

By: Thompson

H.B. No. 710

A BILL TO BE ENTITLED

AN ACT

relating to durable powers of attorney and statutory durable powers of attorney.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 482, Texas Probate Code, is amended to read as follows:

Sec. 482. DEFINITION. A "durable power of attorney" means a written instrument that:

(1) designates another person as attorney in fact or agent;

(2) is signed by an adult principal;

(3) contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal," or "This power of attorney becomes effective on the disability or incapacity of the principal," or similar words showing the principal's intent that the authority conferred on the attorney in fact or agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; ~~and~~

(4) is acknowledged by the principal before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state or any other state; and

(5) is attested to in writing by two credible witnesses 14 years of age or older who are not designated as

1 attorney in fact or agent.

2 SECTION 2. Chapter XII, Texas Probate Code, is amended by
3 adding Sections 489C and 489D to read as follows:

4 Sec. 489C. PROHIBITION ON SELF-DEALING. The attorney in
5 fact or agent may not engage in self-dealing in undertaking an
6 action or exercising any other power granted under the durable
7 power of attorney.

8 Sec. 489D. STANDARD FOR MANAGEMENT AND INVESTMENT. In
9 acquiring, investing, reinvesting, exchanging, retaining, selling,
10 supervising, and managing property under a durable power of
11 attorney, the attorney in fact or agent is subject to the same
12 standard as a trustee under the Texas Trust Code as provided by
13 Subtitle B, Title 9, Property Code.

14 SECTION 3. Section 490(a), Texas Probate Code, is amended
15 to read as follows:

16 (a) The following form is known as a "statutory durable
17 power of attorney." A person may use a statutory durable power of
18 attorney to grant an attorney in fact or agent powers with respect
19 to a person's property and financial matters. A power of attorney
20 in substantially the following form has the meaning and effect
21 prescribed by this chapter. The validity of a power of attorney as
22 meeting the requirements of a statutory durable power of attorney
23 is not affected by the fact that one or more of the categories of
24 optional powers listed in the form are not initialed by the
25 principal [~~struck~~] or the form includes specific limitations on or
26 additions to the attorney in fact's or agent's powers.

27 The following form is not exclusive, and other forms of power

1 of attorney may be used.

2 STATUTORY DURABLE POWER OF ATTORNEY

3 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
4 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER
5 XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE
6 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
7 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS
8 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO
9 DO SO.

10 I, _____ (insert your name and address), appoint
11 _____ (insert the name and address of the person appointed) as
12 my agent (attorney-in-fact) to act for me in any lawful way as
13 provided by this document with respect to all of the following
14 powers that I have initialed [~~except for a power that I have crossed~~
15 ~~out~~] below.

16 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
17 POWER.

18 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
19 [~~YOU MUST CROSS OUT EACH~~] POWER [~~WITHHELD~~].

20 ___(A) Real property transactions, excluding transactions
21 involving your homestead;

22 ___(B) Tangible personal property transactions;

23 ___(C) Stock and bond transactions;

24 ___(D) Commodity and option transactions;

25 ___(E) Banking and other financial institution transactions;

26 ___(F) Business operating transactions;

27 ___(G) Insurance and annuity transactions;

- 1 (H) Estate, trust, and other beneficiary transactions;
- 2 (I) Claims and litigation;
- 3 (J) Personal and family maintenance;
- 4 (K) Benefits from social security, Medicare, Medicaid, or
- 5 other governmental programs or civil or military service;
- 6 (L) Retirement plan transactions;
- 7 (M) Transactions involving your homestead;
- 8 (N) Tax matters.

9 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY INITIALING THE
 10 LINE IN FRONT OF THE ALTERNATIVE CHOSEN:

11 (O) Each power listed in (A) through (N) above that is intialed
 12 by me grants my agent (attorney in fact) the authority to engage in
 13 a transaction of \$50,000 or less with respect to that power.

14 (P) Each power listed in (A) through (N) above that is intialed
 15 by me grants my agent (attorney in fact) the authority to engage in
 16 a transaction with respect to that power that is not limited by a
 17 specified dollar amount.

