

DRAFT
FOR APPROVAL

UNIFORM POWER OF ATTORNEY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FIFTEENTH YEAR
HILTON HEAD, SOUTH CAROLINA
JULY 7-14, 2006

UNIFORM POWER OF ATTORNEY ACT

WITH PREFATORY NOTE AND PARTIAL COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM POWER OF ATTORNEY ACT

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UNIFORM POWER OF ATTORNEY ACT

Prefatory Note

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

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

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

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

Informed by the study, 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 ABA Commission on Law and Aging, the Joint Editorial Board for Uniform Trust and Estate Acts, the National Conference of Lawyers and Corporate Fiduciaries, the American Bankers Association, AARP, 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 **General Comment**

6 The Uniform Power of Attorney Act replaces the Uniform Durable Power of Attorney
7 Act, the Uniform Statutory Form Power of Attorney Act, and Article 5, Part 5 of the Uniform
8 Probate Code. The primary purpose of the Uniform Durable Power of Attorney Act was to
9 provide individuals with an inexpensive, non-judicial method of surrogate property management
10 in the event of later incapacity. Two key concepts were introduced by the Uniform Durable
11 Power of Attorney Act: 1) creation of a durable agency—one that survives, or is triggered by, the
12 principal’s incapacity, and 2) validation of post-mortem exercise of powers by an agent who acts
13 in good faith and without actual knowledge of the principal’s death. The success of the Uniform
14 Durable Power of Attorney Act is evidenced by the widespread use of durable powers in every
15 jurisdiction, not only for incapacity planning, but also for convenience while the principal retains
16 capacity. The limitations of the Uniform Durable Power of Attorney Act are likewise evidenced
17 by the number of states that have supplemented and revised their statutes to address myriad
18 issues upon which the Uniform Durable Power of Attorney Act is silent. These issues include
19 parameters for the creation and use of powers of attorney as well as guidelines for the principal,
20 the agent, and the person who is asked to accept the agent’s authority. The general provisions
21 and definitions of Article 1 in the Uniform Power of Attorney Act address those issues.
22

23 In addition to providing greater detail than the Uniform Durable Power of Attorney Act,
24 this Act changes two presumptions in the earlier act: 1) that a power of attorney is not durable
25 unless it contains language to make it durable; and 2) that a later court-appointed fiduciary for the
26 principal has the power to revoke or amend a previously executed power of attorney. Section
27 104 of this Article reverses the non-durability presumption by stating that a power of attorney is
28 durable unless it expressly provides that it is terminated by the incapacity of the principal.
29 Section 108 gives deference to the principal’s choice of agent by providing that if a court
30 appoints a fiduciary to manage some or all of the principal’s property, the agent’s authority
31 continues unless limited, suspended, or terminated by the court.
32

33 Although the Act is primarily a default statute, Article 1 also contains rules that govern
34 all powers of attorney subject to the Act. Examples of these rules include imposition of certain
35 minimum fiduciary duties on an agent who has accepted appointment (Section 114(a)),
36 recognition of persons who have standing to request judicial construction of the power of
37 attorney or review of the agent’s conduct (Section 116), and protections for persons who accept
38 an acknowledged power of attorney without actual knowledge that the power of attorney or the

agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the power (Section 119). In contrast with the rules of general application in Article 1, the default provisions are clearly indicated by signals such as "unless a power of attorney otherwise provides", or "except as otherwise provided in the power of attorney". These signals alert the draftsman to options for enlarging or limiting the Act's default terms. For example, unless the power of attorney otherwise provides, default provisions in Article 1 state that a power of attorney is effective immediately (Section 109), coagents may exercise their authority independently (Section 111), and an agent is entitled to reimbursement of expenses reasonably incurred and to reasonable compensation (Section 112).

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

Comment

This Act, which replaces the Uniform Durable Power of Attorney Act, does not contain the word "durable" in the title because, pursuant to Section 104, a power of attorney created under the Act is presumed durable unless the power of attorney provides that it is terminated by the incapacity of the principal.

SECTION 102. DEFINITIONS. In this [act]:

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

(2) "Durable" with respect to a power of attorney means not terminated by the principal's incapacity.

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

(4) "Good faith" means honesty in fact.

(5) "Incapacity" means inability of an individual to manage property or business affairs

1 because:

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

4 (B) the individual is:

5 (i) missing;

6 (ii) detained; or

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

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

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

13 (8) “Presently exercisable general power of appointment” with respect to the property or
14 property interest subject to the power means that the power is exercisable at the time in question
15 to vest absolute ownership in the principal individually, the principal’s estate, the principal’s
16 creditors, or the creditors of the principal’s estate. The term includes a power of appointment
17 that is not exercisable until the occurrence of a specified event, the satisfaction of an
18 ascertainable standard, or the passage of a specified period only after the occurrence of the
19 specified event, the satisfaction of the ascertainable standard, or the passage of the specified
20 period. The term does not include a power exercisable in a fiduciary capacity or only by will.

