

D R A F T

FOR DISCUSSION ONLY

UNIFORM POWER OF ATTORNEY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM POWER OF ATTORNEY ACT

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UNIFORM POWER OF ATTORNEY ACT

Prefatory Note

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

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

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

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

Informed by the study, survey results, and comments from many lawyers and professional groups, the Conference drafted the Act to reflect both state legislative trends and collective best practices. Throughout the drafting process, invaluable input was received from the American College of Trust and Estate Counsel, the ABA Section of Real Property, Probate and Trust Law, the Joint Editorial Board for Uniform Trust and Estate Acts, the National Conference of Lawyers and Corporate Fiduciaries, the American Bankers Association, as well as numerous individual lawyers and corporate counsel.

While the Act is primarily a set of default rules that can be altered by specific provisions within a power of attorney, the Act also contains certain safeguards for the protection of an incapacitated principal. The Act was drafted to strike a balance between the need for flexibility and acceptance of an agent's authority and the need to prevent and redress abuse.

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

Sections 119 and 120 of the Act address the problem of persons refusing to accept an agent's authority. Section 119 provides protection from liability for persons that in good faith accept the agent's authority. This section also prohibits such persons from requiring a different form of power of attorney. Section 120 sanctions refusal to accept an agent's authority unless the refusal meets limited statutory exceptions.

In exchange for mandated acceptance of an agent's authority, the Act does not require persons that deal with an agent to investigate the agent or the agent's actions. Instead, safeguards against abuse are provided through heightened requirements for granting authority that could dissipate the principal's property or alter the principal's estate plan (Section 201(a)), provisions that set out the agent's duties and liabilities (Sections 114 and 117) and by specification of the categories of persons that have standing to request judicial review of the agent's conduct (Section 116). A provision that gives the reviewing court discretion to award reasonable attorney's fees to the prevailing party (Section 116(d)) serves to both deter frivolous actions and facilitate redress where warranted.

Overview of the Uniform Power of Attorney Act

The Act consists of 4 articles. The basic substance of the Act is located in Articles 1 and 2. Article 3 contains the optional statutory form and Article 4 consists of miscellaneous

provisions dealing with general application of the Act and repeal of certain prior acts. The following is a brief overview.

Article 1 – General Provisions and Definitions – Section 102 lists definitions which are useful in interpretation of the Act. Of particular note is the definition of “incapacity” which replaces the term “disability” used in the Original Act. The definition of “incapacity” is consistent with the standard for appointment of a conservator under Section 401 of the Uniform Guardianship and Protective Proceedings Act as amended in 1997. Another significant change in terminology from the Original Act is the use of “agent” in place of the term “attorney in fact”. The term “agent” was also used in the Uniform Statutory Form Power of Attorney Act and is intended to clarify confusion in the lay public about the meaning of “attorney in fact.” Section 103 provides that the Act is to apply broadly to all powers of attorney, but excepts from the Act powers of attorney for health care and certain specialized powers such as those coupled with an interest or dealing with proxy voting.

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

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

The default rule for when a power of attorney becomes effective is stated in Section 109. Unless the principal specifies that it is to become effective upon a future date, event, or contingency, the authority of an agent under a power of attorney becomes effective when the power is executed. Section 109 permits the principal to designate who may determine when contingent powers are triggered. If the trigger for contingent powers is the principal’s incapacity, Section 109 provides that the person designated to make that determination has the authority to act as the principal’s personal representative under the Health Insurance Portability and Accountability Act (HIPAA) for purposes of accessing the principal’s health care information and communicating with the principal’s health care provider. This provision does not, however,

confer the authority to make health care decisions for the principal. If the trigger for contingent powers is incapacity but the principal has not designated anyone to make the determination, or the person authorized is unable or unwilling to make the determination, the statute provides for determination by a physician or licensed psychologist that the principal's ability to manage property or business affairs is impaired, or by an attorney at law, judge, or governmental official that the principal is missing, detained, or unable to return to the United States.

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

Sections 111 through 118 address matters related to the agent, including default rules for coagents and successor agents (Section 111), reimbursement and compensation (Section 112), an agent's acceptance of appointment (Section 113), and the agent's duties (Section 114). Section 115 provides that a principal may lower the standard of liability for agent conduct subject to a minimum level of accountability for actions taken dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal. Section 116 sets out a comprehensive list of persons that may petition the court to review the agent's conduct and Section 117 addresses agent liability. An agent may resign by following the notice procedures described in Section 118.

