

D R A F T
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UNIFORM POWER OF ATTORNEY ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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With Prefatory Note

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DRAFTING COMMITTEE FOR THE UNIFORM POWER OF ATTORNEY ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Power of Attorney Act consists of the following individuals:

JOHN P. BURTON, P.O. Box 1357, 315 Paseo de Peralta, Santa Fe, NM 87501, *Chair*
KENNETH W. ELLIOTT, 22nd Floor, City Place Building, 204 N. Robinson Ave., Oklahoma City, OK 73102, *Enactment Plan Coordinator*
DAVID M. ENGLISH, University of Missouri-Columbia School of Law, Missouri Ave. & Conley Ave., Columbia, MO 65211
THOMAS L. JONES, University of Alabama School of Law, University Station, P.O. Box 865557, Tuscaloosa, AL 35486-0050
NATHANIEL STERLING, Law Revision Commission, Suite D-1, 4000 Middlefield Rd., Palo Alto, CA 94303
RICHARD V. WELLMAN, University of Georgia School of Law, Athens, GA 30602
STEVE WILBORN, 306 Tower Drive, Shelbyville, KY 40065
LINDA S. WHITTON, Valparaiso University School of Law, Wesemann Hall, 656 S. Greenwich, Valparaiso, IN 46383, *Reporter*

EX OFFICIO

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, *President*
MARTHA T. STARKEY, Suite 850, 30 S. Meridian St., Indianapolis, IN 46204, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

WILLIAM P. LAPIANA, New York Law School, 57 Worth St., New York, NY 10013, *American Bar Association Advisor*
ABIGAIL G. KAMPMANN, 153 Treeline, Suite 320, San Antonio, TX 78209-1880, *Real Property, Probate and Trust Law Section Advisor*
CHARLES P. SABATINO, ABA Commission on Law and Aging, 740 15th St., Washington, DC 20005, *ABA Commission on Law and Aging Advisor*

EXECUTIVE DIRECTOR

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS
211 E. Ontario Street, Suite 1300
Chicago, Illinois 60611
312/915-0195
www.nccusl.org

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UNIFORM POWER OF ATTORNEY ACT

Prefatory Note

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

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

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

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

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

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

Sections 119 and 120 of the Act address the problem of persons refusing to honor an agent's authority. Section 119 provides protection from liability for persons who in good faith accept the agent's authority. This section also prohibits such persons from requiring a different form of power of attorney. Section 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 place upon persons who deal with an agent the duty to investigate the agent or the agent's actions. Safeguards against abuse are provided, instead, through heightened requirements for delegating authority that could dissipate the principal's property or alter the principal's estate plan (Section 201(b)), provisions that set out the agent's duties and liabilities (Sections 114 and 117) and by specification of comprehensive categories of persons who have standing to request judicial review of the agent's conduct (Section 116). A provision that gives the reviewing court discretion to award attorney fees to the prevailing party (Section 116(b)) serves to both deter frivolous actions and facilitate redress where warranted.

Overview of the Uniform Power of Attorney Act

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

Article 1 – General Provisions and Definitions – Section 102 lists definitions which are useful in interpretation of the Act. Of particular note is the definition of “incapacity” which replaces the term “disability” used in the Original Act. The definition of “incapacity” is taken from the Uniform Guardianship and Protective Proceedings Act as amended in 1997. Another

significant change in terminology from the Original Act is the use of “agent” in place of the term “attorney in fact”. The term “agent” was also used in the Uniform Statutory Form Power of Attorney Act and is intended to clarify confusion in the lay public about the meaning of “attorney in fact.” Section 103 provides that the Act is to apply broadly to all powers of attorney, but excepts from the Act powers of attorney for health care and certain specialized powers such as those coupled with an interest or dealing with proxy voting.

Another innovation is the presumption of durability contained in Section 105. This change reflects the view that most principals prefer their powers of attorney to be durable rather than non-durable. No longer must a durable power of attorney include language indicating that the authority conferred is exercisable notwithstanding the principal’s subsequent disability or incapacity. A power of attorney executed under the Act is durable unless it contains express language indicating otherwise. While the Original Act was silent on execution requirements for a power of attorney, Section 106 requires the principal’s signature and provides that an acknowledged signature is presumed genuine. Section 107 enumerates those powers executed in another state or country or under pre-existing law that will be considered valid under the Act.