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

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

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

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

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

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

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

12 **Comment**

13 Although the definitions in Section 102 are self-explanatory, a few of the terms warrant
14 further comment.

15
16 “Agent” replaces the term “attorney in fact” used in the Uniform Durable Power of
17 Attorney Act to avoid confusion in the lay public about the meaning of the term and the
18 difference between an attorney in fact and an attorney at law. Agent was also used in the
19 Uniform Statutory Form Power of Attorney Act which this Act supersedes.

20
21 “Incapacity” replaces the term “disability” used in the Uniform Durable Power of
22 Attorney Act in recognition that disability does not necessarily render an individual incapable of
23 property and business management. The definition of incapacity stresses the operative
24 consequences of the individual’s impairment—inability to manage property and business
25 affairs—rather than the impairment itself. The definition of incapacity in the Act is also consistent
26 with the standard for appointment of a conservator under Section 401 of the Uniform
27 Guardianship and Protective Proceedings Act as amended in 1997.

28
29 The definition of “power of attorney” clarifies that the term applies to any written grant of
30 authority from a principal to an agent which appears from the grant to be a power of attorney,
31 without regard to whether the words “power of attorney” are actually used in the grant.

1 “Presently exercisable general power of appointment” is defined to clarify that where the
2 phrase appears in the Act it does not include a power exercisable by the principal in a fiduciary
3 capacity or exercisable only by will. *Cf.* Restatement (Third) of Property (Wills and Don. Trans.)
4 § 19.8 cmt. d (Tentative Draft No. 5, approved 2006) (noting that unless the donor of a presently
5 exercisable power of attorney has manifested a contrary intent, it is assumed that the donor
6 intends that the donee’s agent be permitted to exercise the power for the benefit of the donee).
7 Including in a power of attorney the authority to exercise a presently exercisable general power of
8 appointment held by the principal is consistent with the objective of giving an agent
9 comprehensive management authority over the principal’s property and financial affairs. The
10 term appears in Section 211 (Estates, Trusts, and Other Beneficial Interests) in the context of
11 authority to exercise for the benefit of the principal a presently exercisable general power of
12 appointment held by the principal (*see* subparagraph (3) of Section 211), and in Section 217
13 (Gifts) in the context of authority to exercise for the benefit of someone else a presently
14 exercisable general power of appointment held by the principal (*see* Section 217(b)(1)). The
15 term is also incorporated by reference when using the statutory form in Section 301 to grant
16 authority with respect to “Estates, Trusts, and Other Beneficial Interests” or authority with
17 respect to “Gifts”. If a principal wishes to delegate authority to exercise a power that the
18 principal holds in a fiduciary capacity, Section 201(a)(7) requires that the power of attorney
19 contain an express grant of such authority. Furthermore, delegation of a power held in a
20 fiduciary capacity is only possible if the principal has authority to delegate the power, and the
21 agent’s authority is necessarily limited by whatever terms govern the principal’s ability to
22 exercise the power.
23

24 **SECTION 103. APPLICABILITY.** This [act] applies to all powers of attorney except:

- 25 (1) a power to the extent it is coupled with an interest in the subject of the power,
26 including a power given to or for the benefit of a creditor in connection with a credit transaction;
27 (2) a power to make health-care decisions;
28 (3) a proxy or other delegation to exercise voting rights or management rights with
29 respect to an entity; and
30 (4) a power created on a form prescribed by a government or governmental subdivision,
31 agency, or instrumentality for a governmental purpose.

32 **Comment**
33

34 The Uniform Power of Attorney Act is intended to be comprehensive with respect to

1 delegation of surrogate decision making authority over an individual's property and property
2 interests, whether for the purpose of incapacity planning or mere convenience. Given that an
3 agent will likely exercise authority at times when the principal cannot monitor the agent's
4 conduct, the Act specifies minimum agent duties and protections for the principal's benefit.
5 These provisions, however, may not be appropriate for all delegations of authority that might
6 otherwise be included within the definition of a power of attorney. Section 103 lists delegations
7 of authority that are excluded from the Act because the subject matter of the delegation, the
8 objective of the delegation, the agent's role with respect to the delegation, or a combination of
9 the foregoing, would make application of the Act's provisions inappropriate.

10
11 Subparagraph (1), which excludes a power to the extent that it is coupled with an interest
12 in the subject of the power, addresses situations where, due to the agent's interest in the subject
13 matter of the power, the agent is not intended to act as the principal's fiduciary. See Restatement
14 (Third) of Agency § 3.12 (Tentative Draft No. 2, 2001) and M.T. Brunner, Annotation, *What*
15 *constitutes power coupled with interest within rule as to termination of agency*, 28 A.L.R.2d
16 1243 (1953). Common examples of powers coupled with an interest include powers granted to a
17 creditor to perfect or protect title in, or to sell, pledged collateral. While the example of "a power
18 given to or for the benefit of a creditor in connection with a credit transaction" is highlighted in
19 subparagraph (1), it is not meant to exclude application of subparagraph (1) to other contexts in
20 which a power may be coupled with an interest, such as a power held by an insurer to settle or
21 confess judgment on behalf of an insured. See, e.g., *Hayes v. Gessner*, 52 N.E.2d 968 (Mass.
22 1944).