Sections 119 and 120 are included in the Act to address the frequently reported problem of persons refusing to accept a power of attorney. Section 119 protects persons that in good faith accept a power of attorney without actual knowledge that the power of attorney is revoked, terminated, or invalid or that the agent is exceeding or improperly exercising the agent's powers. Subject to limited exceptions, Section 120 imposes liability for refusal to accept an acknowledged power of attorney.

Sections 121 through 123 address the relationship of the Act to other law. Section 121 clarifies that the Act is supplemented by the principles of common law and equity to the extent those principles are not displaced by a specific provision of the Act, and Section 122 further clarifies that the Act is not intended to supersede any law applicable to financial institutions or other entities. With respect to remedies, Section 123 provides that the remedies under the Act are not exclusive and do not abrogate any other cause of action or remedy that may be available under the law of the enacting jurisdiction.

Article 2 – Powers – The Act offers the drafting attorney enhanced flexibility whether drafting an individually tailored power of attorney or using the statutory form. Like the Uniform Statutory Form Power of Attorney Act, Article 2 of the Act sets forth detailed descriptions of powers that can be granted to an agent. Section 202 provides that these powers can be incorporated by reference through use of the short descriptive term or section number for the power provided in Article 2. The definitions in Article 2 also provide meaning for the powers

enumerated on the optional statutory form in Article 3. Section 202 further states that these powers may be modified in the power of attorney.

Article 2 also addresses concerns about the grant of specific powers that could be used to dissipate the principal's property or alter the principal's estate plan. Section 201(a) lists the powers that cannot be implied from a general grant of authority, but which must instead be delegated through express inclusion in the power of attorney. Section 201(b) clarifies that unless a power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not create in the agent or in a person to whom the agent owes a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

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

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

1 **UNIFORM POWER OF ATTORNEY ACT**

2
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS AND DEFINITIONS**

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

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

9 (1) “Agent” means a person granted authority to act for a principal under a power of
10 attorney. The term includes an original agent, coagent, successor agent, and a person to which
11 an agent’s authority is delegated.

12 (2) “Durable” means that a power of attorney is not terminated by the principal’s
13 incapacity.

14 (3) “Electronic” means relating to technology having electrical, digital, magnetic,
15 wireless, optical, electromagnetic, or similar capabilities.

16 (4) “Good faith” means honesty in fact.

17 (5) “Incapacity” means inability of an individual to manage property or business affairs
18 because:

19 (A) of an impairment in the ability to receive and evaluate information or make or
20 communicate decisions even with the use of technological assistance; or

21 (B) the individual is:

22 (i) missing;

1 (ii) detained; or

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

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

6 (7) “Power of attorney” means a writing or other record, evidenced by the record to be a
7 power of attorney, in which a principal grants authority to an agent.

8 (8) “Presently exercisable general power of appointment” means with respect to the
9 property or property interest subject to the power that the power is exercisable at the time in
10 question to vest absolute ownership in the principal individually, the principal’s estate, the
11 principal’s creditors, or the creditors of the principal’s estate, but does not include a power
12 exercisable in a fiduciary capacity or a power exercisable only by will. A power of appointment
13 that is not exercisable until the occurrence of a specified event, the satisfaction of an
14 ascertainable standard, or the passage of a specified period of time becomes a presently
15 exercisable power upon the occurrence of the specified event, the satisfaction of the ascertainable
16 standard, or the passage of the specified period of time.

17 (9) “Principal” means an individual who grants authority to an agent in a power of
18 attorney.

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

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

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

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

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

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

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

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

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

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

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

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

19 **SECTION 105. EXECUTION OF POWER OF ATTORNEY.** A power of attorney
20 must be signed by the principal or in the principal’s conscious presence by another individual
21 directed by the principal to sign the principal’s name on the power of attorney. The signature is
22 presumed to be genuine if the principal acknowledges the signature before a notary public or

1 other individual authorized to take acknowledgments. Sections 119 and 120 do not apply to an
2 unacknowledged power of attorney.

3 **SECTION 106. VALIDITY OF POWER OF ATTORNEY.**

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

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

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

10 (1) the law of the jurisdiction stated in the terms of, or otherwise indicated in, the
11 power of attorney;

12 (2) the law of the jurisdiction in which the power of attorney was executed if
13 there is no statement or other indication of jurisdiction in the power of attorney; or

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

16 (d) Except as otherwise provided by law other than this [act], a photocopy or
17 electronically transmitted copy of an original power of attorney has the same effect as the
18 original.

