

D R A F T

FOR DISCUSSION ONLY

# UNIFORM POWER OF ATTORNEY ACT

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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**Discussion Draft for December 2-4, 2005 Meeting**

*Changes Shown in Strike and Score*

*WITH PREFATORY NOTE AND WITHOUT COMMENTS*

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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# UNIFORM POWER OF ATTORNEY ACT

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# **UNIFORM POWER OF ATTORNEY ACT**

## **Prefatory Note**

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

To ascertain whether there was actual divergence of opinion about default rules for powers of attorney or only the lack of a detailed uniform model, the Joint Editorial Board for Uniform Trust and Estate Acts (JEB) conducted a national survey. The survey was distributed to probate and elder law sections of all state bar associations, to the fellows of the American College of Trust and Estate Counsel, the leadership of the ABA Section of Real Property, Probate and Trust Law and the National Academy of Elder Law Attorneys, as well as to special interest 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 confirmation that contingent powers are activated;
- (2) revoke a spouse-agent’s authority upon the dissolution or annulment of the marriage to the principal;
- (3) include a portability provision;
- (4) require gift making authority to be expressly stated in the grant of authority;
- (5) provide a default standard for fiduciary duties;
- (6) permit the principal to alter the default fiduciary standard;
- (7) require notice by an agent when the agent is no longer willing or able to act;
- (8) include safeguards against abuse by the agent;
- (9) include remedies and sanctions for abuse by the agent;
- (10) protect the reliance of other persons on a power of attorney; and
- (11) include remedies and sanctions for refusal of other persons to honor a power of attorney.

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

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

Sections ~~119~~ 118 and ~~120~~ 119 of the Act address the problem of persons refusing to honor an agent's authority. Section ~~119~~ 118 provides protection from liability for persons that in good faith accept the agent's authority. This section also prohibits such persons from requiring a different form of power of attorney. Section ~~120~~ 119 sanctions refusal to accept an agent's authority unless the refusal meets limited statutory exceptions.

In exchange for mandated acceptance of an agent's authority, the Act does not require persons that deal with an agent to investigate the agent or the agent's actions. Instead, safeguards against abuse are provided through heightened requirements for ~~delegating~~ granting authority that could dissipate the principal's property or alter the principal's estate plan (Section 201(c)), provisions that set out the agent's duties and liabilities (Sections ~~114~~ 113 and ~~117~~ 116) and by specification of the categories of persons that have standing to request judicial review of the agent's conduct (Section ~~116~~ 115). A provision that gives the reviewing court discretion to award reasonable attorney's fees to the prevailing party (Section ~~116(c)~~ 115(d)) serves to both deter frivolous actions and facilitate redress where warranted.

### **Overview of the Uniform Power of Attorney Act**

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

**Article 1 – General Provisions and Definitions** – Section 102 lists definitions which are useful in interpretation of the Act. Of particular note is the definition of “incapacity” which replaces the term “disability” used in the Original Act. The definition of “incapacity” is 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.” 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 ~~105~~ 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 ~~106~~ 105 requires the principal’s signature and provides that an acknowledged signature is presumed genuine. Section ~~107~~ 106 is a portability provision for powers of attorney not executed under the Act and Section ~~108~~ 107 states the guidelines for interpretation of such powers.

Section ~~109~~ 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 ~~110~~ 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 ~~110~~ 109 permits the principal to designate who may determine when contingent powers are triggered. The determination of a person designated by the principal may be considered conclusive by those relying on the power of attorney. If the trigger for contingent powers is the principal’s incapacity, Section ~~110~~ 109 provides that the person designated to make that determination has the authority to act as the principal’s personal representative under the Health Insurance Portability and Accountability Act (HIPAA) for purposes of accessing the principal’s health care information and communicating with the principal’s health care provider. This provision does not, however, confer upon an agent the authority to make health care decisions for the principal. If the trigger for contingent powers is incapacity but the principal has not designated anyone to make the determination, or the person authorized is unable or unwilling to make the determination, the statute provides for determination by a physician or licensed psychologist that the principal’s ability to manage property or business affairs is impaired, or by an attorney-at-law, judge, or government official that the principal is missing, detained, or unable

to return to the United States.

The bases for termination of a power of attorney are covered in Section ~~111~~ 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 ~~112~~ 111 through ~~118~~ 117 address matters related to the agent, including default rules for compensation, reimbursement, agent duties and liability. Section ~~115~~ 114 provides that a principal may lower the standard of liability for agent conduct subject to a minimum level of accountability for actions taken dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney. Section ~~116~~ 115 sets out a comprehensive list of persons that may petition the court to review the agent's conduct. An agent may resign by following the notice procedures described in Section ~~118~~ 117.

Sections ~~119~~ 118 and ~~120~~ 119 are included in the Act to address the frequently reported problem of persons that refuse to accept an agent's authority. Section ~~119~~ 118 protects persons that accept an agent's authority without actual knowledge that a power of attorney is revoked, terminated, or invalid or that the agent is exceeding or improperly exercising the agent's powers. A person that 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 ~~120(a)~~ 119(a) imposes liability for refusal to accept an agent's authority subject to limited exceptions in Section ~~120(b)~~ 119(b).