23
24 Subparagraph (2) excludes from the Act delegations of authority to make health-care
25 decisions for the principal because such delegations are covered under other law within the
26 jurisdiction. The Act recognizes, however, that matters of financial management and health-care
27 decision making are often interdependent and provides as a default rule in Section 114(b)(5) that
28 an agent under this Act must cooperate with the principal's health-care decision maker.

29
30 Likewise, subparagraph (3) excludes from the Act a proxy or other delegation to exercise
31 voting rights or management rights with respect to an entity because the rules with respect to
32 those voting rights are typically controlled by entity-specific statutes within a jurisdiction. See,
33 e.g., Model Bus. Corp. Act § 7.22 (2002); Unif. Ltd. Partnership Act § 118 (2001); and Unif. Ltd.
34 Liability Co. Act § 404(e) (1996). Notwithstanding the exclusion of such delegations from the
35 operation of this Act, Section 209 contemplates that a power granted to an agent with respect to
36 operation of an entity or business includes the authority to "exercise in person or by proxy. . . a
37 right, power, privilege, or option the principal has or claims to have as the holder of a bond,
38 share, or other instrument of similar character. . . ." (see subparagraph (5) of Section 209). Thus,
39 while a person that holds only a proxy pursuant to an entity voting statute will not be subject to
40 the provisions of this Act, an agent that is granted Section 209 authority is subject to the Act
41 because the principal has given the agent authority that is greater than that of a mere voting
42 proxy. In fact, typical entity statutes contemplate that a principal's agent or "attorney in fact"
43 may appoint a proxy on behalf of the principal. See, e.g., Model Bus. Corp. Act § 7.22 (2002);

1 Unif. Ltd. Partnership Act § 118 (2001); and Unif. Ltd. Liability Co. Act § 404(e) (1996). A
2 principal who grants an agent authority under Section 209 empowers the agent to appoint a proxy
3 on behalf of the principal.
4

5 Subparagraph (4) excludes from the Act any power created on a governmental form for a
6 governmental purpose because, like the excluded powers in subparagraphs (2) and (3), the
7 authority for a power created on a governmental form emanates from other law and is generally
8 for a limited purpose. Notwithstanding this exclusion, the Act specifically provides in
9 subparagraph (7) of Section 203 that a grant of authority to an agent includes, with respect to that
10 subject matter, authority to “prepare, execute, and file a record, report, or other document to
11 safeguard or promote the principal’s interest under a statute or governmental regulation”.
12 Section 203, subparagraph (8), further clarifies that the agent has the authority to “communicate
13 with any representative or employee of a government, governmental subdivision, agency, or
14 instrumentality on behalf of the principal”. The intent of these provisions is to obviate the need
15 for a special power on a governmental form with respect to any subject matter over which an
16 agent is granted authority under the Act.
17

18 **SECTION 104. POWER OF ATTORNEY IS DURABLE.** A power of attorney
19 created under this [act] is durable unless it expressly provides that it is terminated by the
20 incapacity of the principal.

21 **Comment**

22 This section establishes that a power of attorney created under the Act is presumed
23 durable unless it expressly provides that it is terminated by the incapacity of the principal. The
24 presumption of durability is the reverse of the approach under the Uniform Durable Power of
25 Attorney Act and based on the assumption that most principals prefer durability as a hedge
26 against the need for guardianship.
27

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

1 **Comment**

2 While notarization of the principal's signature is not required to create a valid power of
3 attorney, this section strongly encourages the practice by according acknowledged signatures a
4 statutory presumption of genuineness. Furthermore, because Section 119 (Acceptance of and
5 Reliance Upon an Acknowledged Power of Attorney) and Section 120 (Liability for Refusal to
6 Accept an Acknowledged Power of Attorney) do not apply to unacknowledged powers, persons
7 who are presented with an unacknowledged power of attorney may be reluctant to accept it. As a
8 practical matter, an acknowledged signature is required if the power of attorney will be recorded
9 by the agent in conjunction with the execution of real estate documents on behalf of the principal.
10 *See R.P.D., Annotation, Recording laws as applied to power of attorney under which deed or*
11 *mortgage is executed*, 114 A.L.R. 660 (1938).
12