19 **SECTION 107. MEANING AND EFFECT OF POWER OF ATTORNEY.** The
20 meaning and effect of a power of attorney is determined by the law of the jurisdiction stated in
21 the terms of, or otherwise indicated in, the power of attorney and, in the absence of a statement or
22 indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was

1 executed.

2 **SECTION 108. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**
3 **COURT-APPOINTED FIDUCIARY.**

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

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

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

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

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

21 (c) If a power of attorney is to become effective upon the principal's incapacity and the
22 principal has not authorized a person to determine that the principal is incapacitated, or the

1 person authorized is unable or unwilling to make the determination, the power of attorney
2 becomes effective upon a determination in a writing or other record by:

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

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

8 (A) missing;

9 (B) detained; or

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

11 (d) A person authorized by the principal in the power of attorney to determine that the
12 principal is incapacitated may act as the principal's personal representative pursuant to the
13 Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social
14 Security Act, 42 U.S.C. Section 1320d, [as amended,] and applicable regulations, to obtain
15 access to the principal's health care information and communicate with the principal's health-
16 care provider.

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

18 (a) A power of attorney terminates when:

19 (1) the principal dies;

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

21 (3) the principal revokes the power of attorney;

22 (4) the power of attorney provides it will terminate;

1 (5) the purpose of the power of attorney is accomplished; or

2 (6) the principal revokes the agent's authority or the agent dies, becomes
3 incapacitated, or resigns and the power of attorney does not provide for another agent to act
4 under the power of attorney.

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

6 (1) the principal revokes the agent's authority;

7 (2) the agent dies, becomes incapacitated, or resigns;

8 (3) proceedings are commenced for the [dissolution] or annulment of the agent's
9 marriage to the principal or their legal separation, unless the power of attorney otherwise
10 provides; or

11 (4) the power of attorney terminates.

12 (c) Unless a power of attorney otherwise provides, an agent's authority is exercisable
13 until the power of attorney terminates, notwithstanding a lapse of time since the execution of the
14 power of attorney.

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

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

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

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

5 (a) A principal may designate two or more persons to act as coagents. Unless a power of
6 attorney otherwise provides, each coagent may exercise its authority independently.

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

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

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

14 (c) Except as otherwise provided in the power of attorney, an agent that does not
15 participate in or conceal a breach of fiduciary duty committed by another agent, including a
16 predecessor agent, is not liable for the actions of the other agent.

17 (d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty
18 by another agent shall notify the principal and, if the principal is incapacitated, take any action
19 reasonably appropriate in the circumstances to safeguard the principal's best interest.

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

1 circumstances.

2 **SECTION 113. AGENT’S ACCEPTANCE.** Except as otherwise provided in the
3 power of attorney, a person accepts appointment as an agent under a power of attorney by
4 exercising powers or performing duties as an agent or by any other assertion or conduct
5 indicating acceptance.

6 **SECTION 114. AGENT’S DUTIES.**

7 (a) Notwithstanding the provisions in a power of attorney, an agent that has accepted
8 appointment shall:

9 (1) act in accordance with the principal’s reasonable expectations to the extent
10 actually known by the agent and, otherwise, in the principal’s best interest;

11 (2) act in good faith; and

12 (3) act only within the scope of authority granted in the power of attorney.

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

15 (1) act loyally for the principal’s benefit;

16 (2) act so as not to create a conflict of interest that impairs the agent’s ability to
17 act impartially in the principal’s best interest;

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

20 (4) keep a record of all receipts, disbursements, and transactions made on behalf
21 of the principal;

22 (5) cooperate with a person that has authority to make health-care decisions for

1 the principal to carry out the principal's reasonable expectations to the extent actually known by
2 the agent and, otherwise, act in what the agent reasonably believes to be the principal's best
3 interest; and

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

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

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

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

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

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

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

18 (e) If an agent is selected by the principal because of special skills or expertise possessed
19 by the agent, or in reliance on the agent's representation that the agent has special skills or
20 expertise, the special skills or expertise must be considered in determining whether the agent has
21 acted with care, competence, and diligence under the circumstances.

22 (f) Absent a breach of duty to the principal, an agent is not liable if the value of the

1 principal's property declines.

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

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

14 **SECTION 115. EXONERATION OF AGENT.** A provision in a power of attorney
15 relieving the agent of liability for breach of duty is binding on the principal and the principal's
16 successors in interest except to the extent the provision:

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

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

1 **SECTION 116. PETITION FOR JUDICIAL REVIEW.**

2 (a) A court may construe a power of attorney, review the agent’s conduct, and grant
3 appropriate relief.