Section ~~121~~ 120 clarifies that the Act is supplemented by existing bodies of law, including the common law and principles of equity. While the principles of common law and equity may supplement the provisions of the Act, the Uniform Power of Attorney Act preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies. Section ~~122~~ 121 clarifies that the remedies under the Act are not exclusive and do not abrogate any other cause of action or remedy that may be available under the law of the enacting jurisdiction.

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

Article 2 also addresses concerns about the grant of specific powers that could be used to



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

**Article 3 – Statutory Form Power of Attorney** – The optional form in Article 3 is designed for use by lawyers as well as lay persons. It contains, in plain language, instructions to the principal and agent. Step-by-step prompts are given for designation of the agent, successor agents, and the grant of powers. In the grant of powers section, the principal must initial the powers that the principal wishes to delegate to the agent. There is a separate list of the Section 201(c) powers, preceded by a warning to the principal about the extraordinary scope of those powers. ~~The form also clarifies that the agent may not use the principal's property to benefit the agent or a person to whom the agent owes a legal obligation of support unless the principal includes special instructions to permit such actions.~~

**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.

# UNIFORM POWER OF ATTORNEY ACT

[ARTICLE] 1

## GENERAL PROVISIONS AND DEFINITIONS

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

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

(1) “Agent” means a person granted authority to act for a principal under a power of attorney and includes the original agent and any co-agent or successor agent.

(2) “Court” means the [ ] court.

(3) “Co-agents” means agents that are granted authority ~~in the same power of~~  
attorney to act concurrently.

(4) “Durable,” with reference to a power of attorney, means that the power of attorney is not terminated by the principal’s incapacity.

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

(6) “Person” means an individual; an entity, including a corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or public corporation; a government or governmental subdivision, an agency or instrumentality, or any

1 other legal or commercial entity.

2 (7) “Power of attorney” means a signed writing or other record in which a  
3 principal grants authority to an agent to act for the principal.

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

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

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

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

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

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

14 (12) “State” means a state of the United States, the District of Columbia, Puerto  
15 Rico, United States Virgin Islands, or any territory or insular possession subject to the  
16 jurisdiction of the United States. ~~The term includes an Indian tribe or band recognized by federal~~  
17 ~~law or formally acknowledged by a state.~~

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

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

22 (2) a power ~~given to another person~~ to make health-care decisions;

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

2 (4) a power contained in a document of a corporation, business trust, partnership,  
3 limited liability company, association, joint venture, or any other legal or commercial entity by  
4 which a director, trustee, partner, member, or other officer authorizes others to act on behalf of  
5 the entity; and

6 (5) a power created for a governmental purpose on a form prescribed by a  
7 government or governmental subdivision, agency, or other instrumentality.

8 ~~SECTION 104. KNOWLEDGE; NOTICE.~~

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

11 ~~(1) has actual knowledge of it;~~

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

13 ~~(3) has knowledge of other facts and circumstances that would cause a~~  
14 ~~reasonable person to presume the existence of the a fact.~~

15 ~~(b) An organization has notice or knowledge of a fact involving a power of~~  
16 ~~attorney from the time it is brought to the attention of the individual conducting a transaction~~  
17 ~~involving the power of attorney and, in any event, from the time it would have been brought to~~  
18 ~~the individual's attention if the organization had exercised reasonable diligence. An organization~~  
19 ~~exercises reasonable diligence if it maintains reasonable routines for communicating significant~~  
20 ~~information to the individual conducting the transaction and the organization reasonably~~  
21 ~~complies with the routines. Reasonable diligence does not require an individual acting for the~~  
22 ~~organization to communicate information unless the communication is part of the individual's~~

1 ~~duties or the individual has reason to know that the transaction would be materially affected by~~  
2 ~~the information. If an organization conducts activities through branch or multiple offices, notice~~  
3 ~~to a branch or office other than the office where the power of attorney is presented is attributable~~  
4 ~~to the individual conducting the transaction not later than three business days after the date of~~  
5 ~~notice to the branch or other office.~~

6 **SECTION ~~105~~ 104. POWER OF ATTORNEY NOT AFFECTED BY**  
7 **INCAPACITY.** A power of attorney is durable unless it expressly provides that it is terminated  
8 by the incapacity of the principal.

9 **SECTION ~~106~~ 105. CREATION.** A power of attorney must be signed by the principal  
10 or by another individual directed by the principal to sign the principal's name on the power of  
11 attorney in the principal's presence. The signature is presumed genuine if the principal  
12 acknowledges the signature before a notary public or another individual authorized to take  
13 acknowledgments.

14 **SECTION ~~107~~ 106. VALIDITY OF POWER OF ATTORNEY NOT EXECUTED**  
15 **UNDER THIS [ACT].**

16 (a) A power of attorney executed in another state or country is valid and  
17 enforceable in this state if, when it was executed, it complied with:

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

20 (2) the law of this state; or

21 (3) the law of the state or country where the principal intended the agent  
22 to act on behalf of the principal.