13 This section does require, at a minimum, that the power of attorney be signed by the
14 principal or by another individual who the principal has directed to sign the principal's name. If
15 another individual is directed to sign the principal's name, the signing must occur in the
16 principal's "conscious presence". The 1990 amendments to the Uniform Probate Code codified
17 the "conscious presence" test (Section 2-502(a)(2)), which generally requires that the signing is
18 sufficient if it takes place within the range of the senses—usually sight or hearing—of the
19 individual who directed that another sign the individual's name. *See Unif. Probate Code* § 2-502
20 *cmt. (2003)*. For a discussion of acknowledgment of a signature by an individual whose name is
21 signed by another, see *R.L.M., Annotation, Formal acknowledgment of instrument by one whose*
22 *name is signed thereto by another as an adoption of the signature*, 57 A.L.R. 525 (1928).
23

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

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

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

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

31 (1) the law of the jurisdiction that determines the meaning and effect of the power
32 of attorney pursuant to Section 107; or

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

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

Legislative note: *The brackets in subsections (a) and (b) of this section indicate where an enacting jurisdiction may elect to insert the effective date of the Act.*

Comment

One of the purposes of the Uniform Power of Attorney Act is promotion of the portability, use and enforceability of powers of attorney. Section 106 makes clear that the Act does not affect the validity of pre-existing powers of attorney executed under prior law in the enacting jurisdiction, powers of attorney validly created under the law of another jurisdiction, and military powers of attorney. This section not only recognizes the validity of such powers, but states that unless another law in the jurisdiction requires presentation of the original power of attorney, a photocopy or electronically transmitted copy has the same effect as the original. An example of another law that might require presentation of the original power of attorney is the jurisdiction's recording act. *See, e.g.,* Restatement (Third) of Property (Wills & Don. Trans.) § 6.3 cmt. e (2003) (noting that in order to record a deed, "some states require that the document of transfer be signed, sealed, attested, and acknowledged"). While the purpose of Section 106 is to recognize the validity of powers of attorney created under other law, it does not abrogate the traditional grounds for contesting the validity of execution such as forgery, fraud, or undue influence.

SECTION 107. MEANING AND EFFECT OF POWER OF ATTORNEY. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

Comment

This section recognizes that a foreign power of attorney may have been created under default rules that differ from those in the Uniform Power of Attorney Act, and clarifies that the

meaning and effect of a power of attorney is to be determined by the law under which it was created. For example, the law in another jurisdiction may provide for different default rules with respect to the authority of coagents (*see* Section 111) or the scope of authority for specific powers such as the power to make gifts (*see* Section 217). Section 107 clarifies that the principal's intended grant of authority will be neither enlarged nor narrowed by virtue of the agent using the power in a different jurisdiction. For a discussion of the issues that can arise with inter-jurisdictional use of powers of attorney, see Linda S. Whitton, *Crossing State Lines with Durable Powers*, Prob. & Prop., Sept./Oct. 2003, at 28.

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

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

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

Legislative Note: *The brackets in this section indicate areas where an enacting jurisdiction should reference its respective guardianship, conservatorship, or other protective proceedings statutes and adjust, where necessary for consistency, the terminology and substance of the bracketed language.*

Comment

Section 108(b) is a departure from the Uniform Durable Power of Attorney Act which gave a court-appointed fiduciary the same power to revoke or amend a power of attorney as the

1 principal would have if not incapacitated. *See* Unif. Durable Power of Atty. Act § 3(a) (1979).
2 In contrast, this Act gives deference to the principal's choice of agent by providing that the
3 agent's authority continues, notwithstanding the later court appointment of a fiduciary, unless the
4 court decides to limit or terminate the agent's authority. This approach assumes that the later-
5 appointed fiduciary's authority should supplement, not truncate, the agent's authority. If,
6 however, a fiduciary appointment is required because of the agent's inadequate performance or
7 breach of fiduciary duties, the court, having considered this evidence during the appointment
8 proceedings, can limit or terminate the agent's authority contemporaneously with appointment of
9 the fiduciary.

10
11 Deference for the principal's autonomous choice is evident both in the presumption that
12 an agent's authority continues unless limited or terminated by the court, and in the directive that
13 the court shall appoint a fiduciary in accordance with the principal's most recent nomination (*see*
14 subsection (a)). Typically, a principal will nominate as conservator or guardian the same
15 individual named as agent under the power of attorney. Favoring the principal's choice of agent
16 and nominee, an approach consistent with most statutory hierarchies for guardian selection (*see*
17 Unif. Guardianship & Protective Proc. Act § 310 (a)(2) (1997)), also discourages guardianship
18 petitions filed for the sole purpose of thwarting the agent's authority to gain control over a
19 vulnerable principal. *See* Unif. Guardianship & Protective Proc. Act § 310 cmt. (1997). *See also*
20 Linda S. Ershow-Levenberg, *When Guardianship Actions Violate the Constitutionally-Protected*
21 *Right of Privacy*, NAELA News, Apr. 2005, at 1 (arguing that appointment of a guardian when
22 there is a valid power of attorney in place violates the alleged incapacitated person's
23 constitutionally protected rights of privacy and association).
24

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

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

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

32 (c) If a power of attorney is to become effective upon the principal's incapacity and the
33 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 **Legislative Note:** The phrase "or licensed psychologist" is bracketed in subsection (c)(1) to
18 indicate where an enacting jurisdiction should insert the appropriate designation for the mental
19 health professional or professionals in that jurisdiction who are qualified to make capacity
20 determinations.