Article 1 also addresses concerns about powers that have the potential of dissipating the principal’s property or altering the principal’s estate plan. Section 108(b) lists the powers that cannot be implied from a general grant of authority, but which must instead be delegated through express inclusion in the power of attorney. Of particular note is Section 201(b)(5) which requires an express grant of authority to empower the agent to create with the principal’s property a gift, survivorship right, or beneficiary designation in the agent or in a person customarily supported by the agent.

Section 109 provides guidance on the relationship of the agent to a later court-appointed fiduciary. The Original Act conferred upon a later-appointed fiduciary the same power to revoke or amend the power of attorney as the principal would have had prior to incapacity. In contrast, the Act reserves this power to the court and states that the agent’s authority continues until limited, suspended, or terminated by the court. This approach reflects greater deference for the previously expressed preferences of the principal and is consistent with the Uniform Guardianship and Protective Proceedings Act.

The default rule for when a power of attorney becomes effective is stated in Section 110. Unless the principal specifies that it is to become effective upon a future date, event, or contingency, a power of attorney becomes effective when executed. The principal is permitted under this section to designate who may determine when contingent powers are triggered. The determination of a person designated by the principal may be considered conclusive by those relying on the power of attorney. If the trigger for contingent powers is the principal’s incapacity, Section 110 provides that the person designated to make that determination has the authority to act as the principal’s personal representative under the Health Insurance Portability and Accountability Act for purposes of accessing the principal’s health care information and communicating with the principal’s health care provider. This provision does not, however,

confer upon an agent the authority to make health care decisions for the principal. If the trigger for contingent powers is incapacity but the principal has not designated anyone to make the determination, the statute provides for determination by a physician or licensed psychologist as a default position.

The bases for termination of a power of attorney are covered in Section 111. In response to concerns expressed in the Conference survey, the Act provides as the default rule that authority granted to a principal's spouse is revoked upon the commencement of proceedings for legal separation, marital dissolution or annulment.

Sections 112 through 118 deal with matters related to the agent, including default rules for compensation, reimbursement, agent duties and liability. 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 in bad faith or with reckless indifference to the purposes of the power of attorney. Section 116 sets out a comprehensive list of persons who may petition the court to review the agent's conduct. An agent may resign by following the notice procedures described in Section 118.

Sections 119 and 120 are included in the Act to address the frequently reported problem of persons who refuse to accept an agent's authority. Section 119 protects persons who accept an agent's authority without knowledge that a power of attorney is revoked, terminated, or invalid or that the agent is exceeding or improperly exercising the agent's powers. A person who accepts an agent's authority in good faith is not required to make inquiry into the extent of the agent's powers or the propriety of their exercise, and may rely on an agent's certification as to any matter concerning the power of attorney or the principal. In exchange for this protection, Section 120(a) imposes liability for refusal to accept an agent's authority subject to limited exceptions in Section 120(b).

Section 121 clarifies that the Act is supplemented by existing bodies of law, including the common law and equity. While the principles of common law and equity may supplement the provisions of the Act, the Uniform Power of Attorney Act preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies.

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

Article 3 – Statutory Form Power of Attorney – The optional form in Article 3 is

designed for use by lawyers as well as lay persons. It contains, in plain language, instructions to the principal and agent. Step-by-step prompts are given for designation of the agent, successor agent(s), and the grant of powers. In the grant of powers section, the principal must decide to cross out any of the general powers listed on the form that the principal does not wish to delegate to the agent. There is a separate list of the Section 201(b) powers for which the statute requires an express grant of authority. If the principal wishes to grant any of the Section 201(b) powers, the principal must initial each power to be granted.

Article 4 – Miscellaneous Provisions – The miscellaneous provisions in Article 4 clarify that the Act is intended to have the widest possible effect within constitutional limitations. The Act repeals the Uniform Durable Power of Attorney Act, The Uniform Statutory Form Power of Attorney Act, and Article 5, Part 5 of the Uniform Probate Code.