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

5 (1) the principal or the agent;

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

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

8 (4) the principal’s spouse, parent, or descendant;

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

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

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

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

17 (9) a person asked to accept the power of attorney.

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

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

1 **SECTION 117. AGENT’S LIABILITY.** An agent that violates this [act] is liable to
2 the principal or the principal’s successors in interest for any of the following resulting from the
3 violation:

- 4 (1) damages;
- 5 (2) reasonable attorney’s fees and costs paid from the principal’s estate; and
- 6 (3) any amount awarded under Section 116(d).

7 **SECTION 118. AGENT’S RESIGNATION; NOTICE.** If a power of attorney does
8 not provide the method for an agent’s resignation, an agent may resign by giving notice to the
9 principal and, if the principal is incapacitated:

- 10 (1) to the conservator or guardian, if one has been appointed for the principal, and a
11 coagent or successor agent;
- 12 (2) if there is no person described in paragraph (1), to the principal’s caregiver or other
13 person reasonably believed by the agent to have sufficient interest in the principal’s welfare; or
- 14 (3) if neither paragraph (1) nor (2) applies, to a governmental agency having authority to
15 protect the welfare of the principal.

16 **SECTION 119. PROTECTION OF PERSON ACCEPTING POWER OF**
17 **ATTORNEY.**

18 (a) A person that in good faith accepts a writing or other record purporting to be an
19 acknowledged power of attorney without actual knowledge that the signature is not genuine may
20 rely upon the presumption under Section 105 that the signature is genuine.

21 (b) A person that in good faith accepts an acknowledged power of attorney without
22 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported

1 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly
2 exercising the agent's powers, is protected from liability as if the power of attorney were
3 genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and
4 the agent had not exceeded and had properly exercised the power.

5 (c) A person that is asked to accept an acknowledged power of attorney may request, and
6 rely upon, without further investigation:

7 (1) an agent's certification sworn under penalty of perjury of any factual matter
8 concerning the principal, the agent, or the power of attorney;

9 (2) an English translation of the power of attorney if the power of attorney
10 contains, in whole or in part, language other than English; and

11 (3) an opinion of counsel as to any matter of law concerning the power of
12 attorney if the power of attorney is executed other than on a statutory form under this [act] and
13 the person making the request provides in a writing or other record the reason for the request.

14 (d) An English translation or an opinion of counsel requested under this section must be
15 provided at the principal's expense unless the request is made more than five business days after
16 the power of attorney is presented for acceptance.

17 (e) For purposes of this section and Section 120, a person that conducts activities through
18 employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an
19 agent if the employee conducting the transaction involving the power of attorney is without
20 actual knowledge of the fact.

1 **SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT POWER OF**
2 **ATTORNEY.**

3 (a) Except as otherwise provided in subsection (c):

4 (1) a person must either accept an acknowledged power of attorney or request an
5 agent's certification, a translation, or an opinion of counsel pursuant to Section 119(c) within five
6 business days after presentation of the power of attorney for acceptance;

7 (2) if a person requests an agent's certification, a translation, or an opinion of
8 counsel under Section 119(c), the person must accept the power of attorney no later than five
9 business days after receipt of the certification, translation, or opinion of counsel; and

10 (3) a person may not require an additional or different form of power of attorney
11 for authority granted in the power of attorney presented.

12 (b) A person that refuses to accept an acknowledged power of attorney is subject to:

13 (1) a court order mandating acceptance of the power of attorney; and

14 (2) liability for reasonable attorney's fees and costs incurred in any action or
15 proceeding necessary to confirm the validity of the power of attorney or to mandate acceptance of
16 the power of attorney.

17 (c) A person is not required to accept an acknowledged power of attorney if:

18 (1) the person is not otherwise required to engage in a transaction with the
19 principal in the same circumstances;

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

22 (3) a request for a certification, a translation, or an opinion of counsel under

1 Section 119(c) is refused;

2 (4) the person in good faith believes that the power is not valid or that the agent
3 does not have the authority to perform the act requested, whether or not an agent’s certification, a
4 translation, or an opinion of counsel has been requested or provided; or

5 (5) the person makes, or has actual knowledge that another person has made, a
6 report to the [local adult protective services unit] stating a good faith belief that the principal is
7 subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a
8 person acting for or with the agent.