21 22 **Comment** 23

24 This section establishes the default rule that a power of attorney is effective when
25 executed. If the principal chooses to create what is commonly known as a "springing" or
26 contingent power of attorney—one that becomes effective at a future date or upon a future event
27 or contingency—the principal may authorize the agent or someone else to provide written

1 verification that the event or contingency has occurred (subsection (b)). Because the person
2 authorized to verify the principal's incapacitation will likely need access to the principal's health
3 information, subsection (d) qualifies that person to act as the principal's "personal
4 representative" for purposes of the Health Insurance Portability and Accountability Act of 1996
5 (HIPAA) (*see* 45 C.F.R. § 164.502(g)(1)-(2)(2006)) (providing that for purposes of disclosing an
6 individual's protected health information, "a covered entity must. . . treat a personal
7 representative as the individual"). Section 109 does not, however, empower the agent to make
8 health-care decisions for the principal. *See* Section 103 and comment (discussing exclusion from
9 this Act of powers to make health-care decisions).

10
11 The default rule reflects a "best practices" philosophy that any agent who can be trusted
12 to act for the principal under a springing power should be trustworthy enough to hold an
13 immediate power concurrently with the principal. Survey evidence suggests, however, that a
14 significant number of principals still prefer springing powers, most likely to maintain privacy in
15 the hope that they will never need a surrogate decision maker. *See* Linda S. Whitton, National
16 Conference of Commissioners on Uniform State Laws, National Durable Power of Attorney
17 Survey Results and Analysis 6-7 (2002),
18 <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm> (last visited on May 28, 2006)
19 (reporting that 23% of lawyer respondents found their clients preferred springing powers, 61%
20 reported a preference for immediate powers, and 16% saw no trend; however, 89% stated that a
21 power of attorney statute should authorize springing powers).

22
23 If the principal's incapacity is the trigger for a springing power of attorney and the
24 principal has not authorized anyone to make that determination, or the authorized person is
25 unable or unwilling to make the determination, this section provides a default mechanism to
26 trigger the power. Incapacity based on the principal's impairment may be verified by a physician
27 or licensed psychologist (subsection (c)(1)), and incapacity based on the principal's unavailability
28 (*i.e.*, the principal is missing, detained, or unable to return to the United States) may be verified
29 by an attorney at law, judge, or governmental official (subsection (c)(2)).
30

31 **SECTION 110. TERMINATION OF POWER OF ATTORNEY OR AGENT'S** 32 **AUTHORITY.**

33 (a) A power of attorney terminates when:

- 34 (1) the principal dies;
- 35 (2) the principal becomes incapacitated, if the power of attorney is not durable;
- 36 (3) the principal revokes the power of attorney;

1 (4) the power of attorney provides it terminates;
2 (5) the purpose of the power of attorney is accomplished; or
3 (6) the principal revokes the agent's authority or the agent dies, becomes
4 incapacitated, or resigns, and the power of attorney does not provide for another agent to act
5 under the power of attorney.

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

7 (1) the principal revokes the agent's authority;
8 (2) the agent dies, becomes incapacitated, or resigns;
9 (3) an action is filed for the [dissolution] or annulment of the agent's marriage to
10 the principal or their legal separation, unless the power of attorney otherwise provides; or
11 (4) the power of attorney terminates.

12 (c) Unless the 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 the
16 agent or another person that, without actual knowledge of the termination, acts in good faith
17 under the power of attorney. An act so performed, unless otherwise invalid or unenforceable,
18 binds the 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.

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

Legislative Note: The word “dissolution” is bracketed in subsection (b)(3) to indicate where an enacting jurisdiction should insert that jurisdiction’s term for divorce or marital dissolution.

Comment

This section addresses termination of a power of attorney or an agent’s authority under a power of attorney by first summarizing the events of termination (*see* subsections (a) and (b)), and then distinguishing these events from circumstances that, in contrast, either do not invalidate the power of attorney (*see* subsections (c) and (f)) or the actions taken pursuant to the power of attorney (*see* subsections (d) and (e)).

For example, subsection (c) emphasizes that powers do not become “stale” under the Act. Unless a power of attorney provides for termination upon a certain date or after the passage of a period of time, lapse of time since execution is irrelevant to validity, a concept carried over from the Uniform Durable Power of Attorney Act. *See* Unif. Durable Power of Atty. Act § 1 (as amended in 1987). Similarly, subsection (f) clarifies that a subsequently executed power of attorney will not revoke a prior power of attorney by virtue of inconsistency alone. To effect a revocation, a subsequently executed power of attorney must expressly revoke a previously executed power of attorney or state that all other powers of attorney are revoked.