UNIFORM POWER OF ATTORNEY ACT

[ARTICLE] 1

GENERAL PROVISIONS AND DEFINITIONS

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

SECTION 102. DEFINITIONS. In this [act]:

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

(2) “Court” means the [] court.

(3) “Durable,” with reference to a power of attorney, means that the agent’s authority survives the principal’s incapacity or takes effect upon the principal’s incapacity.

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

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

(6) “Power of attorney” means an instrument in which a principal grants authority to an agent to act as attorney in fact for a principal.

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

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

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

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

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

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

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

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

(1) to the extent a power of attorney is coupled with an interest in the subject of the power;

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

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

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

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

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

6 **SECTION 104. KNOWLEDGE; NOTICE.**

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

9 (1) has actual knowledge of it;

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

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

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

multiple offices, notice to a branch or office other than the office where the power of attorney is presented is attributable to the individual conducting the transaction not later than three business days from the date of notice to the branch or other office.

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

(a) A power of attorney is durable unless it expressly provides that it is terminated by the incapacity of the principal.

(b) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act. Unless the power of attorney provides a time of termination, the authority of an agent is exercisable notwithstanding a lapse of time since the execution of the power of attorney.

SECTION 106. CREATION. The principal must sign a power of attorney or direct another individual to sign on behalf of the principal in the principal's presence. The signature of the other individual is deemed to be the signature of the principal. If the principal acknowledges [the principal's signature] [the signature of the other individual] before a notary public or another individual authorized to take acknowledgments, the signature is presumed to be genuine.

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

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

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

1 executed;

2 (2) the law of this state; or

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

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

8 **SECTION 108. INTERPRETATION.** If the provisions of this [act] conflict with the
9 terms of a power of attorney, the terms of the power of attorney control unless the public policies
10 of this state clearly prohibit or restrict what the terms of the power of attorney purport to
11 authorize. This [act] may not be applied to enlarge the scope of authority granted to an agent in a
12 power of attorney executed in or intended for use in another state or country or executed under
13 pre-existing law.

14 **SECTION 109. NOMINATION OF GUARDIAN; RELATION OF AGENT TO**
15 **COURT-APPOINTED FIDUCIARY.**

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

21 (b) If, after the execution of a power of attorney, a court appoints a conservator or
22 guardian of the principal's estate, or other fiduciary charged with the management of all of the

1 principal's property or all of the property except specified exclusions, the agent is accountable to
2 the fiduciary as well as to the principal. [The agent's authority continues until limited, suspended,
3 or terminated by the court.]

4 **SECTION 110. WHEN EFFECTIVE.**

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

8 (b) If a power of attorney becomes effective upon the occurrence of a future event
9 or contingency, the principal may authorize one or more persons to determine conclusively in a
10 writing or other record that the event or contingency has occurred. Other persons may rely on the
11 determination of a person so authorized without liability to the principal or any other person,
12 whether or not the event or contingency actually has occurred.

13 (c) If a power of attorney becomes effective upon the principal's incapacity and
14 the principal has not authorized a person to determine that the principal is incapacitated, the
15 power of attorney becomes effective upon a determination in a writing or other record by a
16 physician [or licensed psychologist] that the principal is incapacitated. Other persons may rely
17 on the determination of the physician [or licensed psychologist] without liability to the principal
18 or to any other person.

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

1 and communicate with the principal's health care provider or physician.

2 **SECTION 111. TERMINATION OF POWER OF ATTORNEY.**

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

4 (1) the principal dies;

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

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

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

10 (5) the agent resigns pursuant to Section 118;

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

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

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

16 (b) Unless a power of attorney otherwise provides, a power of attorney is not
17 terminated by the termination of an agent's authority or the agent's death or resignation if the
18 power of attorney provides for a co-agent or successor agent.

19 (c) Termination of the agent's authority, revocation of the power of attorney by
20 the principal, or death of the principal does not terminate the agency as to an agent or other
21 person that, without knowledge of the termination, revocation, or death, acts in good faith under
22 the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the

principal and successors in interest of the principal.

