

D R A F T

FOR DISCUSSION ONLY

UNIFORM POWER OF ATTORNEY ACT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-FOURTEENTH YEAR

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UNIFORM POWER OF ATTORNEY ACT

WITH PREFATORY NOTE AND WITHOUT COMMENTS

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NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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UNIFORM POWER OF ATTORNEY ACT

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 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**
43

