

D R A F T

FOR DISCUSSION ONLY

## **UNIFORM POWER OF ATTORNEY ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-FOURTEENTH YEAR

PITTSBURGH, PENNSYLVANIA

JULY 22 - 29, 2005

## **UNIFORM POWER OF ATTORNEY ACT**

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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 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 Joint Editorial Board for Uniform Trust and Estate Acts (JEB) conducted a national survey. The survey was distributed to probate and elder law sections of all state bar associations, to the fellows of the American College of Trust and Estate Counsel, the leadership of the ABA Section of Real Property, Probate and Trust Law and the National Academy of Elder Law Attorneys, as well as to special interest listserves of the ABA Commission on Law and Aging. Forty-four jurisdictions were represented in the 371 surveys returned.

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

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

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

Among the provisions that enhance flexibility are the statutory definitions of powers in Article 2 which can be incorporated by reference in an individually drafted power of attorney or selected for inclusion on the optional statutory form provided in Article 3. The statutory definitions of enumerated powers are an updated version of those in the Uniform Statutory Form Power of Attorney Act (1988), which the Act 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 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 require persons who deal with an agent to investigate the agent or the agent's actions. Instead, safeguards against abuse are provided through heightened requirements for delegating authority that could dissipate the principal's property or alter the principal's estate plan (Section 201(c)), provisions that set out the agent's duties and liabilities (Sections 114 and 117) and by specification of the 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's fees to the prevailing party (Section 116(c)) 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 is a portability provision for powers of attorney not executed under the Act and Section 108 states the guidelines for interpretation of such powers.

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

The default rule for when a power of attorney becomes effective is stated in Section 110. Unless the principal specifies that it is to become effective upon a future date, event, or contingency, the authority of an agent under a power of attorney becomes effective when the power is executed. Section 110 permits the principal to designate who may determine when contingent powers are triggered. The determination of a person designated by the principal may be considered conclusive by those relying on the power of attorney. If the trigger for contingent powers is the principal’s incapacity, Section 110 provides that the person designated to make that determination has the authority to act as the principal’s personal representative under the Health Insurance Portability and Accountability Act (HIPAA) for purposes of accessing the principal’s health care information and communicating with the principal’s health care provider. This provision does not, however, confer upon an agent the authority to make health care decisions for the principal. If the trigger for contingent powers is incapacity but the principal has not designated anyone to make the determination, or the person authorized is unable or unwilling to make the determination, the statute provides for determination by a physician or licensed psychologist 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 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 and not only upon entry of the final order.

Sections 112 through 118 address 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 dishonestly, with an improper motive, 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 principles of equity. While the principles of common law and equity may supplement the provisions of the Act, the Uniform Power of Attorney Act preempts principles of common law and equity that are inconsistent with either its provisions or its purposes and policies. Section 122 clarifies that the remedies under the Act are not exclusive and do not abrogate any other cause of action or remedy that may be available under the law of the enacting jurisdiction.

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

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

whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

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

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

1 **UNIFORM POWER OF ATTORNEY ACT**

2  
3 **[ARTICLE] 1**

4 **GENERAL PROVISIONS AND DEFINITIONS**

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

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

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

11 (2) “Court” means the [ ] court.

12 (3) “Co-agents” means agents that are granted authority in the same power of  
13 attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 **SECTION 104. KNOWLEDGE; NOTICE.**

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

12 (1) has actual knowledge of it;

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

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

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

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

7  
8 **SECTION 105. POWER OF ATTORNEY NOT AFFECTED BY INCAPACITY.**

9 A power of attorney is durable unless it expressly provides that it is terminated by the incapacity  
10 of the principal.

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

16 **SECTION 107. VALIDITY OF POWER OF ATTORNEY NOT EXECUTED**  
17 **UNDER THIS [ACT].**

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

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

22 (2) the law of this state; or

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

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

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

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

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

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

1 limited, suspended, or terminated by the court.]

2 **SECTION 110. WHEN EFFECTIVE.**

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

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

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

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

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

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

22 (1) the principal dies;

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

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

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

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

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

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

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

12 (b) Unless a power of attorney otherwise provides, the power of attorney is not  
13 terminated by the termination of an agent's authority if the power of attorney provides for a co-  
14 agent or successor agent.

15 (c) The authority of an agent under a power of attorney is exercisable until the  
16 power of attorney terminates notwithstanding a lapse of time since the execution of the power of  
17 attorney.