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

SECTION 112. CO-AGENTS AND SUCCESSOR AGENTS.

(a) Unless a power of attorney or this section otherwise provides:

(1) authority granted to co-agents is exercisable only by their majority consent, or in the circumstance of two co-agents, their unanimous consent;

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

(3) if a vacancy occurs in one or more of the designations of agent under a power of attorney, the remaining agents may act for the principal.

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

(c) An agent is not liable for the actions of another agent, including a predecessor

1 agent, unless the agent participates in or conceals a breach of fiduciary duty committed by the
2 other agent. An agent who has knowledge of a breach or imminent breach of fiduciary duty by
3 another agent shall notify the principal, and, if the principal is incapacitated, take any action
4 reasonably appropriate in the circumstances to safeguard the principal's best interests.

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

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

11 (a) An agent's acceptance of authority under a power of attorney creates an
12 agency. An agent accepts authority under a power of attorney by exercising powers or
13 performing duties as an agent or by any other assertion or conduct indicating acceptance.

14 (b) Except as otherwise provided in the power of attorney, an agent shall:

15 (1) act loyally for the principal's benefit in accordance with the reasonable
16 expectations of the principal known to the agent and, otherwise, with the care, competence, and
17 diligence normally exercised by agents in similar circumstances for the best interest of a
18 principal;

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

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

1 (4) not perform any act beyond the authority granted by the principal;

2 (5) cooperate with a person that has authority to make health-care
3 decisions for the principal in accordance with the principal's expectations, if known to the agent,
4 and, otherwise, in accordance with what is reasonably believed by the agent to be in the best
5 interest of the principal; and

6 (6) take the principal's estate plan into account to the extent known to the
7 agent and attempt to preserve the plan if consistent with the principal's best interest based on all
8 relevant factors, including the principal's foreseeable obligations and need for maintenance;
9 minimization of income, estate, inheritance, generation-skipping transfer, or gift taxes; and
10 eligibility for public benefits or assistance under a statute or governmental regulation.

11 (c) An agent is not liable to any beneficiary of the principal's estate plan for
12 failure to preserve the plan unless the agent acts in bad faith.

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

16 (e) If an agent has skills or knowledge that exceed those possessed by most others,
17 the agent's skills or knowledge are circumstances to be considered in determining whether the
18 agent has acted with due care, competence, and diligence.

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

21 (g) An agent that is granted and exercises the authority to delegate to another
22 person the agency authority granted by the principal or that employs another person on behalf of

1 the principal is not liable for an error of judgment, act, or default of that person if the agent
2 exercises due care, competence, and diligence in selecting and monitoring the person.

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

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

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

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

18 **SECTION 116. PETITION FOR JUDICIAL RELIEF.**

19 (a) The court may construe a power of attorney, review the agent's conduct, and
20 grant appropriate relief. The persons that have standing to petition the court include:

21 (1) the principal or the agent;

22 (2) a conservator, guardian of the estate, or other fiduciary charged with

1 management of the principal's property;

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

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

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

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

9 (7) the principal's caregiver or another person who demonstrates sufficient
10 interest in the principal's welfare.

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

13 **SECTION 117. AGENT'S LIABILITY.** An agent that violates this [act] is liable to
14 the principal or the principal's successors in interest for the damages and attorney's fees and
15 costs paid from the principal's estate resulting from the violation and for any amounts awarded
16 under Section 116(b).

17 **SECTION 118. AGENT'S RESIGNATION; NOTICE.** An agent may resign by
18 giving notice to the principal and, if the principal is incapacitated, to:

19 (1) the conservator or guardian, if one has been appointed for the principal, and a
20 co-agent or successor agent, if any;

21 (2) if the principal does not have a conservator or guardian and has not named a
22 co-agent or successor agent, the principal's caregiver or other person reasonably believed by the

1 agent to have sufficient interest in the principal's welfare; or

2 (3) if the principal does not have a conservator or guardian, has not named a co-
3 agent or successor agent, and does not have a caregiver or other person having sufficient interest
4 in the principal's welfare, a governmental agency having authority to protect the welfare of the
5 principal.