9 **SECTION 121. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by a
10 provision of this [act], the principles of law and equity supplement this [act].

11 **SECTION 122. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND**
12 **ENTITIES.** This [act] does not supersede any law applicable to financial institutions or other
13 entities, and the other law controls if inconsistent with this [act].

14 **SECTION 123. REMEDIES UNDER OTHER LAW.** The remedies under this [act]
15 are not exclusive and do not abrogate any right or remedy under the law of this state.

1 [ARTICLE] 2

2 POWERS

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

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

8 (1) create, amend, or revoke an inter vivos trust;

9 (2) make a gift;

10 (3) create or change rights of survivorship;

11 (4) create or change a beneficiary designation;

12 (5) delegate a power granted under the power of attorney;

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

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

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

17 (b) Notwithstanding a grant of authority to do an act in subsection (a), unless a power of
18 attorney otherwise provides, an agent, other than an ancestor, spouse, or descendant of the
19 principal, may not exercise authority under a power of attorney to create in the agent, or in a
20 person to whom the agent owes a legal obligation of support, an interest in the principal's
21 property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

22 (c) Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an agent

1 authority to do all acts that a principal could do, the agent has all the powers described in
2 Sections 204 through 216.

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

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

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

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

14 **SECTION 202. INCORPORATION OF POWERS.**

15 (a) An agent has a power described in this [article] if the power of attorney incorporates
16 the power by including the descriptive term for the power stated in Sections 204 through 217 or
17 citing to a section of Sections 204 through 217.

18 (b) A reference in a power of attorney to the descriptive term for a power in Sections 204
19 through 217 or a citation to a section of Sections 204 through 217 incorporates the entire section
20 as if it were set out in full in the power of attorney.

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

22 **SECTION 203. CONSTRUCTION OF POWERS GENERALLY.** Except as

1 otherwise provided in the power of attorney, by executing a power of attorney that incorporates
2 by reference a power described in Sections 204 through 217 or that grants to an agent authority to
3 do all acts that a principal could do pursuant to Section 201(c), a principal authorizes the agent,
4 with respect to that subject, to:

5 (1) demand, receive, and obtain by litigation or otherwise, money or another thing of
6 value to which the principal is, may become, or claims to be entitled, and conserve, invest,
7 disburse, or 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, cancel, terminate, reform, restate,
10 release, or modify the 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 agreement, lease, notice, check, draft, promissory note, electronic funds transfer, release, or other
13 instrument or communication the agent considers desirable to accomplish a purpose of a
14 transaction, including creating at any time a schedule listing some or all of the principal's
15 property and attaching it to the power of attorney;

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

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

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

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

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

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

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

9 **SECTION 204. REAL PROPERTY.** Unless a power of attorney otherwise provides,
10 language in a power of attorney granting power with respect to real property authorizes the agent
11 to:

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

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

20 (3) pledge or mortgage an interest in real property or right incident to real property as
21 security in order to borrow money or pay, renew, or extend the time of payment of a debt of the
22 principal;

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

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

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

7 (B) obtaining or regaining possession or protecting the interest or right by
8 litigation or otherwise;

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

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

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

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

19 (A) selling or otherwise disposing of them;

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

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

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

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

4 **SECTION 205. TANGIBLE PERSONAL PROPERTY.** Unless a power of attorney
5 otherwise provides, language in a power of attorney granting power with respect to tangible
6 personal property authorizes the agent to:

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

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

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

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

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

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

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

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

5 (D) moving the property from place to place;

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

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

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

9 **SECTION 206. STOCKS AND BONDS.**

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

14 (b) Unless a power of attorney otherwise provides, language in a power of attorney
15 granting power with respect to stocks and bonds authorizes the agent to:

16 (1) buy, sell, and exchange securities;

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

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

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

22 (5) exercise voting rights with respect to securities in person or by proxy, enter

1 into voting trusts, and consent to limitations on the right to vote.