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

4 **SECTION ~~108~~ 107. INTERPRETATION OF POWER OF ATTORNEY NOT**  
5 **EXECUTED UNDER THIS [ACT].** If the authority granted in a power of attorney not  
6 executed under this [act] conflicts with provisions of this [act], the scope of authority granted  
7 controls unless prohibited or restricted by the public policy of this state. ~~prohibits or restricts~~  
8 ~~what the terms of the power of attorney purport to authorize.~~ This [act] may not be applied to  
9 enlarge the scope of authority granted to an agent in a power of attorney not executed under this  
10 [act].

11 **SECTION ~~109~~ 108. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**  
12 **COURT-APPOINTED FIDUCIARY.**

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

18 (b) If, after a principal executes a power of attorney, a court appoints a  
19 conservator or guardian of the principal's estate or other fiduciary charged with the management  
20 of some or all of the principal's property, the agent is accountable to the fiduciary as well as to  
21 the principal. [The agent's authority continues until limited, suspended, or terminated by the  
22 court.]

1                   **SECTION ~~110~~ 109. WHEN EFFECTIVE.**

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

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

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

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

16                         (2) an attorney-at-law, judge, or governmental official that the principal is  
17 missing, detained, or unable to return to the United States.

18                   (d) A person authorized by the principal in the power of attorney to determine  
19 that the principal is incapacitated may act as the principal's personal representative pursuant to  
20 Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d [or similar  
21 provisions later enacted] and applicable regulations, to obtain access to the principal's health care  
22 information and communicate with the principal's health care provider or physician.

1                   **SECTION ~~11~~ 110. TERMINATION OF POWER OF ATTORNEY.**

2                   (a) Subject to subsections (b), (c), and (d), a power of attorney terminates when:

3                               (1) the principal dies;

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

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

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

9                               (5) the agent resigns pursuant to Section 1178;

10                              (6) proceedings are commenced for the ~~[legal separation or divorce of the~~  
11                   ~~principal and agent]~~ ~~[dissolution or annulment of the agent's marriage to the principal [or their~~  
12                   ~~legal separation]~~, unless the power of attorney otherwise provides;

13                              (7) the power of attorney ~~states~~ provides that it will be terminated ~~or an~~  
14                   ~~event occurs which under the power of attorney terminates it;~~ or

15                              (8) the purpose of the power of attorney is accomplished.

16                   (b) Unless a power of attorney otherwise provides:

17                              (1) an agent's authority is exercisable until the power of attorney  
18                   terminates notwithstanding a lapse of time since the execution of the power of attorney; and

19                              (2) the termination of the agent's authority does not terminate the power  
20                   of attorney if the power of attorney provides for a co-agent or successor agent.

21                   (c) Termination of an agent's authority, revocation of the power of attorney by  
22                   the principal, or death of the principal does not terminate a power of attorney as to an agent or



1 other person that, without actual knowledge of the termination, revocation, or death, acts in good  
2 faith under the power of attorney. An act so performed, unless otherwise invalid or  
3 unenforceable, binds the principal and the principal's successors in interest.

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

9 (e) The execution of a power of attorney does not revoke a power of attorney  
10 previously executed by the principal unless the power of attorney ~~states~~ provides that the  
11 previous power of attorney is revoked or that all other powers of attorney are revoked.

## 12 **SECTION ~~H2~~ 111. CO-AGENTS AND SUCCESSOR AGENTS.**

13 (a) A principal may designate two or more persons to act as co-agents. Unless a  
14 power of attorney otherwise provides:

15 (1) authority granted to co-agents is exercisable only by their majority  
16 consent, or if there are two co-agents, their unanimous consent;

17 (2) if prompt action is required to accomplish a purpose of the power of  
18 attorney or to avoid irreparable injury to the principal's interests and a co-agent is unavailable  
19 because of absence, illness, or other temporary incapacity, the other co-agent or co-agents may  
20 act for the principal; and

21 (3) if a co-agent resigns, dies, becomes incapacitated, is not qualified to  
22 serve, or declines to serve, the remaining co-agent or co-agents may act for the principal.

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

(1) a successor agent has the same authority as that ~~initially~~ granted to the initial agent; and

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

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

#### **SECTION ~~H3~~ 112. REIMBURSEMENT AND COMPENSATION OF AGENT.**

An agent is entitled to reimbursement of expenses properly incurred on behalf of the principal. Unless a power of attorney otherwise provides, the agent is entitled to compensation that is reasonable under the circumstances.

#### **SECTION ~~H4~~ 113. AGENT'S DUTIES.**

(a) A person accepts appointment as an agent under a power of attorney by exercising powers or performing duties as an agent or by any other assertion or conduct indicating acceptance.

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

3 (1) act loyally for the principal's benefit in accordance with the reasonable  
4 expectations of the principal known to the agent and, if unknown, with the care, competence, and  
5 diligence normally exercised by agents in similar circumstances for the best interest of a  
6 principal;

7 (2) avoid creating a conflict of interest that would impair the agent's  
8 ability to act impartially in the best interest of the principal;

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

11 (4) not perform any act beyond the authority granted in the power of  
12 attorney;

13 (5) cooperate with a person that has authority to make health-care  
14 decisions for the principal to carry out the principal's reasonable expectations known to the agent  
15 and, if unknown, to act in what the agent reasonably believes to be the best interest of the  
16 principal; and

17 (6) take the principal's estate plan into account to the extent known to the  
18 agent and attempt to preserve the plan if consistent with the principal's best interest based on all  
19 relevant factors, including the principal's foreseeable obligations and need for maintenance,  
20 minimization of taxes, and the principal's eligibility for public benefits or assistance.