6 **SECTION 119. PROTECTION OF PERSONS DEALING WITH AN AGENT.**

7 (a) A person that in good faith accepts an agent's authority, without knowledge
8 that the agent's authority has been terminated, a power of attorney has been terminated or is
9 invalid, or the agent is exceeding or improperly exercising the agent's powers, is protected from
10 liability as if the power of attorney were still in effect and valid and the agent had properly
11 exercised the power.

12 (b) A person that in good faith accepts an agent's authority is not required to
13 inquire into the extent of the agent's powers or the propriety of their exercise but may require and
14 rely upon, without further investigation, an agent's certification as to any matters concerning the
15 power of attorney or the principal.

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

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

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

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

1 the authority of an agent within five business days of presentment of a power of attorney is liable
2 to the principal or the principal's successors in interest to the same extent as the person would be
3 liable had the person refused to accept the authority of a principal who has capacity to act on the
4 principal's own behalf. The amount recoverable for refusal to accept an agent's authority is the
5 total of the damages from the refusal or \$1000, whichever is greater, plus costs and reasonable
6 attorney's fees.

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

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

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

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

19 (c) This section does not abrogate any other cause of action or remedy to which
20 the principal or agent is entitled under the law of this state other than this [act].

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

- 1 capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion,
- 2 mistake, ratification, bankruptcy and other validating or invalidating cause, supplement its
- 3 provisions.

1 [ARTICLE] 2

2 POWERS

3 SECTION 201. GENERAL GRANT OF AUTHORITY; POWERS WHICH
4 REQUIRE SPECIFIC AUTHORIZATION.

5 (a) Subject to subsection (b), if a principal grants to an agent general authority
6 that is not limited to express acts, subjects, or purposes for which general authority is granted, the
7 agent has all the authority to act that the principal would have if the principal had capacity to
8 contract, other than an act for which the personal action of the principal is required. Unless a
9 power of attorney otherwise provides, a grant of general authority includes all of the powers
10 defined in Sections 204 through 216.

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

- 14 (1) create, modify, or revoke an inter vivos trust;
- 15 (2) make a gift;
- 16 (3) create or change rights of survivorship;
- 17 (4) designate or change the designation of a beneficiary;
- 18 (5) create in the agent or a person customarily supported by the agent an
19 interest in the principal's property through gift, survivorship, or beneficiary designation; [or]
- 20 (6) delegate to another person the authority granted under the power of
21 attorney [; or
- 22 (7) disclaim property, including a power of appointment].

1 (c) Authority to make a gift is further subject to Section 217 unless otherwise
2 modified by the terms of the power of attorney.

3 (d) With the exception of powers granted pursuant to subsection (b), if powers
4 granted in a power of attorney are similar or overlap, the broadest power controls.

5 (e) If a principal grants inconsistent authority to one or more agents in two or
6 more powers of attorney, the authority granted last controls to the extent of the inconsistency.

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

11 **SECTION 202. INCORPORATION OF POWERS.**

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

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

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

19 **SECTION 203. CONSTRUCTION OF POWERS GENERALLY.** By executing a
20 power of attorney that incorporates by reference a power described in Sections 204 through 218,
21 except as otherwise modified in the power of attorney, the principal authorizes the agent with
22 respect to that subject to:

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

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

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

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

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

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

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

21 (8) prepare, execute, and file a record, report, or other document the agent
22 considers desirable to safeguard or promote the principal's interest under a statute or

1 governmental regulation;

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

4 (10) access communications intended for the principal whether by mail, e-mail,
5 telephone, or other means;

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (A) selling or otherwise disposing of them;

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

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

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

22 (8) dedicate to public use, with or without consideration, easements or other real

1 property in which the principal has, or claims to have, an interest.

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

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

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

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

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

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

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

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

20 (D) moving from place to place;

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

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

(5) change the form of title of an interest in tangible personal property, except as otherwise provided in Section 201(b).

SECTION 206. STOCKS AND BONDS. Language granting power with respect to transactions concerning stocks and bonds authorizes the agent to:

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

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

(3) 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. Language granting power with respect to transactions concerning 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 with a broker.