2 **SECTION 207. COMMODITIES AND OPTIONS.** Unless a power of attorney
3 otherwise provides, language in a power of attorney granting power with respect to commodities
4 and options authorizes the agent to:

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

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

8 **SECTION 208. BANKS AND OTHER FINANCIAL INSTITUTIONS.** Unless a
9 power of attorney otherwise provides, language in a power of attorney granting power with
10 respect to banks and other financial institutions authorizes the agent to:

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

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

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

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

20 (5) receive statements of account, vouchers, notices, and similar documents from a
21 financial institution and act with respect to them;

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

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

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

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

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

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

14 **SECTION 209. OPERATION OF AN ENTITY OR BUSINESS.** Subject to the
15 terms of a document or an agreement governing an entity or an entity ownership interest, and
16 unless a power of attorney otherwise provides, language in a power of attorney granting power
17 with respect to operation of an entity or business authorizes the agent to:

18 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

19 (2) perform a duty or discharge a liability and exercise in person or by proxy a right,
20 power, privilege, or option that the principal has, may have, or claims to have;

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

22 (4) defend, submit to alternative dispute resolution, settle, or compromise litigation to

1 which the principal is a party because of an ownership interest;

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

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

7 (7) with respect to an entity or business owned solely by the principal:

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

11 (B) determine:

12 (i) the location of its operation;

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

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

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

17 (v) the mode of engaging, compensating, and dealing with its employees
18 and accountants, attorneys or other agents;

19 (C) change the name or form of organization under which the entity or business is
20 operated and enter into an ownership agreement with other persons to take over all or part of the
21 operation of the entity or business; and

22 (D) demand and receive money due or claimed by the principal or on the

1 principal's behalf in the operation of the entity or business and control and disburse the money in
2 the operation of the entity or business;

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

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

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

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

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

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

15 **SECTION 210. INSURANCE AND ANNUITIES.** Unless a power of attorney
16 otherwise provides, language in a power of attorney granting power with respect to insurance and
17 annuities authorizes the agent to:

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

22 (2) procure new, different, and additional contracts of insurance and annuities for the

1 principal and the principal's spouse, children, and other dependents, and select the amount, type
2 of insurance or annuity, and mode of payment;

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

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

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

7 (6) exercise an election;

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

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

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

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

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

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

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

21 Unless a power of attorney otherwise provides, language in a power of attorney granting power
22 with respect to estates, trusts, and other beneficial interests authorizes the agent to act for the

1 principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow,
2 or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a
3 share or payment, including the power to:

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

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

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

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

13 (5) initiate, participate in, or oppose litigation to remove, substitute, or surcharge a
14 fiduciary;

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

16 (7) transfer an interest of the principal in real property, stocks, bonds, accounts with
17 financial institutions or securities intermediaries, insurance, annuities, and other property to the
18 trustee of a revocable trust created by the principal as settlor [; and

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

21 **SECTION 212. CLAIMS AND LITIGATION.** Unless a power of attorney otherwise
22 provides, language in a power of attorney granting power with respect to claims and litigation

1 authorizes the agent to perform any lawful act on behalf of the principal in connection with
2 claims and litigation, including:

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

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

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

12 (4) perform any lawful act, including make or accept a tender, offer of judgment, or
13 admission of facts, submit a controversy on an agreed statement of facts, consent to examination
14 before trial, and bind the principal in litigation;

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

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

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

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

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

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

10 (a) Unless a power of attorney otherwise provides, language in a power of attorney
11 granting power with respect to personal and family maintenance authorizes the agent to:

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

15 (A) the principal's children;

16 (B) other individuals legally entitled to be supported by the principal; and

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

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

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

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

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

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

15 (7) maintain credit and debit accounts for the convenience of the individuals
16 described in paragraph (1) and open new accounts to accomplish a lawful purpose; and

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

20 (b) Authority with respect to personal and family maintenance is neither dependent upon,
21 nor limited by, authority that an agent may or may not have with respect to gifts under this [act].
22

1 **SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL**
2 **OR MILITARY SERVICE.**

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

6 (b) Unless a power of attorney otherwise provides, language in a power of attorney
7 granting power with respect to benefits from governmental programs or civil or military service
8 authorizes the agent to:

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

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

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

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

22 (5) prosecute, defend, submit to alternative dispute resolution, settle, and propose

1 or accept a compromise with respect to any benefit or assistance the principal may be entitled to
2 receive under a statute or governmental regulation; and

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

5 **SECTION 215. RETIREMENT PLANS.**

6 (a) In this section, “retirement plan” means any plan or account created by an employer,
7 the principal, or another individual for the purpose of providing retirement benefits or deferred
8 compensation of which the principal is a participant, beneficiary, or owner including a plan or
9 account under the following sections of the Internal Revenue Code:

10 (1) an individual retirement account under Internal Revenue Code Section 408,
11 26 U.S.C. Section 408 [, as amended];

12 (2) a Roth individual retirement account under Internal Revenue Code Section
13 408A, 26 U.S.C. Section 408A [, as amended];