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

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

4 (e) ~~Special~~ If an agent is selected by the principal because of special skills or  
5 expertise possessed by the agent, the special skills or expertise ~~possessed by an agent~~ must be  
6 considered in determining whether the agent has acted with ~~due~~ care, competence, and diligence  
7 under the circumstances.

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

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

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

22 **SECTION ~~H5~~ 114. EXONERATION OF AGENT.** A provision in a power of

1 attorney relieving the agent of liability for breach of duty is binding on the principal and the  
2 principal's successors in interest except to the extent the provision:

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

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

8 **SECTION ~~116~~ 115. PETITION FOR JUDICIAL RELIEF.**

9 (a) The court may construe a power of attorney, review the agent's conduct, and  
10 grant appropriate relief.

11 (b) The persons that have standing to petition the court include:

12 (1) the principal or the agent;

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

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

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

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

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

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

1 (8) the principal's caregiver or another person that demonstrates sufficient  
2 interest in the principal's welfare.

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

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

8 **SECTION ~~117~~ 116. AGENT'S LIABILITY.** An agent that violates this [act] is liable  
9 to the principal or the principal's successors in interest for damages, reasonable attorney's fees  
10 and costs paid from the principal's estate resulting from the violation, and for any amounts  
11 awarded under Section ~~116(c)~~ 115(d).

12 **SECTION ~~118~~ 117. AGENT'S RESIGNATION; NOTICE.** If a power of attorney  
13 does not ~~specify~~ provide the method for an agent's resignation, an agent may resign by giving  
14 notice to the principal and, if the principal is incapacitated, to:

15 (1) the conservator or guardian, if one has been appointed for the principal, and a  
16 co-agent or successor agent, if any; or if none,

17 (2) the principal's caregiver or other person reasonably believed by the agent to  
18 have sufficient interest in the principal's welfare; or if none,

19 (3) a governmental agency having authority to protect the welfare of the principal.

20 **SECTION ~~119~~ 118. PROTECTION OF PERSON DEALING WITH AGENT.**

21 (a) A person that in good faith accepts an agent's authority without actual  
22 knowledge that the agent's authority has been terminated, a power of attorney has been

1 terminated or is invalid, or the agent is exceeding or improperly exercising the agent's powers is  
2 protected from liability as if the power of attorney were still in effect and valid and the agent had  
3 properly exercised the power.

4 (b) A person that in good faith accepts an agent's authority is not required to  
5 inquire into the extent of the agent's powers or the propriety of their exercise but may ~~require~~  
6 request and rely upon, without further investigation, an agent's certification under penalty of  
7 perjury of any matter concerning the power of attorney or the principal.

8 (c) A person that is presented with a power of attorney executed under the law of  
9 another country may request that the agent obtain at the principal's expense, and may rely upon  
10 without further investigation, an opinion of counsel as to any matter concerning the power of  
11 attorney or the principal.

12 (d) A request under this section for an agent's certification or an opinion of  
13 counsel must be made not later than three business days after presentation of a power of attorney.

14 (e) ~~(e) A person with which an agent seeks to act~~ Except when an agent's  
15 authority is refused under Section 119(b), a person may not require an additional or different  
16 form of power of attorney for authority granted in the power of attorney presented.

17 (f) ~~(f) A~~ Except as otherwise required by a law of this state, a photocopy or  
18 electronically transmitted copy of an original power of attorney is must be considered as ~~valid~~  
19 genuine as the original.

20 **SECTION ~~120~~ 119. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S**  
21 **AUTHORITY.**

22 (a) Except as otherwise provided in subsection (b), a person that refuses to accept

1 the authority of an agent within the later of five business days after: (i) presentation of a power of  
2 attorney, or (ii) the receipt of an agent's certification or an opinion of counsel if requested under  
3 section 118, is liable to the principal or the principal's successors in interest to the same extent as  
4 the person would be liable had the person refused to accept the authority of a principal having  
5 capacity to act on the principal's own behalf. The amount recoverable for refusal to accept an  
6 agent's authority is the total of the damages from the refusal or \$1,000, whichever is greater, plus  
7 costs and reasonable attorney's fees.

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

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

12 (2) the person reasonably believes that the power of attorney is not valid  
13 under the law of this state or that the agent does not have authority to perform the act requested  
14 and provides the agent with a writing or other record not more than five business days after the  
15 refusal which describes the reason for the person's belief that the power of attorney is not valid  
16 or that the agent lacks authority; or

17 (3) the person has made a report in good faith to the [local adult protective  
18 services unit] alleging physical or financial abuse, neglect, exploitation, or abandonment of the  
19 principal by the agent or has actual knowledge that such a report has been made by another  
20 person.