SECTION 208. BANKS AND OTHER FINANCIAL INSTITUTIONS. Language granting power with respect to transactions concerning 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

1 a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm,
2 or other financial institution selected by the agent;

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

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

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

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

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

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

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

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

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

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

3 **SECTION 209. OPERATION OF BUSINESS.** Language granting power with respect
4 to operating a business authorizes the agent to:

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

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

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

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

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

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

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

22 (A) continue, modify, renegotiate, extend, and terminate a contract made

1 by or on behalf of the principal with respect to the business before execution of the power of
2 attorney;

3 (B) determine:

4 (i) the location of its operation;

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

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

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

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

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

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

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

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

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

22 (8) establish the value of a business under a buy-out agreement to which the

principal is a party;

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

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

SECTION 210. INSURANCE AND ANNUITIES. Language granting power with respect to insurance and annuities authorizes the agent to:

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

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

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

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

(5) surrender and receive the cash surrender value;

(6) exercise an election;

(7) change the manner of paying premiums;

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

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

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

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

SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIARY

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

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

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

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

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

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

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

11 **SECTION 212. CLAIMS AND LITIGATION.** Language granting power with respect
12 to claims and litigation authorizes the agent to:

13 (1) assert and prosecute before a court or administrative agency a claim, claim for
14 relief, cause of action, counterclaim, offset, or defense against an individual, organization, or
15 government, including but not limited to actions to recover property or other thing of value,
16 recover damages sustained by the principal, eliminate or modify tax liability, or seek an
17 injunction, specific performance, or other relief;

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

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

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

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

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

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

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

20 **SECTION 213. PERSONAL AND FAMILY MAINTENANCE.** Language granting
21 power with respect to personal and family maintenance authorizes the agent to:

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

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

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

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

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

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

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

22 (7) continue payments incidental to the membership or affiliation of the principal

1 in a church, club, society, order, or other organization or to continue contributions to those
2 organizations.

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

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

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

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

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

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

1 **SECTION 215. RETIREMENT PLANS.** Language granting power with respect to
2 retirement plans authorizes the agent to:

- 3 (1) select a payment option under a retirement plan in which the principal
4 participates, including a plan for a self-employed individual;
5 (2) make voluntary contributions to those plans;
6 (3) exercise the investment powers available under a self-directed retirement plan;
7 (4) make a rollover of benefits into another retirement plan;
8 (5) if authorized by the plan, borrow from, sell assets to, purchase assets from, or
9 request distributions from the plan; and
10 (6) waive the right of the principal to be a beneficiary of a joint or survivor
11 annuity if the principal is a spouse who is not employed.

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

- 14 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
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 [or similar provisions later enacted], closing
19 agreements, and any power of attorney required by the Internal Revenue Service or other taxing
20 authority with respect to a tax year upon which the statute of limitations has not run and the
21 following 25 tax years;
22 (2) pay taxes due, collect refunds, post bonds, receive confidential information,

1 and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

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

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

6 **SECTION 217. GIFTS.** Except as otherwise provided in Section 201(b), language
7 granting power with respect to gifts authorizes the agent to make gifts of any of the principal's
8 property to individuals or organizations within the limits of the annual exclusion under the
9 Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b) [or similar provisions later
10 enacted], as the agent determines to be in the principal's best interest based on all relevant
11 factors, including:

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

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

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

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

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

19 **SECTION 218. DELEGATION OF AGENCY AUTHORITY.** Language granting
20 power with respect to delegation of agency authority authorizes the agent to make a revocable
21 delegation by writing or other record to one or more persons of a power granted to the agent by
22 the principal.

1 [ARTICLE] 3

2 STATUTORY FORM POWER OF ATTORNEY

3
4
5 SECTION 301. OPTIONAL FORM. The following form may be used to create a
6 power of attorney that has the meaning and effect prescribed by this [act].