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

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

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

9           **SECTION 112. CO-AGENTS AND SUCCESSOR AGENTS.**

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

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

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

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

20           (b) A principal may designate one or more successor agents to act if an agent  
21 resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal  
22 may grant authority to another person, designated by name, by office, or by function, including

1 an agent, to designate one or more successor agents. Unless a power of attorney otherwise  
2 provides:

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

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

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

12 **SECTION 113. REIMBURSEMENT AND COMPENSATION OF AGENT.** An  
13 agent is entitled to reimbursement of expenses properly incurred on behalf of the principal.  
14 Unless otherwise provided in a power of attorney, the agent is entitled to compensation that is  
15 reasonable under the circumstances.

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

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

20 (b) Except as otherwise provided in the power of attorney, an agent who has  
21 accepted appointment shall:

22 (1) act loyally for the principal's benefit in accordance with the

1 reasonable expectations of the principal known to the agent and, if unknown, with the care,  
2 competence, and diligence normally exercised by agents in similar circumstances for the best  
3 interest of a principal;

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

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

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

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

12 (6) take the principal's estate plan into account to the extent known to the  
13 agent and attempt to preserve the plan if consistent with the principal's best interest based on all  
14 relevant factors, including the principal's foreseeable obligations and need for maintenance;  
15 minimization of income, estate, inheritance, generation-skipping transfer, or gift taxes; and the  
16 principal's eligibility for public benefits or assistance.

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

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

22 (e) Special skills or expertise possessed by an agent must be considered in

1 determining whether the agent has acted with due care, competence, and diligence under the  
2 circumstances.

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

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

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

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

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

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

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

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

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

7 (1) the principal or the agent;

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

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

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

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

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

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

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

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

22 **SECTION 117. AGENT'S LIABILITY.** An agent that violates this [act] is liable to

1 the principal or the principal's successors in interest for damages, attorney's fees and costs paid  
2 from the principal's estate resulting from the violation, and for any amounts awarded under  
3 Section 116(c).

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

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

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

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

13 **SECTION 119. PROTECTION OF PERSON DEALING WITH AGENT.**

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

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

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

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

5 **SECTION 120. LIABILITY FOR REFUSAL TO ACCEPT AGENT'S**  
6 **AUTHORITY.**

7 (a) Except as otherwise provided in subsection (b), a person that refuses to accept  
8 the authority of an agent within five business days after presentation of a power of attorney is  
9 liable to the principal or the principal's successors in interest to the same extent as the person  
10 would be liable had the person refused to accept the authority of a principal having capacity to  
11 act on the principal's own behalf. The amount recoverable for refusal to accept an agent's  
12 authority is the total of the damages from the refusal or \$1,000, whichever is greater, plus costs  
13 and reasonable attorney's fees.

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

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

18 (2) the person reasonably believes that the power of attorney is not valid  
19 under the law of this state or that the agent does not have authority to perform the act requested  
20 and provides the agent with a writing or other record not more than five business days after the  
21 refusal which describes the reason for believing that the power of attorney is not valid or that the  
22 agent lacks authority; or

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

5                   **SECTION 121. PRINCIPLES OF LAW AND EQUITY.** Unless displaced by the  
6 particular provisions of this [act], the principles of law and equity, including the law relative to  
7 capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion,  
8 mistake, ratification, bankruptcy and other validating or invalidating cause, supplement its  
9 provisions.

10                   **SECTION 122. REMEDIES UNDER OTHER LAW.** The remedies under this [act]  
11 are not exclusive and do not abrogate any other cause of action or remedy under the law of this  
12 state.

1 [ARTICLE] 2

2 POWERS

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

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

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

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

- 15 (1) create, amend, or revoke an inter vivos trust;
- 16 (2) make a gift;
- 17 (3) create or change rights of survivorship;
- 18 (4) designate or change the designation of a beneficiary; [or]
- 19 (5) delegate to another person the authority granted under the power of  
20 attorney [; or
- 21 (6) disclaim property, including a power of appointment].

22 (d) Unless a power of attorney otherwise provides, a grant of authority to make a

1 gift is subject to the limitations of Section 217.