21 **SECTION ~~121~~ 120. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by the  
22 ~~particular~~ a provisions of this [act], the principles of law and equity, including the law ~~relative to~~



1 governing capacity to contract, principal and agent, entity operation and interests, estoppel, fraud,  
2 misrepresentation, duress, coercion, mistake, ratification, bankruptcy and other validating or  
3 invalidating cause, supplement ~~its provisions~~ this [act].

4 **SECTION ~~122~~ 121. REMEDIES UNDER OTHER LAW.** The remedies under this  
5 [act] are not exclusive and do not abrogate any other cause of action or remedy under the law of  
6 this state.

1 [ARTICLE] 2

2 POWERS

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

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

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

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

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

17 (2) make a gift;

18 (3) create or change rights of survivorship;

19 (4) designate or change the designation of a beneficiary; ~~or~~

20 (5) ~~delegate to another person the authority~~ make a revocable delegation  
21 of a power granted under the power of attorney; ~~or~~

22 (6) waive the principal's right to be a beneficiary of a joint and survivor

1     annuity; [or]

2     \_\_\_\_\_ (7) exercise fiduciary powers that the principal has authority to delegate[;

3     or

4     \_\_\_\_\_ ~~(6)~~ (8) disclaim property, including a power of appointment].

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

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

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

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

16                    **SECTION 202. INCORPORATION OF POWERS.**

17                    (a) An agent has a power described in this [article] if the power of attorney  
18    incorporates the power by referring to a descriptive caption in Sections 204 through ~~218~~ 217 or  
19    citing to a specific section of Sections 204 through ~~218~~ 217.

20                    (b) A reference in a power of attorney to a descriptive caption in Sections 204  
21    through ~~218~~ 217 or a citation to a specific section of Sections 204 through ~~218~~ 217 incorporates  
22    the entire section as if it were set out in full in the power of attorney.

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

2 **SECTION 203. CONSTRUCTION OF POWERS GENERALLY.** Except as  
3 otherwise ~~modified~~ provided in the power of attorney, by executing a power of attorney that  
4 incorporates by reference a power described in Sections 204 through ~~218~~ 217, a principal  
5 authorizes the agent with respect to that subject to:

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

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

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

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

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

22 (6) engage, compensate, and discharge an attorney, accountant, expert witness, or

1 other assistant;

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

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

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

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

11 (11) reimburse the agent for expenditures properly made by the agent in  
12 exercising the powers granted by the power of attorney; and

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

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

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

20 (2) sell, exchange, convey with or without covenants or warranties, quitclaim,  
21 release, surrender, mortgage, retain title for security, encumber, partition, consent to partitioning,  
22 subject to an easement or covenant, subdivide, apply for zoning, rezoning, or other governmental

permits, plat or consent to platting, develop, grant options concerning, lease, sublease, contribute to an entity in exchange for an interest in that entity, or otherwise grant or dispose of an interest in real property or a right incident to real property;

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

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

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

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

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

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

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

~~(5)~~ (6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

~~(6)~~ (7) participate in a reorganization with respect to real property or a person other than an individual ~~which~~ that owns an interest in or right incident to real property and

1 receive and hold, directly or indirectly, shares of stock or obligations or other evidences of  
2 ownership or debt received in a plan of reorganization, and act with respect to them, including:

3 (A) selling or otherwise disposing of them;

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

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

7 ~~(7)~~ (8) change the form of title of an interest in or right incident to real property;

8 and

9 ~~(8)~~ (9) dedicate to public use, with or without consideration, easements or other  
10 real property in which the principal has, or claims to have, an interest.

11 **SECTION 205. TANGIBLE PERSONAL PROPERTY.** Language granting power  
12 with respect to tangible personal property authorizes the agent to:

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

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

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

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

1 personal property on behalf of the principal, including:

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

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

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

7 (D) moving from place to place;

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

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

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

11 **SECTION 206. STOCKS AND BONDS.** Language granting power with respect to  
12 stocks and bonds authorizes the agent to:

13 (1) buy, sell, and exchange stocks, bonds, mutual funds, and all other types of  
14 securities and financial instruments, whether held directly or indirectly, except commodity  
15 futures contracts and call and put options on stocks and stock indexes;

16 (2) receive certificates and other evidences of ownership with respect to  
17 securities; and

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

20 **SECTION 207. COMMODITIES AND OPTIONS.** Language granting power with  
21 respect to commodities and options authorizes the agent to:

22 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts



1 and call and put options on stocks and stock indexes traded on a regulated option exchange; and  
2 (2) establish, continue, modify, and terminate option accounts with a broker.