14 (3) a deemed individual retirement account under Internal Revenue Code Section
15 408(q), 26 U.S.C. Section 408 (q) [, as amended];

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

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

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

22 (7) a nonqualified deferred compensation plan under Internal Revenue Code

1 Section 409A, 26 U.S.C. Section 409A [, as amended].

2 (b) Unless a power of attorney otherwise provides, language in a power of attorney
3 granting power with respect to retirement plans authorizes the agent to:

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

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

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

9 (4) make contributions to a retirement plan;

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

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

12 **SECTION 216. TAXES.** Unless a power of attorney otherwise provides, language in a
13 power of attorney granting power with respect to tax matters authorizes the agent to:

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

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

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

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

5 **SECTION 217. GIFTS.**

6 (a) In this section, a gift “for the benefit of” a person includes a gift to a trust, an account
7 under the Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan
8 as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529 [, as amended].

9 (b) Unless a power of attorney otherwise provides, language in a power of attorney
10 granting power with respect to gifts authorizes the agent to:

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

19 (2) consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section
20 2513, [as amended,] to the splitting of a gift made by the principal’s spouse in an amount per
21 donee not to exceed the aggregate annual gift tax exclusions for both spouses.

22 (c) An agent shall make a gift of the principal’s property only as the agent determines to

1 be consistent with the principal's objectives if actually known by the agent and, if unknown, as
2 the agent determines to be consistent with the principal's best interest based on all relevant
3 factors, including:

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

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

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

8 (4) eligibility for a benefit, program, or assistance under a statute or governmental
9 regulation; and

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

1 [ARTICLE] 3

2 STATUTORY FORMS

3
4 SECTION 301. STATUTORY FORM POWER OF ATTORNEY. A document

5 substantially in the following form may be used to create a statutory form power of attorney that
6 has the meaning and effect prescribed by this [act].

7 [INSERT NAME OF JURISDICTION]

8 STATUTORY FORM POWER OF ATTORNEY

9
10 IMPORTANT INFORMATION

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

16
17 This power of attorney does not authorize the agent to make health-care decisions for you.

18
19 You should select someone you trust to serve as your agent. The agent’s authority will continue
20 until your death unless you revoke the power of attorney or the agent resigns.

21
22 This form provides for designation of one agent. If you wish to name more than one agent you
23 may name a coagent in the Special Instructions. Coagents are not required to act together unless
24 you include that requirement in the Special Instructions.

25
26 If your agent is unable or unwilling to act for you, your power of attorney will end unless you
27 have named a successor agent. You may also name a second successor agent.

28
29 This power of attorney becomes effective immediately unless you state otherwise in the Special
30 Instructions.

31
32 **If you have questions about the power of attorney or the authority you are granting to your**
33 **agent, you should seek legal advice before signing this form.**

34
35 DESIGNATION OF AGENT

1 I _____ name the following
2 (name of Principal)
3 person as my agent:

4
5 Name of Agent: _____
6 Agent's Address: _____
7 Agent's Phone Number: _____
8

9
10 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

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

13
14 Name of Successor Agent: _____
15 Successor Agent's Address: _____
16 Successor Agent's Phone Number: _____
17

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

19
20 Name of Second Successor Agent: _____
21 Second Successor Agent's Address: _____
22 Second Successor Agent's Phone Number: _____
23

24
25 **GRANT OF GENERAL AUTHORITY**

26
27 I grant my agent and any successor agent general authority to act for me with respect to the
28 following subjects as defined in the [act]:

29
30 (INITIAL each power you want to include in the agent's general authority. If you wish to grant
31 all of the powers you may initial "All Preceding Powers" instead of initialing each power.)

- 32
33 Real Property
34 Tangible Personal Property
35 Stocks and Bonds
36 Commodities and Options
37 Banks and Other Financial Institutions
38 Operation of an Entity or Business
39 Insurance and Annuities
40 Estates, Trusts, and Other Beneficial Interests
41 Claims and Litigation
42 Personal and Family Maintenance
43 Benefits from Governmental Programs or Civil or Military Service

1 _____
2 _____
3
4 **EFFECTIVE DATE**

5
6 This power of attorney is effective immediately unless I have stated otherwise in the Special
7 Instructions.
8

9 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

10
11 If it becomes necessary for a court to appoint a conservator or guardian of my estate or person, I
12 nominate the following person(s) for appointment:
13