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

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

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

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.** Except as

20 otherwise modified in the power of attorney, by executing a power of attorney that incorporates  
21 by reference a power described in Sections 204 through 218, a principal authorizes the agent  
22 with respect to that subject to:

1           (1) demand, receive, and obtain by litigation or otherwise, money or other thing  
2 of 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,  
8 security agreement, lease, notice, check, promissory note, electronic funds transfer, release, or  
9 other 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 and communicate on behalf of the  
5 principal, whether by mail, e-mail, 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 which owns an interest in or right incident to real property and receive and  
15 hold, 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  
11 interest, lien, or other claim on behalf of the principal, with respect to tangible personal property  
12 or an 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

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

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

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

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

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

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

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

15 (2) establish, continue, modify, and terminate option accounts with a broker.

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

17 Language granting power with respect to banking and other financial transactions authorizes the  
18 agent to:

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

21 (2) establish, modify, and terminate an account or other banking arrangement  
22 with a bank, trust company, savings and loan association, credit union, thrift company, brokerage

- 1 firm, or other financial institution selected by the agent;
- 2 (3) rent a safe deposit box or space in a vault;
- 3 (4) contract for other services available from a financial institution as the agent  
4 considers desirable;
- 5 (5) withdraw, by check, order, electronic funds transfer or otherwise, money or  
6 property of the principal deposited with or left in the custody of a financial institution;
- 7 (6) receive bank statements, vouchers, notices, and similar documents from a  
8 financial institution and act with respect to them;
- 9 (7) enter a safe deposit box or vault and withdraw or add to the contents;
- 10 (8) borrow money at an interest rate agreeable to the agent and pledge as security  
11 personal property of the principal necessary in order to borrow, pay, renew, or extend the time of  
12 payment of a debt of the principal;
- 13 (9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory  
14 notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to  
15 the principal or the principal's order, transfer money, receive the cash or other proceeds of those  
16 transactions, and accept a draft drawn by a person upon the principal and pay it when due;
- 17 (10) receive for the principal and act upon a sight draft, warehouse receipt, or  
18 other negotiable or nonnegotiable instrument;
- 19 (11) apply for, receive, and use letters of credit, credit and debit cards, electronic  
20 transaction authorization, and traveler's checks from a financial institution and give an  
21 indemnity or other agreement in connection with letters of credit; and
- 22 (12) consent to an extension of the time of payment with respect to commercial

1 paper or a financial transaction with a financial institution.

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

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

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

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

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

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

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

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

21 (A) continue, modify, renegotiate, extend, and terminate a contract made  
22 by or on behalf of the principal with respect to the business before execution of the power of

1 attorney;

2 (B) determine:

3 (i) the location of its operation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (6) exercise an election;

1 (7) change the manner of paying premiums;

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

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

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

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

12 **SECTION 211. ESTATES, TRUSTS, AND OTHER BENEFICIARY**

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

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

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

22 (3) initiate, participate in, and oppose litigation to ascertain the meaning, validity,

1 or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the  
2 interest of the principal;

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

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

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

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

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

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

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

22 (3) procure an attachment, garnishment, libel, order of arrest, or other

1 preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy  
2 a judgment, order, or decree;

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

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

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

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

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

1           **SECTION 213. PERSONAL AND FAMILY MAINTENANCE.** Language granting

2 power with respect to personal and family maintenance authorizes the agent to:

3           (1) perform the acts necessary to maintain the customary standard of living of the  
4 principal, the principal's spouse and children, other individuals legally entitled to be supported  
5 by the principal, and those individuals whom the principal has customarily supported or  
6 indicated the intent to support, including providing living quarters by purchase, lease, or other  
7 contract, or paying the operating costs, including interest, amortization payments, repairs, and  
8 taxes, on premises owned by the principal and occupied by those individuals;

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

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

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

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

22           (6) maintain or open charge accounts for the convenience of the individuals

1 described in paragraph (1) and open new accounts the agent considers desirable to accomplish a  
2 lawful purpose; and

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

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

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

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

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

22 (4) prosecute, defend, submit to arbitration or mediation, settle, and propose or

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

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

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

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

9 (2) make voluntary contributions to those plans;

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

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

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

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

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

19 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,  
20 Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for  
21 extension of time, petitions regarding tax matters, and any other tax-related documents,  
22 including receipts, offers, waivers, consents, including consents and agreements under Internal

1 Revenue Code Section 2032A, 26 U.S.C. Section 2032A [or similar provisions later enacted],  
2 closing agreements, and any power of attorney required by the Internal Revenue Service or other  
3 taxing authority with respect to a tax year upon which the statute of limitations has not run and  
4 the following 25 tax years;