3 **SECTION 208. BANKING AND OTHER FINANCIAL TRANSACTIONS.**

4 Language granting power with respect to banking and other financial transactions authorizes the  
5 agent to:

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

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

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

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

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

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

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

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

22 (9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory

notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

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

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

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

**SECTION 209. OPERATION OF AN ENTITY OR BUSINESS.** ~~Language Subject~~  
~~to the terms of documents or agreements governing an entity or an entity ownership interest,~~  
~~language~~ granting power with respect to operating ~~a business~~ an entity or business authorizes the agent to:

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

~~(2) subject to the terms of a partnership agreement or operating agreement:~~

~~(A)~~ (2) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have, ~~under the partnership agreement or operating agreement, whether or not the principal is a partner in a partnership or member of a limited liability company;~~

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

1           ~~(C)~~ (4) defend, submit to arbitration, and settle or compromise litigation to which  
2 the principal is a party because of ~~membership in a partnership or limited liability company~~ an  
3 ownership interest;

4           ~~(3)~~ (5) exercise in person or by proxy, or enforce by litigation or otherwise, a  
5 right, power, privilege, or option the principal has or claims to have as the holder of a bond,  
6 share, or other instrument of similar character and defend, submit to arbitration or mediation,  
7 settle, or compromise litigation to which the principal is a party because of a bond, share, or  
8 similar instrument;

9           ~~(4)~~ (6) with respect to ~~a~~ an entity or business controlled by the principal:

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

13                   (B) determine:

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

21                   (C) change the name or form of organization under which the entity or  
22 business is operated and enter into ~~partnership agreement or operating~~ an ownership agreement

1 with other persons ~~or organize a corporation or other business entity~~ to take over all or part of the  
2 operation of the entity or business; and

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

6 ~~(5)~~ (7) put additional capital into a an entity or business in which the principal has  
7 an interest;

8 ~~(6)~~ (8) join in a plan of reorganization, consolidation, or merger of the entity or  
9 business;

10 ~~(7)~~ (9) sell or liquidate a business or part of it at the time and upon the terms the  
11 agent considers desirable;

12 ~~(8)~~ (10) establish the value of a an entity or business under a buy-out agreement  
13 to which the principal is a party;

14 ~~(9)~~ (11) prepare, sign, file, and deliver reports, compilations of information,  
15 returns, or other papers with respect to a an entity or business which are required by a  
16 governmental agency or instrumentality or which the agent considers desirable, and make related  
17 payments; and

18 ~~(10)~~ (12) pay, compromise, or contest taxes or assessments and perform any other  
19 act that the agent considers desirable to protect the principal from illegal or unnecessary taxation,  
20 fines, penalties, or assessments with respect to a an entity or business, including attempts to  
21 recover, in any manner permitted by law, money paid before or after the execution of the power  
22 of attorney.

1           **SECTION 210. 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, exchange, rescind,  
4 release, or terminate a contract procured by or on behalf of the principal which insures or  
5 provides an annuity to either the principal or another person, whether or not the principal is a  
6 beneficiary 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, exchange, rescind, release, or  
11 terminate a 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

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

3                   ~~(11)~~ (12) pay from proceeds or otherwise, compromise or contest, and apply for  
4   refunds in connection with, a tax or assessment levied by a taxing authority with respect to a  
5   contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or  
6   assessment.

7                   **SECTION 211. ESTATES, TRUSTS, AND OTHER ~~BENEFICIARY~~**  
8   ~~RELATIONSHIPS~~ **BENEFICIAL INTERESTS.** Language granting power with respect to  
9   estates, trusts, and other ~~relationships in which the principal is a beneficiary~~ beneficial interests  
10   authorizes the agent to act for the principal in all matters that affect a trust, probate estate,  
11   guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is,  
12   may become, or claims to be, entitled ~~as a beneficiary~~ to a share or payment, including:

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

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

17                   ~~(3)~~ (3) exercise for the benefit of the principal a presently exercisable general power  
18   of appointment held by the principal;

19                   ~~(3)~~ (4) initiate, participate in, and oppose litigation to ascertain the meaning,  
20   validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting  
21   the interest of the principal;

22                   ~~(4)~~ (5) initiate, participate in, and oppose litigation to remove, substitute, or

1 surcharge a fiduciary;

2 (5) (6) conserve, invest, disburse, and use anything received for an authorized  
3 purpose; [and]

4 (6) (7) transfer an interest of the principal in real property, stocks, bonds,  
5 accounts with financial institutions or securities intermediaries, insurance, annuities, and other  
6 property to the trustee of a revocable trust created by the principal as settlor.[]; and

7 (7) (8) reject, renounce, disclaim, release, or consent to a reduction in or  
8 modification of a share in or payment from the fund.]

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

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

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

19 (3) procure an attachment, garnishment, libel, order of arrest, or other  
20 preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy  
21 a judgment, order, or decree;

22 (4) perform any lawful act, including acceptance of tender, offer of judgment,

admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and bind the principal in litigation;

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

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

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

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

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

(a) Language granting power with respect to personal and family maintenance authorizes the agent to:

(1) perform the acts necessary to maintain the customary standard of



1 living of the principal, the principal's spouse and children, other individuals legally entitled to be  
2 supported by the principal, and those individuals, whether living when the power of attorney is  
3 executed or later born, whom the principal has customarily supported or indicated the intent to  
4 support, including providing living quarters by purchase, lease, or other contract, or paying the  
5 operating costs, including interest, amortization payments, repairs, and taxes, on premises owned  
6 by the principal and occupied by those individuals;

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

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

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

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

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

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

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

**SECTION 214. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE.** Language granting power with respect to benefits from social security, medicare, medicaid, other governmental programs, or civil or military service, authorizes the agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Section 213(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

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

5 **SECTION 215. RETIREMENT PLANS.**

6 \_\_\_\_\_ (a) Language granting power with respect to retirement plans authorizes the agent  
7 to:

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

10 ~~(2) make voluntary contributions to those plans;~~

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

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

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

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

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

20 (2) make a rollover (including a direct trustee to trustee rollover) of  
21 benefits from one retirement plan to another;

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

1                                   (4) make contributions to a retirement plan;  
2                                   (5) exercise investment powers available under a retirement plan; and  
3                                   (6) borrow from, sell assets to, or purchase assets from the retirement  
4                                   plan.

