

By: Guillen

H.B. No. 2331

Substitute the following for H.B. No. 2331:

By: Leibowitz

C.S.H.B. No. 2331

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the acknowledgment of an agent's or attorney in fact's  
3 duties under a durable power of attorney.

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

5 SECTION 1. Chapter XII, Texas Probate Code, is amended by  
6 adding Section 489C to read as follows:

7 Sec. 489C. NOTICE REGARDING FIDUCIARY AND OTHER LEGAL  
8 RESPONSIBILITIES OF ATTORNEY IN FACT OR AGENT. (a) An attorney in  
9 fact or agent at the time authority conferred by a durable power of  
10 attorney is exercised by the attorney in fact or agent for a  
11 transaction of \$1,000 or more must provide to the financial  
12 institution or other person to whom the durable power of attorney is  
13 provided the following written notice, in substantially the  
14 following form:

15 "NOTICE

16 THE ATTORNEY IN FACT OR AGENT UNDERSTANDS THAT, BY ACCEPTING  
17 THE APPOINTMENT, THE ATTORNEY IN FACT OR AGENT ASSUMES THE  
18 FOLLOWING FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT:

19 I, \_\_\_\_\_ (insert your name and address), accept the  
20 following responsibilities and obligations as an agent (attorney in  
21 fact) of \_\_\_\_\_ (insert the name and address of the principal):

22 I am a fiduciary and have a duty to inform and to account for  
23 actions taken under the power of attorney.

24 I shall timely inform the principal of all actions taken

1 under the power of attorney. Failure to inform timely, as to third  
2 parties, does not invalidate any action taken by me as the agent or  
3 attorney in fact.

4 I shall maintain records of each action taken or decision  
5 made by me as the agent or attorney in fact.

6 The principal may demand an accounting of my actions as the  
7 agent or attorney in fact. Unless otherwise directed by the  
8 principal, the accounting must include:

9 (1) a description of the property belonging to the  
10 principal that has come to the agent's or attorney in fact's  
11 knowledge or into the agent's or attorney in fact's possession;

12 (2) a description of all actions taken or decisions  
13 made by me as the agent or attorney in fact;

14 (3) a complete account of receipts, disbursements, and  
15 other actions as the agent or attorney in fact, including their  
16 source and nature, with receipts of principal and income shown  
17 separately;

18 (4) a listing of all property over which I, as the  
19 agent or attorney in fact, have exercised control, with an adequate  
20 description of each asset and its current value if known to me as  
21 the agent or attorney in fact;

22 (5) a statement of the cash balance on hand and the  
23 name and location of the depository where the balance is kept;

24 (6) a statement of all known liabilities; and

25 (7) other information and facts known to me as the  
26 agent or attorney in fact as may be necessary to a full and definite  
27 understanding of the exact condition of the property belonging to

1 the principal.

2 Unless directed otherwise by the principal, I shall provide  
3 to the principal all documentation regarding the principal's  
4 property.

5 I shall maintain all records until delivered to the  
6 principal, released by the principal, or discharged by a court.

7 If I fail or refuse to inform the principal, provide  
8 documentation, or deliver the accounting within 60 days (or a  
9 longer or shorter time that the principal demands or a court may  
10 order), the principal may file suit to compel me to deliver the  
11 accounting, to deliver the assets, or to terminate the power of  
12 attorney.

13 Wherever in Chapter XII, Texas Probate Code, a principal is  
14 given an authority to act, that authority includes not only the  
15 principal but also any person designated by the principal, a  
16 guardian of the estate of the principal, or other personal  
17 representative of the principal.

18 The rights set out in Chapter XII, Texas Probate Code, are  
19 cumulative of any other rights or remedies the principal may have at  
20 common law or other applicable statutes and not in derogation of  
21 those rights.

22 Signed this \_\_ day of \_\_\_\_, 20\_\_

23 \_\_\_\_\_  
24 (signature of agent or attorney in  
25 fact)

26 State of \_\_\_\_\_

27 County of \_\_\_\_\_

1 This document was acknowledged before me on \_\_\_\_\_ (date)  
 2 by \_\_\_\_\_ and \_\_\_\_\_  
 3 (name of principal) (name of agent (or attorney in fact))  
 4 \_\_\_\_\_  
 5 (signature of notarial officer)  
 6 (Seal, if any, of notary) \_\_\_\_\_  
 7 (printed name)

8 My commission expires: \_\_\_\_\_".

9 (b) A written notice complies with the requirements of  
10 Subsection (a) of this section if:

11 (1) the wording of the notice complies substantially  
12 with the wording of the form prescribed by Subsection (a) of this  
13 section;

14 (2) the notice is properly completed and signed by the  
15 attorney in fact or agent; and

16 (3) the signature of the attorney in fact or agent is  
17 acknowledged.

18 SECTION 2. This Act takes effect September 1, 2009.