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

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

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

11 **SECTION 217. GIFTS.**

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

14 (1) make gifts of any of the principal's property to individuals or  
15 organizations in an amount per donee not to exceed the annual dollar limits of the federal gift tax  
16 exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b) [or similar  
17 provisions later enacted] without regard to whether the federal gift tax exclusion applies to the  
18 gift, and if the principal's spouse consents to a split gift pursuant to Internal Revenue Code  
19 Section 2513, 26 U.S.C. 2513 [or similar provisions later enacted], in an amount per donee not to  
20 exceed twice the annual federal gift tax exclusion limit; and

21 (2) consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C.  
22 2513 [or similar provisions later enacted], to the splitting of gifts made by the principal's spouse

1 in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

2 (b) Except as otherwise provided in a power of attorney, an agent shall make  
3 gifts of the principal's property only as the agent determines to be in the principal's best interest  
4 based on all relevant factors, including:

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

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

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

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

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

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

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

1 [ARTICLE] 3

2 STATUTORY FORM POWER OF ATTORNEY

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

6 STATUTORY FORM POWER OF ATTORNEY

7  
8 IMPORTANT INFORMATION

9  
10 This power of attorney authorizes another person, your agent, to make decisions concerning  
11 your property for you, the principal. Your agent can make decisions and act with respect to your  
12 property (including your money) even if you are unable to act for yourself. The meaning of  
13 powers listed in this document is explained in the Uniform Power of Attorney Act. This power  
14 of attorney does not authorize the agent to make medical or health-care decisions for you.

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

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

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

26  
27  
28 DESIGNATION OF AGENT

29  
30 Name of Principal: \_\_\_\_\_  
31 Principal’s Address: \_\_\_\_\_  
32 \_\_\_\_\_

33  
34 I name the following person as my agent:

35  
36 Name of Agent: \_\_\_\_\_  
37 Agent’s Address: \_\_\_\_\_  
38



1 My agent MAY NOT do any of the following specific acts for me UNLESS I have also  
2 INITIALED the blank space (\_\_\_) in front of the specific power:

3  
4 (CAUTION: Granting any of the following powers will give your agent the authority to take  
5 actions that could significantly reduce your property or change how your property is distributed  
6 at your death. INITIAL ONLY the specific powers you WANT to include in the agent's  
7 authority.)

- 8
- 9  Create, amend, or revoke an inter vivos trust
- 10  Make a gift, subject to the limitations of the Uniform Power of Attorney Act and any  
11 special instructions in this power of attorney
- 12  Create or change rights of survivorship
- 13  Create or change a beneficiary designation
- 14  Authorize another person to exercise the authority granted under this power of attorney
- 15 [ Disclaim or refuse an interest in property, including a power of appointment]

16  
17 **LIMITATION ON AGENT'S AUTHORITY**

18  
19 My agent MAY NOT use my property to benefit the agent or a person to whom the agent owes  
20 an obligation of support unless I have included special instructions in this power of attorney to  
21 permit such actions.

22  
23 **OPTIONAL SPECIAL INSTRUCTIONS**

24  
25 (On the following lines you may give special instructions limiting or extending the powers  
26 granted to your agent.)

27  
28 \_\_\_\_\_  
29 \_\_\_\_\_  
30 \_\_\_\_\_  
31 \_\_\_\_\_  
32 \_\_\_\_\_  
33 \_\_\_\_\_  
34 \_\_\_\_\_

35  
36 **EFFECTIVE DATE**

37  
38 This power of attorney is effective immediately unless I have stated otherwise in the Special  
39 Instructions.

40  
41 **OPTIONAL NOMINATION OF GUARDIAN OR CONSERVATOR**

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

3  
4 Name of Nominee: \_\_\_\_\_

5 Nominee's Address: \_\_\_\_\_

6  
7  
8 **RELIANCE ON THIS POWER OF ATTORNEY**

9  
10 Any person, including my agent, may rely upon the validity of this power of attorney or a copy  
11 of it unless that person knows it is terminated or invalid.