5                                   (b) “Retirement plan” means any plan or account created by an employer, the  
6                                   principal, or another individual for the purpose of providing retirement benefits or deferred  
7                                   compensation of which the principal is a participant, beneficiary, or owner including a plan or  
8                                   account under the following sections of the Internal Revenue Code [or similar provisions later  
9                                   enacted]:

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

12                                   (2) a Roth IRA under Internal Revenue Code Section 408A, 26 U.S.C.  
13                                   Section 408A;

14                                   (3) a deemed IRA under Internal Revenue Code Section 408(q), 26 U.S.C.  
15                                   Section 408 (q);

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

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

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

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

1 Code Section 409A, 26 U.S.C. Section 409A.

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

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

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

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

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

18 **SECTION 217. GIFTS.**

19 (a) ~~Subject to Section 201 and except as otherwise provided in a power of~~  
20 ~~attorney, language~~ Language granting power with respect to gifts authorizes the agent to:

21 (1) make gifts of any of the principal's property to ~~individuals or~~  
22 ~~organizations~~ a person in an amount per donee not to exceed the annual dollar limits of the

1 federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. Section  
2 2503(b) [or similar provisions later enacted] without regard to whether the federal gift tax  
3 exclusion applies to the gift, and if the principal's spouse agrees to consents to a split gift  
4 pursuant to Internal Revenue Code Section 2513, 26 U.S.C. 2513 [or similar provisions later  
5 enacted], in an amount per donee not to exceed twice the annual federal gift tax exclusion limit;  
6 and

7 (2) exercise in favor of another person a presently exercisable general  
8 power of appointment held by the principal; and

9 ~~(2)~~ (3) consent, pursuant to Internal Revenue Code Section 2513, 26  
10 U.S.C. 2513 [or similar provisions later enacted], to the splitting of gifts made by the principal's  
11 spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both  
12 spouses.

13 (b) ~~Except as otherwise provided in a power of attorney, Unless a power of~~  
14 attorney otherwise provides, an agent shall make gifts of the principal's property only as the  
15 agent determines to be consistent with the principal's objectives if known to the agent, or in the  
16 principal's best interest based on all relevant factors, including:

- 17 (1) the value and nature of the principal's property;
- 18 (2) the principal's foreseeable obligations and need for maintenance;
- 19 (3) minimization of taxes, including income, estate, inheritance,  
20 generation-skipping transfer, or gift taxes;
- 21 (4) eligibility for public benefits or assistance under a statute or  
22 governmental regulation; and

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

2 (c) ~~Except as otherwise provided in a power of attorney, gifts~~ Gifts under this  
3 section may be made outright or for the benefit of a donee, including to a trust, ~~established by or~~  
4 ~~created for a donee, to an account under the Uniform Transfers to Minors Act for a donee~~  
5 ~~regardless of who is the custodian, or to a tuition savings account or prepaid tuition plan as~~  
6 defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529 [or similar provisions  
7 later enacted] ~~for the benefit of a donee without regard to who is the owner of or the responsible~~  
8 ~~person for the account.~~

9 **~~SECTION 218. DELEGATION OF AUTHORITY.~~** ~~Language granting power with~~  
10 ~~respect to delegation of authority authorizes the agent to make a revocable delegation by writing~~  
11 ~~or other record to one or more persons of 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 decisions concerning your  
11 property for you, the principal. Your agent can make decisions and act with respect to your  
12 property (including your money) even if you are unable to act for yourself. The meaning of  
13 powers listed in this document is explained in the Uniform Power of Attorney Act. This power  
14 of attorney does not authorize the agent to make medical or health-care decisions for you.

15  
16 You should select someone you trust to serve as your agent. The agent's authority will continue  
17 until your death unless you revoke the power of attorney or the agent resigns. If your agent is  
18 unable or unwilling to act for you, your power of attorney will end unless you have named a  
19 successor agent. You may also name a second successor agent.

20  
21 This power of attorney becomes effective immediately unless you state otherwise in the Special  
22 Instructions.