Subsections (d) and (e) emphasize that even a termination event is not effective as to the agent or person who, without actual knowledge of the termination event, acts in good faith under the power of attorney. For example, the principal’s death terminates a power of attorney (*see* subsection (a)(1)), but an agent who acts in good faith under a power of attorney without actual knowledge of the principal’s death will bind the principal’s successors in interest with that action (*see* subsection (d)). The same result is true if the agent knows of the principal’s death, but the person who accepts the agent’s apparent authority has no actual knowledge of the principal’s death. *See* Restatement (Third) of Agency § 3.11 Tentative Draft No. 2, (2001) (stating that “termination of actual authority does not by itself end any apparent authority held by the agent”). *See also* Section 119(b) (stating that “a person that in good faith accepts an acknowledged power of attorney without actual knowledge that the power of attorney is . . . terminated. . . may rely upon the power of attorney as if the power of attorney were. . . still in effect. . .”).

Of special note in the list of termination events is subsection (b)(3) which provides that a spouse-agent’s authority is revoked when an action is filed for the dissolution or annulment of the agent’s marriage to the principal, or their legal separation. Although the typical marital break-up might render a principal particularly vulnerable to self-interested actions by a spouse-

1 agent, subsection (b)(3) is only a default provision. There may be special circumstances
2 precipitating the dissolution, such as catastrophic illness and the need for public benefits, that
3 would prompt the principal to specify that the agent's authority continues notwithstanding
4 dissolution, annulment or legal separation.
5

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

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

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

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

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

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

19 (d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty
20 by another agent shall notify the principal and, if the principal is incapacitated, take any action
21 reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent
22 that fails to notify the principal or take action as required by this subsection is liable for the
23 reasonably foreseeable damages that could have been avoided if the agent had notified the
24 principal or taken such action.

1 **Comment**

2 This section provides several default rules that merit careful consideration by the
3 principal. Subsection (a) states that if a principal names coagents, each coagent may exercise its
4 authority independently unless otherwise directed in the power of attorney. The Act adopts this
5 default position to discourage the practice of executing separate, co-extensive powers of attorney
6 in favor of different agents, and to facilitate transactions with persons who are reluctant to accept
7 a power of attorney from only one of two or more named agents. This default rule should not,
8 however, be interpreted as encouraging the practice of naming coagents. For a principal who can
9 still monitor the activities of an agent, naming coagents multiplies monitoring responsibilities
10 and significantly increases the risk that inconsistent actions will be taken with the principal's
11 property. For the incapacitated principal, the risk is even greater that coagents will use the power
12 of attorney to vie for control of the principal and the principal's property. Although the principal
13 can override the default rule by requiring coagents to act by majority or unanimous consensus,
14 such a requirement impedes use of the power of attorney, especially among agents who do not
15 share close physical or philosophical proximity. A more prudent practice is generally to name
16 one original agent and one or more successor agents. If desirable, a principal may give the
17 original agent authority to delegate the agent's authority during periods when the agent is
18 temporarily unavailable to serve (*see* Section 201(a)(5)).
19

20 Subsection (b) states that unless a power of attorney otherwise provides, a successor agent
21 has the same authority as that granted to the original agent. While this default provision ensures
22 that the scope of authority granted to the original agent can be carried forward by successors, a
23 principal may want to consider whether a successor agent is an appropriate person to exercise all
24 of the powers given to the original agent, especially with respect to powers that have the
25 propensity to dissipate the principal's estate, such as the power to make gifts, to create, amend, or
26 revoke an inter vivos trust, and to create or change survivorship and beneficiary designations (*see*
27 Section 201(a)). For example, the foregoing powers may be appropriate for a spouse-agent, but
28 not for an adult child who is named as the successor agent.
29

30 Subsection (c) provides as a default rule that an agent is not liable for the actions of
31 another agent unless the agent participates in or conceals the breach of fiduciary duty committed
32 by that other agent. Consequently, absent specification to the contrary in the power of attorney,
33 an agent has no duty to monitor another agent's conduct. However, subsection (d) does require
34 an agent that has actual knowledge of a breach or imminent breach of fiduciary duty to notify the
35 principal, and if the principal is incapacitated, to take reasonably appropriate action to safeguard
36 the principal's best interest. Subsection (d) further clarifies that if an agent fails to notify the
37 principal or to take action to safeguard the principal's best interest, that agent is only liable for
38 the reasonably foreseeable damages that could have been avoided.
39

40 **SECTION 112. REIMBURSEMENT AND COMPENSATION OF AGENT.** Unless

1 the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses
2 reasonably incurred on behalf of the principal and to compensation that is reasonable under the
3 circumstances.