12  
13 **SIGNATURE AND ACKNOWLEDGMENT**

14  
15 \_\_\_\_\_  
16 Your signature Date

17  
18 \_\_\_\_\_  
19 Your name printed

20  
21 \_\_\_\_\_  
22 Your address

23  
24 [This document prepared by:  
25 \_\_\_\_\_  
26 \_\_\_\_\_]  
27

28  
29  
30 [State of \_\_\_\_\_  
31 [County] of \_\_\_\_\_

32  
33 This document was acknowledged before me on \_\_\_\_\_ (date),  
34 by \_\_\_\_\_ (name of Principal).

35  
36  
37 \_\_\_\_\_ (Seal, if any)  
38 Signature of Notary  
39 My commission expires: \_\_\_\_\_

40  
41  
42 **IMPORTANT INFORMATION FOR AGENT**

1 When you accept the authority granted under this power of attorney a special legal  
2 relationship is created between you and the principal. This relationship imposes upon you duties  
3 that continue until you resign or the power of attorney is terminated or revoked. You must:  
4

- 5 (1) do what you know the principal reasonably expects you to do with the principal's  
6 property;
- 7 (2) act in good faith with care, competence, and diligence for the best interest of the  
8 principal;
- 9 (3) avoid conflicts that would impair your ability to act in the principal's best interest;
- 10 (4) keep a complete record of all receipts, disbursements, and transactions conducted for the  
11 principal;
- 12 (5) do nothing beyond the authority granted in this power of attorney;
- 13 (6) preserve the principal's estate plan to the extent you know the plan, unless preserving the  
14 estate plan is inconsistent with the principal's best interest; and
- 15 (7) stop acting on behalf of the principal if you learn of any event which terminates this  
16 power of attorney or your authority under this power of attorney.  
17

18 You must disclose your identity as an agent whenever you act for the principal by writing  
19 or printing the name of the principal and signing your own name as "agent" in the following  
20 manner:  
21

22 (Principal's Name) by (Your Signature) as Agent  
23

24 The meaning of the powers granted to you is defined in the Uniform Power of Attorney  
25 Act. If you violate the Uniform Power of Attorney Act or act outside the authority granted, you  
26 may be liable for any damages, including attorney's fees and costs, caused by your violation.  
27

28 You should seek legal advice if there is anything about this document or your duties that  
29 you do not understand.  
30

### 31 AGENT'S ACCEPTANCE

32  
33 (This statement of acceptance may be signed any time after the principal signs the power of  
34 attorney.)  
35

36 I accept appointment as agent under this power of attorney.  
37

38 \_\_\_\_\_  
39 Agent's signature

\_\_\_\_\_ Date

40 \_\_\_\_\_  
41 Agent's name printed  
42

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

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

2 **AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY**  
3 **AND AGENT’S AUTHORITY**

4  
5 [State of \_\_\_\_\_]  
6 [County] of \_\_\_\_\_

7  
8 I, \_\_\_\_\_ (name of Agent), [certify] under  
9 penalty of perjury that \_\_\_\_\_ (name of Principal)  
10 signed a Power of Attorney (a copy of the Power of Attorney is attached to this certification) on  
11 \_\_\_\_\_ (date), naming the undersigned as an agent or successor agent.

12  
13 I further [certify] that to my knowledge:

14  
15 (1) the Principal is alive and has not revoked the Power of Attorney or my authority to  
16 act under the Power of Attorney and that the Power of Attorney remains in full force and effect;

17  
18 (2) if the Power of Attorney was drafted to become effective upon the happening of an  
19 event or contingency that the event or contingency has occurred;

20  
21 (3) if I was named as a successor agent that the predecessor agent is no longer able or  
22 willing to serve; and

23  
24 (4) \_\_\_\_\_  
25 \_\_\_\_\_  
26 \_\_\_\_\_  
27 \_\_\_\_\_

28 (insert other relevant statements)

29  
30 **SIGNATURE AND ACKNOWLEDGMENT**

31  
32 \_\_\_\_\_  
33 Agent’s signature

34 \_\_\_\_\_  
35 Date

36 \_\_\_\_\_  
37 Agent’s name printed

38 \_\_\_\_\_  
39 Agent’s address

40  
41  
42 [This document was acknowledged before me on \_\_\_\_\_ (date),  
43 by \_\_\_\_\_ (name of Agent).

1  
2  
3  
4  
5  
6  
7  
8  
9

\_\_\_\_\_  
Signature of Notary  
My commission expires: \_\_\_\_\_]

(Seal, if any)

[This document prepared by:  
\_\_\_\_\_  
\_\_\_\_\_]

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

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

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

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

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

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

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

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