18 IF NEITHER (O) NOR (P) IS INITIALED BY YOU, IT WILL BE ASSUMED
 19 THAT YOU CHOSE ALTERNATIVE (O).

20 IF EACH [~~NO~~] POWER LISTED IN (A) THROUGH (N) ABOVE IS
 21 INITIALED BY ME AND I CHOOSE ALTERNATIVE (P) ABOVE [~~CROSSED OUT~~],
 22 THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER
 23 OF ATTORNEY AND MY AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND
 24 AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR
 25 UNDERTAKE IF I WERE PERSONALLY PRESENT.

26 SPECIAL INSTRUCTIONS:

27 Special instructions applicable to gifts (initial in front of

1 the following sentence to have it apply):

2 I grant my agent (attorney in fact) the power to apply my
3 property to make gifts, except that the amount of a gift to an
4 individual may not exceed the amount of annual exclusions allowed
5 from the federal gift tax for the calendar year of the gift.

6 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS
7 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

8 _____
9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____

18 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS
19 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

20 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
21 ALTERNATIVE NOT CHOSEN:

22 (A) This power of attorney is not affected by my subsequent
23 disability or incapacity.

24 (B) This power of attorney becomes effective upon my
25 disability or incapacity.

26 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
27 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

1 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT
2 YOU CHOSE ALTERNATIVE (A).

3 If Alternative (B) is chosen and a definition of my
4 disability or incapacity is not contained in this power of
5 attorney, I shall be considered disabled or incapacitated for
6 purposes of this power of attorney if a physician certifies in
7 writing at a date later than the date this power of attorney is
8 executed that, based on the physician's medical examination of me,
9 I am mentally incapable of managing my financial affairs. I
10 authorize the physician who examines me for this purpose to
11 disclose my physical or mental condition to another person for
12 purposes of this power of attorney. A third party who accepts this
13 power of attorney is fully protected from any action taken under
14 this power of attorney that is based on the determination made by a
15 physician of my disability or incapacity.

16 I agree that any third party who receives a copy of this
17 document may act under it. Revocation of the durable power of
18 attorney is not effective as to a third party until the third party
19 receives actual notice of the revocation. I agree to indemnify the
20 third party for any claims that arise against the third party
21 because of reliance on this power of attorney.

22 If any agent named by me dies, becomes legally disabled,
23 resigns, or refuses to act, I name the following (each to act alone
24 and successively, in the order named) as successor(s) to that
25 agent: _____.

26 I authorize the following (name one or more individuals) to
27 demand an accounting by my agent (attorney in fact):

1 _____.

2 Signed this _____ day of _____, 19_____]

3 _____

4 (your signature)

5 _____

6 (signature of witness)

7 _____

8 (signature of witness)

9 THIS POWER OF ATTORNEY IS NOT EFFECTIVE UNLESS IT IS SIGNED BY
10 TWO CREDIBLE WITNESSES 14 YEARS OF AGE OR OLDER WHO ARE NOT
11 DESIGNATED AS MY AGENT (ATTORNEY IN FACT).

12 State of _____

13 County of _____

14 This document was acknowledged before me on

15 _____(date) by _____

16 (name of principal)

17 _____

18 (signature of notarial officer)

19 (Seal, if any, of notary)

20 _____

21 (printed name)

22 My commission expires:_____

23 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
24 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
25 RESPONSIBILITIES OF AN AGENT AND IS SUBJECT TO THE SAME STANDARD IN
26 MANAGING MY PROPERTY AND AFFAIRS AS IS PROVIDED FOR A TRUSTEE UNDER
27 THE TEXAS TRUST CODE.

1 SECTION 4. This Act takes effect September 1, 2003, and the
2 changes in law made by this Act apply to a durable power of attorney
3 or statutory durable power of attorney that is executed on or after
4 that date. A durable power of attorney or statutory durable power of
5 attorney that is executed before the effective date of this Act is
6 governed by the law in effect on the date the power of attorney was
7 executed, and that law is continued in effect for that purpose.