14 Name of Nominee for conservator or guardian of my estate:
15 _____

16 Nominee's Address: _____

17 Nominee's Phone Number: _____
18

19 Name of Nominee for guardian of my person:
20 _____

21 Nominees's Address: _____

22 Nominee's Phone Number: _____
23

24 **RELIANCE ON THIS POWER OF ATTORNEY**

25
26 Any person, including my agent, may rely upon the validity of this power of attorney or a copy of
27 it unless that person knows it is terminated or invalid.
28

29 **SIGNATURE AND ACKNOWLEDGMENT**

30
31 _____
32 Your signature

_____ Date

33
34 _____
35 Your name printed

36
37 _____
38 Your address

39
40 _____
41 Your phone number
42

1 State of _____
2 [County] of _____

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

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

13 [This document prepared by:
14 _____
15 _____
16 _____]

17
18 **IMPORTANT INFORMATION FOR AGENT**

19 **Agent's Duties**

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

- 24
25 (1) do what you know the principal reasonably expects you to do with the principal's
26 property or, if you do not know the principal's expectations, act in the principal's best
27 interest;
28 (2) act in good faith;
29 (3) do nothing beyond the authority granted in this power of attorney; and
30 (4) disclose your identity as an agent whenever you act for the principal by writing or printing
31 the name of the principal and signing your own name as "agent" in the following manner:

32
33
34 _____ (Principal's Name) by (Your Signature) as Agent

35
36 Unless the Special Instructions in this power of attorney state otherwise, you must also:

- 37
38 (1) act loyally for the principal's benefit;
39 (2) avoid conflicts that would impair your ability to act in the principal's best interest;
40 (3) act with care, competence, and diligence;
41 (4) keep a record of all receipts, disbursements, and transactions conducted for the principal;
42 (5) cooperate with any person that has authority to make health care decisions for the
43 principal to do what you know the principal reasonably expects or, if you do not know the

1 principal's expectations, to act in the principal's best interest; and
2 (6) attempt to preserve the principal's estate plan if you know the plan and preserving the
3 plan is consistent with the principal's best interest.
4

5 **Termination of Agent's Authority**
6

7 You must stop acting on behalf of the principal if you learn of any event that terminates this
8 power of attorney or your authority under this power of attorney. Events that terminate a power
9 of attorney or your authority to act under a power of attorney include:
10

- 11 (1) death of the principal;
- 12 (2) the principal's revocation of the power of attorney or your authority;
- 13 (3) the occurrence of a termination event stated in the power of attorney;
- 14 (4) the purpose of the power of attorney is fully accomplished; or
- 15 (5) a legal action is filed with a court to end your marriage to the principal, or for your legal
16 separation, unless the Special Instructions in this power of attorney state that such an
17 action will not terminate your authority.
18

19 ***Liability of Agent***
20

21 The meaning of the powers granted to you is defined in the [act]. If you violate the [act] or act
22 outside the authority granted, you may be liable for any damages, including reasonable attorney's
23 fees and costs, caused by your violation.
24

25 **If there is anything about this document or your duties that you do not understand, you
26 should seek legal advice.**
27
28

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

31 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY
32 AND AGENT'S AUTHORITY**
33

34 State of _____
35 [County] of _____]
36

37 I, _____ (name of Agent), [certify] under
38 penalty of perjury that _____ (name of Principal)
39 granted me authority as an agent or successor agent in a power of attorney dated
40 _____.
41

1 I further [certify] that to my knowledge:

2
3 (1) the Principal is alive and has not revoked the Power of Attorney or my authority to act
4 under the Power of Attorney and that the Power of Attorney and my authority to act under the
5 Power of Attorney have not terminated;

6
7 (2) if the Power of Attorney was drafted to become effective upon the happening of an
8 event or contingency, the event or contingency has occurred;

9
10 (3) if I was named as a successor agent, that the prior agent is no longer able or willing to
11 serve; and

12
13 (4) _____
14 _____
15 _____
16 _____

17 (Insert other relevant statements)

18
19 **SIGNATURE AND ACKNOWLEDGMENT**

20
21 _____
22 Agent's signature

_____ Date

23
24 _____
25 Agent's name printed

26
27 _____
28 Agent's address

29
30
31 This document was acknowledged before me on _____,
32 (date)

33 by _____.
34 (name of Agent)

35
36
37 _____
38 Signature of Notary

(Seal, if any)

39 My commission expires: _____
40

41 [This document prepared by:
42 _____
43 _____

1 _____]

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

1 law applies; and

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

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

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

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

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

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