supported by the agent a right to receive my property
42 () Authorize another person to exercise the agency authority granted under this power of
43 attorney

1 () Disclaim or refuse an interest in property, including a power of appointment

2
3 **SPECIAL INSTRUCTIONS**

4
5 **(On the following lines you may give special instructions limiting or extending the powers**
6 **granted to your agent.)**

7
8
9
10
11
12
13

14
15 **EFFECTIVE DATE**

16
17 This power of attorney is effective immediately unless I have stated otherwise in the Special
18 Instructions.

19
20 **RELIANCE ON THIS POWER OF ATTORNEY**

21
22 Any person, including my agent, may rely upon the validity of this power of attorney or a copy of
23 it unless that person knows it is terminated or revoked.

24
25
26 **SIGNATURE AND ACKNOWLEDGMENT**

27
28
29
30 Your signature

Date

31
32
33 Your name printed

34
35
36 Your address

37
38 [This document prepared by:

39
40
41
42

1 State of _____
2 [County] of _____
3
4

5 This document was acknowledged before me on _____ (date),
6 by _____ (name of Principal).
7
8

9 _____ (Seal, if any)
10 Signature of Notary
11 My commission expires: _____
12

13 **IMPORTANT INFORMATION FOR AGENT**

14

15 **When you accept the authority granted under this power of attorney a special legal**
16 **relationship, known as agency, is created between you and the principal. Agency imposes**
17 **upon you fiduciary duties that continue until you resign or the power of attorney is**
18 **terminated or revoked. You must:**
19

- 20 (3) **do what you know the principal reasonably expects you to do with the principal's**
21 **property;**
22 (2) **act in good faith with competence, diligence and prudence for the best interest of the**
23 **principal;**
24 (3) **avoid conflicts that would impair your ability to act in the principal's best interest;**
25 (4) **keep a complete record of all receipts, disbursements, and transactions conducted**
26 **for the principal;**
27 (5) **do nothing beyond the authority granted in this power of attorney; and**
28 (6) **preserve the principal's estate plan to the extent you know the plan, unless**
29 **preserving the estate plan is inconsistent with the principal's best interest.**
30

31 **If you have special skills or expertise then you must use those special skills and**
32 **expertise when acting for the principal. You must disclose your identity as an agent**
33 **whenever you act for the principal by writing or printing the name of the principal and**
34 **signing your own name as "agent" in the following manner:**
35

36 **(Principal's Name) by (Your Signature) as Agent**
37

38 **The meaning of the powers granted to you is defined in the Uniform Power of**
39 **Attorney Act. If you violate the Uniform Power of Attorney Act or act outside the**
40 **authority granted, you may be liable for any damages, including attorneys' fees and**
41 **expenses, caused by your violation.**
42

43 **You should seek legal advice if there is anything about this document or your duties**
44 **that you do not understand.**

1
2 **AGENT'S ACCEPTANCE**
3

4 **(This statement of acceptance may be signed any time after the principal signs the power of**
5 **attorney.)**
6

7 I accept appointment as agent under this power of attorney.
8

9
10 _____
11 Agent's signature

Date

12
13 _____
14 Agent's name printed

15
16 _____
17 Successor Agent's signature

Date

18
19 _____
20 Successor Agent's name printed

21
22 _____
23 Second Successor Agent's signature

Date

24
25 _____
26 Second Successor Agent's name printed
27
28

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

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

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

11 SECTION 403. EFFECTIVE DATE. This [act] takes effect _____.

12 SECTION 404. EFFECT ON EXISTING POWERS OF ATTORNEY. Except as
13 otherwise provided in this [act], on [the effective date of this [act]]:

14 (1) this [act] applies to all powers of attorney created before, on, or after [its
15 effective date];

16 (2) this [act] applies to all judicial proceedings concerning powers of attorney
17 commenced on or after [its effective date];

18 (3) this [act] applies to judicial proceedings concerning powers of attorney
19 commenced before [its effective date] unless the court finds that application of a particular
20 provision of this [act] would substantially interfere with the effective conduct of the judicial
21 proceedings or prejudice the rights of the parties, in which case the particular provision of this
22 [act] does not apply and the superseded law applies;

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

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

(1) [Uniform Durable Power of Attorney Act]

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

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