4 **Comment**

5 This section provides as a default rule that an agent is entitled to reimbursement of
6 expenses reasonably incurred on behalf of the principal and to reasonable compensation. While
7 it is unlikely that a principal would choose to alter the default rule as to expenses, a principal's
8 circumstances may warrant including limitations in the power of attorney as to the categories of
9 expenses the agent may incur; likewise, the principal may choose to specify the terms of
10 compensation rather than leave that determination to a reasonableness standard. Although many
11 family-member agents serve without compensation, payment of compensation to the agent may
12 be advantageous to the principal in circumstances where the principal needs to spend down
13 income or resources to meet qualifications for public benefits.
14

15 **SECTION 113. AGENT'S ACCEPTANCE.** Except as otherwise provided in the
16 power of attorney, a person accepts appointment as an agent under a power of attorney by
17 exercising powers or performing duties as an agent or by any other assertion or conduct
18 indicating acceptance.

19 **SECTION 114. AGENT'S DUTIES.**

20 (a) Notwithstanding provisions in a power of attorney, an agent that has accepted
21 appointment shall:

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

24 (2) act in good faith; and

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

26 (b) Except as otherwise provided in the power of attorney, an agent that has accepted

1 appointment shall:

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

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

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

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

9 (5) cooperate with a person that has authority to make health-care decisions for
10 the principal to carry out the principal's reasonable expectations to the extent actually known by
11 the agent and, otherwise, act in the principal's best interest; and

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

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

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

17 (C) minimization of taxes, including income, estate, inheritance,
18 generation-skipping transfer, and gift taxes; and

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

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

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

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

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

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

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

22 **SECTION 115. EXONERATION OF AGENT.** A provision in a power of attorney

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

3 (1) relieves the agent of liability for breach of duty committed dishonestly, with an
4 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 with the
7 principal.

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

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

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

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 principal;

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

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

22 (8) the principal's caregiver or another person that demonstrates sufficient

1 interest in the principal's welfare; and

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

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

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

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

11 (1) damages;

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

13 (3) any amount awarded under Section 116(d).

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

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

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

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

1 **SECTION 119. ACCEPTANCE OF AND RELIANCE UPON AN**
2 **ACKNOWLEDGED POWER OF ATTORNEY.**

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

6 (b) A person that in good faith accepts an acknowledged power of attorney without
7 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported
8 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly
9 exercising the agent's powers may rely upon the power of attorney as if the power of attorney
10 were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect,
11 and the agent had not exceeded and had properly exercised the power.

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

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

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

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

21 (d) An English translation or an opinion of counsel requested under this section must be
22 provided at the principal's expense unless the request is made more than five business days after

1 the power of attorney is presented for acceptance.

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

6 **SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT AN**
7 **ACKNOWLEDGED POWER OF ATTORNEY.**

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

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

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

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

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

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

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

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

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

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

5 (3) a request for a certification, a translation, or an opinion of counsel under
6 Section 119(c) is refused;

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

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

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

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

19 **SECTION 123. REMEDIES UNDER OTHER LAW.** The remedies under this [act]
20 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 agent the
8 authority:

- 9 (1) create, amend, or revoke an inter vivos trust;
- 10 (2) make a gift;
- 11 (3) create or change rights of survivorship;
- 12 (4) create or change a beneficiary designation;
- 13 (5) delegate a power granted under the power of attorney;
- 14 (6) waive the principal's right to be a beneficiary of a joint and survivor annuity,
15 including a survivor benefit under a retirement plan; [or]
- 16 (7) exercise fiduciary powers that the principal has authority to delegate[; or
- 17 (8) disclaim property, including a power of appointment].

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

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

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

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

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

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

15 **SECTION 202. INCORPORATION OF POWERS.**

16 (a) An agent has a power described in this [article] if the power of attorney refers to the
17 descriptive term for the power stated in Sections 204 through 217 or cites the section in which
18 the power is described.

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

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

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

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

6 (1) demand, receive, and obtain by litigation or otherwise, money or another thing of
7 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, cancel, terminate, reform, restate,
11 release, or modify the 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, draft, 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 alternative dispute resolution, 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 or other governmental agency
21 to carry out an act authorized in the power of attorney;

22 (6) engage, compensate, and discharge an attorney, accountant, discretionary investment

1 manager, expert witness, or other assistant;

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

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

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

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

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

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

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

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

1 principal;

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

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

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

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

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

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

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

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

20 (A) selling or otherwise disposing of them;

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

1 (C) exercising any voting rights in person or by proxy;
2 (8) change the form of title of an interest in or right incident to real property; and
3 (9) dedicate to public use, with or without consideration, easements or other real property
4 in which the principal has, or claims to have, an interest.

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

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

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

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

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

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

- 1 (A) insuring against liability, or casualty or other loss;
- 2 (B) obtaining or regaining possession of or protecting the property or interest, by
- 3 litigation or otherwise;
- 4 (C) paying, assessing, compromising, or contesting taxes or assessments or
- 5 applying for and receiving refunds in connection with taxes or assessments;
- 6 (D) moving the property from place to place;
- 7 (E) storing the property for hire or on a gratuitous bailment; and
- 8 (F) using and making repairs, alterations, or improvements to the property; and
- 9 (6) change the form of title of an interest in tangible personal property.