7 STATUTORY FORM POWER OF ATTORNEY

8
9 IMPORTANT INFORMATION

10
11 This power of attorney authorizes another person, your agent, to make property decisions for
12 you, the principal. Your agent can make decisions and act with respect to your property
13 (including your money) even if you lose capacity to act for yourself. The meaning of powers
14 listed in this document is explained in the Uniform Power of Attorney Act. This power of
15 attorney does not authorize the agent to make medical or health care decisions for you.
16

17 You should select someone you trust to serve as your agent. The agent's authority will continue
18 until your death unless you revoke the power of attorney or the agent resigns. If your agent is
19 unable or unwilling to act for you, your power of attorney will end unless you have named a
20 successor agent. You may also name a second successor agent.
21

22 If you grant authority in this power of attorney that is inconsistent with authority you have
23 already granted in another power of attorney, the earlier power of attorney will be revoked to the
24 extent of the inconsistency. This power of attorney becomes effective immediately unless you
25 state otherwise in the Special Instructions.
26

27 Before signing this document, you should seek legal advice if you have questions about the
28 power of attorney or the authority you are granting to your agent.
29

30 DESIGNATION OF AGENT

31
32 I, _____ (principal's full name), of
33 _____
34 _____ (principal's address)
35 name the following person as my agent:
36 _____
37 _____
38 (full name and address of agent)
39
40

1 **OPTIONAL DESIGNATION OF SUCCESSOR AGENT(S)**

2

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

4 _____

5 _____

6 (full name and address of successor agent)

7

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

9 _____

10 _____

11 _____

12 (full name and address of second successor agent)

13

14 **GRANT OF GENERAL AUTHORITY**

15

16 I grant my agent and any successor agent general authority to act for me with respect to the

17 following subjects as defined in the Uniform Power of Attorney Act:

18

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

- 20
- 21 • Real Property
 - 22 • Tangible Personal Property
 - 23 • Stocks and Bonds
 - 24 • Commodities and Options
 - 25 • Banks and Other Financial Institutions
 - 26 • Operation of Business
 - 27 • Insurance and Annuities
 - 28 • Estates, Trusts, and Other Beneficiary Relationships
 - 29 • Claims and Litigation
 - 30 • Personal and Family Maintenance
 - 31 • Benefits from Government Programs or Military Service
 - 32 • Retirement Plans
 - 33 • Taxes
- 34

35 **GRANT OF SPECIFIC AUTHORITY**

36

37 My agent MAY NOT do any of the following specific acts for me UNLESS I have also

38 INITIALED the blank space (____) in front of the specific power to act:

39

40 (CAUTION: Granting any of the following powers to your agent will give your agent the

41 authority to take actions that could significantly reduce your property or change how your

42 property is distributed at your death. INITIAL ONLY the specific powers you WANT to include

1 in the agent's authority.)

- 2
- 3 ☐ Create, modify, or revoke an inter vivos trust
- 4 ☐ Make a gift, subject to the limitations of the Uniform Power of Attorney Act and any
- 5 special instructions in this power of attorney
- 6 ☐ Create or change rights of survivorship
- 7 ☐ Create or change a beneficiary designation
- 8 ☐ Create in the agent or a person customarily supported by the agent an interest in my
- 9 property through gift, survivorship right or beneficiary designation
- 10 ☐ Authorize another person to exercise the agency authority granted under this power of
- 11 attorney
- 12 [☐ Disclaim or refuse an interest in property, including a power of appointment]
- 13

14 **SPECIAL INSTRUCTIONS**

15

16 (On the following lines you may give special instructions limiting or extending the powers

17 granted to your agent.)

18

19 _____

20 _____

21 _____

22 _____

23 _____

24 _____

25 _____

26

27 **EFFECTIVE DATE**

28

29 This power of attorney is effective immediately unless I have stated otherwise in the Special

30 Instructions.

31

32 **OPTIONAL NOMINATION OF GUARDIAN OR CONSERVATOR**

33

34 If it becomes necessary for a court to appoint a conservator or guardian of my estate or person, I

35 nominate the following person for appointment:

36

37 _____

38 _____

39 (full name and address of nominee)

40

41

1 **RELIANCE ON THIS POWER OF ATTORNEY**

2
3 Any person, including my agent, may rely upon the validity of this power of attorney or a copy of
4 it unless that person knows it is terminated or invalid.