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

26  
27  
28 DESIGNATION OF AGENT

29  
30 Name of Principal: \_\_\_\_\_  
31 Principal's Address: \_\_\_\_\_  
32 \_\_\_\_\_  
33 Principal's Phone Number: \_\_\_\_\_

34  
35 I name the following person as my agent:

36  
37 Name of Agent: \_\_\_\_\_  
38 Agent's Address: \_\_\_\_\_



1 Agent's Phone Number: \_\_\_\_\_  
2  
3

4 **OPTIONAL DESIGNATION OF SUCCESSOR AGENT(S)**  
5

6 If my agent is unable or unwilling to act for me, I name as my successor agent:  
7

8 Name of Successor Agent: \_\_\_\_\_

9 Successor Agent's Address: \_\_\_\_\_

10 Successor Agent's Phone Number: \_\_\_\_\_  
11

12 If my successor agent is unable or unwilling to act for me, I name as my second successor agent:  
13

14 Name of Second Successor Agent: \_\_\_\_\_

15 Second Successor Agent's Address: \_\_\_\_\_

16 Second Successor Agent's Phone Number: \_\_\_\_\_  
17

18  
19 **GRANT OF GENERAL AUTHORITY**  
20

21 I grant my agent and any successor agent general authority to act for me with respect to the  
22 following subjects as defined in the Uniform Power of Attorney Act:  
23

24 (INITIAL all of the subjects you want to include in the agent's general authority. If you wish to  
25 grant all of the powers you may initial next to the phrase "All of Preceding Powers" instead of  
26 initialing each subject.)  
27

28 ☐ Real Property

29 ☐ Tangible Personal Property

30 ☐ Stocks and Bonds

31 ☐ Commodities and Options

32 ☐ ~~Banks~~ Banking and Other Financial ~~Institutions~~ Transactions

33 ☐ Operation of an Entity or Business

34 ☐ Insurance and Annuities

35 ☐ Estates, Trusts, and Other ~~Beneficiary Relationships~~ Beneficial Interests

36 ☐ Claims and Litigation

37 ☐ Personal and Family Maintenance

38 ☐ Benefits from Government Programs or Military Service

39 ☐ Retirement Plans

40 ☐ Taxes  
41

42 ☐ All of Preceding Powers  
43

1  
2  
3  
4 **OPTIONAL GRANT OF SPECIFIC AUTHORITY**  
5

6 My agent MAY NOT do any of the following specific acts for me UNLESS I have also  
7 INITIALED the blank space ( ) in front of the specific power:  
8

9 (CAUTION: Granting any of the following powers will give your agent the authority to take  
10 actions that could significantly reduce your property or change how your property is distributed at  
11 your death. INITIAL ONLY the specific powers you WANT to include in the agent's authority.)  
12

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

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

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

29 **OPTIONAL SPECIAL INSTRUCTIONS**  
30

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

1 EFFECTIVE DATE

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

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

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

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

12  
13 Nominee's Address: \_\_\_\_\_

14 Nominee's Phone Number: \_\_\_\_\_

15  
16 Name of Nominee for conservator or guardian of my person:

17  
18 Nominees's Address: \_\_\_\_\_

19 Nominee's Phone Number: \_\_\_\_\_

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

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

25  
26 **SIGNATURE AND ACKNOWLEDGMENT**

27  
28  
29 Your signature \_\_\_\_\_

\_\_\_\_\_  
Date

30  
31  
32 Your name printed \_\_\_\_\_

33  
34  
35 Your address \_\_\_\_\_

36  
37 [This document prepared by:

38  
39 \_\_\_\_\_  
40 \_\_\_\_\_]

41  
42  
43 [State of \_\_\_\_\_

1 [County] of \_\_\_\_\_  
2

3 This document was acknowledged before me on \_\_\_\_\_ (date),  
4 by \_\_\_\_\_ (name of Principal).  
5  
6

7 \_\_\_\_\_  
8 Signature of Notary

(Seal, if any)

9 My commission expires: \_\_\_\_\_]  
10  
11

### 12 **IMPORTANT INFORMATION FOR AGENT**

13

14 When you accept the authority granted under this power of attorney a special legal  
15 relationship is created between you and the principal. This relationship imposes upon you duties  
16 that continue until you resign or the power of attorney is terminated or revoked. You must:  
17

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

31 You must disclose your identity as an agent whenever you act for the principal by writing  
32 or printing the name of the principal and signing your own name as "agent" in the following  
33 manner:  
34

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

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

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

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- 1

I accept appointment as agent under this power of attorney.

Date

**SECTION 302. AGENT’S CERTIFICATION.** The following optional form may be

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

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

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

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

(insert other relevant statements)

**SIGNATURE AND ACKNOWLEDGMENT**

Agent's signature

Date

Agent's name printed

Agent's address

[This document was acknowledged before me on \_\_\_\_\_ (date),  
by \_\_\_\_\_ (name of Agent).]

Signature of Notary

(Seal, if any)

My commission expires: \_\_\_\_\_]

[This document prepared by:

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

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

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

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

13 **SECTION 404. 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 all powers of attorney created before, on, or after [its  
16 effective date];

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

19 (3) this [act] applies to judicial proceedings concerning powers of attorney  
20 commenced before [its effective date] unless the court finds that application of a particular  
21 provision of this [act] would substantially interfere with the effective conduct of the judicial  
22 proceedings or prejudice the rights of the parties, in which case the particular provision of this

1 [act] does not apply and the superseded law applies; and

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

3 **SECTION 405. REPEAL.** The following acts and parts of acts 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]