10 **SECTION 206. STOCKS AND BONDS.**

11 (a) In this section, “stocks and bonds” means stocks, bonds, mutual funds, and all other

12 types of securities and financial instruments, whether held directly, indirectly, or in any other

13 manner, except commodity futures contracts and call and put options on stocks and stock

14 indexes.

15 (b) Unless a power of attorney otherwise provides, language in a power of attorney

16 granting power with respect to stocks and bonds authorizes the agent to:

- 17 (1) buy, sell, and exchange securities;
- 18 (2) establish, continue, modify, or terminate a securities account;
- 19 (3) pledge securities as security in order to borrow, pay, renew, or extend the time
- 20 of payment of a debt of the principal;
- 21 (4) receive certificates and other evidences of ownership with respect to
- 22 securities; and

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

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

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

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

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

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

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

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

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

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

- (6) enter a safe deposit box or vault and withdraw or add to the contents;
- (7) borrow money and pledge as security personal property of the principal necessary in order to borrow money or pay, renew, or extend the time of payment of a debt of the principal;
- (8) 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;
- (9) receive for the principal and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;
- (10) apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
- (11) 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. Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless a power of attorney otherwise provides, language in a power of attorney granting power with respect to operation of an entity or business authorizes the agent to:

- (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- (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;
- (3) enforce the terms of an ownership agreement;

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

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

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

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

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

12 (B) determine:

13 (i) the location of its operation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (6) exercise an election;

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

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

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

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

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

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

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

22 Unless a power of attorney otherwise provides, language in a power of attorney granting power

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

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

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

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

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

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

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

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

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

22 **SECTION 212. CLAIMS AND LITIGATION.** Unless a power of attorney otherwise

1 provides, language in a power of attorney granting power with respect to claims and litigation
2 authorizes the agent to perform any lawful act on behalf of the principal in connection with
3 claims and litigation, including:

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

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

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

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

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

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

1 instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

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

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

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

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

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

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

16 (A) the principal's children;

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

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

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

1 individuals;

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

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

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

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

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

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

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

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 only authorizes the agent to:

11 (1) make outright to, 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 may make a gift of the principal’s property only as the agent determines is

1 consistent with the principal's objectives if actually known by the agent and, if unknown, as the
2 agent determines is consistent with the principal's best interest based on all relevant factors,
3 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, and gift taxes;

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

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

Name of Agent: _____
Agent's Address: _____
Agent's Phone Number: _____

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of Successor Agent: _____
Successor Agent's Address: _____
Successor Agent's Phone Number: _____

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

Name of Second Successor Agent: _____
Second Successor Agent's Address: _____
Second Successor Agent's Phone Number: _____

GRANT OF GENERAL AUTHORITY

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

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

- ☐ Real Property
- ☐ Tangible Personal Property
- ☐ Stocks and Bonds
- ☐ Commodities and Options
- ☐ Banks and Other Financial Institutions
- ☐ Operation of an Entity or Business
- ☐ Insurance and Annuities
- ☐ Estates, Trusts, and Other Beneficial Interests
- ☐ Claims and Litigation
- ☐ Personal and Family Maintenance
- ☐ Benefits from Governmental Programs or Civil or Military Service

- 1 ☐ Retirement Plans
2 ☐ Taxes
3
4 ☐ All Preceding Powers
5

6 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**
7

8 My agent MAY NOT do any of the following specific acts for me UNLESS I have also
9 INITIALED the specific power:

10
11 (CAUTION: Granting any of the following powers will give your agent the authority to take
12 actions that could significantly reduce your property or change how your property is distributed at
13 your death. INITIAL ONLY the specific powers you WANT to include in the agent's authority.)
14

- 15 ☐ Create, amend, or revoke an inter vivos trust
16 ☐ Make a gift, subject to the limitations of the [act] and any special instructions in this
17 power of attorney
18 ☐ Create or change rights of survivorship
19 ☐ Create or change a beneficiary designation
20 ☐ Authorize another person to exercise the authority granted under this power of attorney
21 ☐ Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
22 survivor benefit under a retirement plan
23 ☐ Exercise fiduciary powers that the principal has authority to delegate
24 [☐ Disclaim or refuse an interest in property, including a power of appointment]
25

26 **LIMITATION ON AGENT'S AUTHORITY**
27

28 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit
29 the agent or a person to whom the agent owes an obligation of support unless I have included that
30 authority in the Special Instructions.
31

32 **SPECIAL INSTRUCTIONS (OPTIONAL)**
33

34 On the following lines you may give special instructions:
35
36
37
38
39
40
41

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 _____
3

4 This document was acknowledged before me on _____,
5 (date)

6 by _____.
7 (name of Principal)

8
9 _____ (Seal, if any)
10 Signature of Notary
11 My commission expires: _____
12

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 [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 _____.