5
6 **SIGNATURE AND ACKNOWLEDGMENT**

7
8
9
10 _____
11 Your signature

Date

12
13 _____
14 Your name printed

15
16 _____
17 Your address

18 [This document prepared by:

19
20
21 _____
22 _____]]

23
24 [State of _____

25 [County] of _____

26
27
28 This document was acknowledged before me on _____ (date),
29 by _____ (name of Principal).

30
31
32 _____
33 Signature of Notary
34 My commission expires: _____]

(Seal, if any)

35
36 **IMPORTANT INFORMATION FOR AGENT**

37
38 When you accept the authority granted under this power of attorney a special legal
39 relationship, known as agency, is created between you and the principal. Agency imposes upon
40 you duties that continue until you resign or the power of attorney is terminated or revoked. You
41 must:

42
43 (1) do what you know the principal reasonably expects you to do with the principal's

- 1 property;
- 2 (2) act in good faith with care, competence, and diligence for the best interest of the
- 3 principal;
- 4 (3) avoid conflicts that would impair your ability to act in the principal's best interest;
- 5 (4) keep a complete record of all receipts, disbursements, and transactions conducted for the
- 6 principal;
- 7 (5) do nothing beyond the authority granted in this power of attorney;
- 8 (6) preserve the principal's estate plan to the extent you know the plan, unless preserving the
- 9 estate plan is inconsistent with the principal's best interest; and
- 10 (7) stop acting on behalf of the principal if you learn of any event which terminates this
- 11 power of attorney or your authority under this power of attorney.
- 12

13 If you have special skills or expertise, you must use those special skills and expertise

14 when acting for the principal. You must disclose your identity as an agent whenever you act for

15 the principal by writing or printing the name of the principal and signing your own name as

16 "agent" in the following manner:

17

18 (Principal's Name) by (Your Signature) as Agent

19

20 The meaning of the powers granted to you is defined in the Uniform Power of Attorney

21 Act. If you violate the Uniform Power of Attorney Act or act outside the authority granted, you

22 may be liable for any damages, including attorney's fees and costs, caused by your violation.

23

24 You should seek legal advice if there is anything about this document or your duties that

25 you do not understand.

26

27 AGENT'S ACCEPTANCE

28

29 (This statement of acceptance may be signed any time after the principal signs the power of

30 attorney.)

31

32 I accept appointment as agent under this power of attorney.

33

34 _____

35 Agent's signature

36

Date

37

38 _____

39 Agent's name printed

40

41 _____

42 Successor Agent's signature

43

Date

1 Successor Agent's name printed

2
3
4 Second Successor Agent's signature

Date

5
6
7 Second Successor Agent's name printed

8
9
10
11
12
13 **SECTION 302. AGENT'S CERTIFICATION.** The following optional form may be

14 used by an agent to certify facts concerning a power of attorney.

15
16 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY**
17 **AND AGENT'S AUTHORITY**

18
19 [State of _____]
20 [County] of _____

21
22 I, _____ (name of Agent), [certify] that
23 _____ (name of Principal) signed a Power of
24 Attorney (a copy of the Power of Attorney is attached to this certification) on
25 _____ (date), naming the undersigned as an agent or successor agent.

26
27 I further [certify] that to my knowledge:

28
29 (1) the Principal is alive and has not revoked the Power of Attorney or my authority to act
30 under the Power of Attorney and that the Power of Attorney remains in full force and effect;

31
32 (2) if the Power of Attorney was drafted to become effective upon the happening of an
33 event or contingency that the event or contingency has occurred; and

34
35 (3) if I was named as a successor agent that the predecessor agent is no longer able to
36 serve.

37
38 **SIGNATURE AND ACKNOWLEDGMENT**

1 Agent's signature Date
2
3
4 Agent's name printed
5
6
7 Agent's address
8
9
10 [This document was acknowledged before me on _____ (date),
11 by _____ (name of Agent).
12
13
14 _____ (Seal, if any)
15 Signature of Notary
16 My commission expires: _____]
17
18 [This document prepared by:
19
20 _____]
21 _____]

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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