

By: Guillen

H.B. No. 2331

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the requirements of a durable power of attorney and the
3 acknowledgment of an agent's or attorney in fact's duties under a
4 durable power of attorney.

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

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

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

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

12 (2) is signed by an adult principal and designated
13 attorney in fact or agent;

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

21 (4) is acknowledged by the principal and designated
22 attorney in fact or agent before an officer authorized to take
23 acknowledgments to deeds of conveyance and to administer oaths
24 under the laws of this state or any other state.

1 SECTION 2. Section 490, Texas Probate Code, is amended to
2 read as follows:

3 Sec. 490. STATUTORY DURABLE POWER OF ATTORNEY. (a) The
4 following form is known as a "statutory durable power of attorney."
5 A person may use a statutory durable power of attorney to grant an
6 attorney in fact or agent powers with respect to a person's property
7 and financial matters. A power of attorney in substantially the
8 following form has the meaning and effect prescribed by this
9 chapter. The validity of a power of attorney as meeting the
10 requirements of a statutory durable power of attorney is not
11 affected by the fact that one or more of the categories of optional
12 powers listed in the form are struck or the form includes specific
13 limitations on or additions to the attorney in fact's or agent's
14 powers.

15 The following form is not exclusive, and other forms of power
16 of attorney may be used.

17 STATUTORY DURABLE POWER OF ATTORNEY
18 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND
19 SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT,
20 CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT
21 THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES
22 NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE
23 DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU
24 LATER WISH TO DO SO.

25 I, _____ (insert your name and address), appoint _____
26 (insert the name and address of the person appointed) as my agent
27 (attorney-in-fact) to act for me in any lawful way with respect to

1 all of the following powers except for a power that I have crossed
2 out below.

3 TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER WITHHELD.

4 Real property transactions;

5 Tangible personal property transactions;

6 Stock and bond transactions;

7 Commodity and option transactions;

8 Banking and other financial institution transactions;

9 Business operating transactions;

10 Insurance and annuity transactions;

11 Estate, trust, and other beneficiary transactions;

12 Claims and litigation;

13 Personal and family maintenance;

14 Benefits from social security, Medicare, Medicaid, or other
15 governmental programs or civil or military service;

16 Retirement plan transactions;

17 Tax matters.

18 IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL
19 BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY
20 AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO
21 PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I
22 WERE PERSONALLY PRESENT.

23 SPECIAL INSTRUCTIONS:

24 Special instructions applicable to gifts (initial in front of
25 the following sentence to have it apply):

26 I grant my agent (attorney in fact) the power to apply my
27 property to make gifts, except that the amount of a gift to an

1 individual may not exceed the amount of annual exclusions allowed
2 from the federal gift tax for the calendar year of the gift.

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

5 _____
6 _____
7 _____
8 _____
9 _____
10 _____
11 _____
12 _____
13 _____

14 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING THE APPOINTMENT,
15 ASSUMES THE FOLLOWING FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF
16 AN AGENT.

17 I, _____ (insert your name and address), accept the
18 following responsibilities and obligations as an agent (attorney in
19 fact) of _____ (insert the name and address of the principal):

20 I am a fiduciary and have a duty to inform and to account for
21 actions taken pursuant to the power of attorney.

22 I shall timely inform the principal of all actions taken
23 pursuant to the power of attorney. Failure to inform timely, as to
24 third parties, does not invalidate any action taken by me as the
25 agent or attorney in fact.

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

1 The principal may demand an accounting of my actions as the
2 agent or attorney in fact. Unless otherwise directed by the
3 principal, the accounting shall include:

4 (1) the property belonging to the principal that has
5 come to the agent's or attorney in fact's knowledge or into the
6 agent's or attorney in fact's possession;

7 (2) all actions taken or decisions made by me as the
8 agent or attorney in fact;

9 (3) a complete account of receipts, disbursements, and
10 other actions as the agent or attorney in fact, including their
11 source and nature, with receipts of principal and income shown
12 separately;

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

17 (5) the cash balance on hand and the name and location
18 of the depository where the balance is kept;

19 (6) all known liabilities; and

20 (7) such other information and facts known to me as the
21 agent or attorney in fact as may be necessary to a full and definite
22 understanding of the exact condition of the property belonging to
23 the principal.

24 Unless directed otherwise by the principal, I shall also
25 provide to the principal all documentation regarding the
26 principal's property.

27 I shall maintain all records until delivered to the

1 principal, released by the principal, or discharged by a court.

2 If I fail or refuse to inform the principal, provide
3 documentation, or deliver the accounting within 60 days (or such
4 longer or shorter time that the principal demands or a court may
5 order), the principal may file suit to compel me to deliver the
6 accounting, to deliver the assets, or to terminate the power of
7 attorney.

8 Wherever in this chapter a principal is given an authority to
9 act, that shall include not only the principal but also any person
10 designated by the principal, a guardian of the estate of the
11 principal, or other personal representative of the principal.

12 The rights set out in this section and chapter are cumulative
13 of any other rights or remedies the principal may have at common law
14 or other applicable statutes and not in derogation of those rights.

15 Signed this __ day of ____, 20__

16 _____
17 (signature of agent or attorney in
18 fact)

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

22 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
23 ALTERNATIVE NOT CHOSEN:

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

26 (B) This power of attorney becomes effective upon my
27 disability or incapacity.

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

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

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

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

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

1 Signed this ____ day of _____, 20 [~~19~~]

2 _____

3 ([~~your~~] signature of of
4 principal)

5 State of _____

6 County of _____

7 This document was acknowledged before me on _____ (date)

8 by _____ and _____

9 (name of principal) (name of agent (or attorney in
10 fact))

11 _____

12 (signature of notarial officer)

13 (Seal, if any, of notary) _____

14 (printed name)

15 My commission expires: _____

16 [~~THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER~~
17 ~~THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL~~
18 ~~RESPONSIBILITIES OF AN AGENT.~~]

19 (b) A statutory durable power of attorney is legally
20 sufficient under this chapter if the wording of the form complies
21 substantially with Subsection (a) of this section, the form is
22 properly completed, and the signatures [~~signature~~] of the principal
23 and agent or attorney in fact are [~~is~~] acknowledged.

24 SECTION 3. Section 491, Texas Probate Code, is amended to
25 read as follows:

26 Sec. 491. CONSTRUCTION OF POWERS GENERALLY. The principal
27 and attorney in fact or agent, by executing a statutory durable

1 power of attorney that confers authority with respect to any class
2 of transactions, empowers the attorney in fact or agent for that
3 class of transactions to:

4 (1) demand, receive, and obtain by litigation, action,
5 or otherwise any money or other thing of value to which the
6 principal is, may become, or may claim to be entitled;

7 (2) conserve, invest, disburse, or use any money or
8 other thing of value received on behalf of the principal for the
9 purposes intended;

10 (3) contract in any manner with any person, on terms
11 agreeable to the attorney in fact or agent, to accomplish a purpose
12 of a transaction and perform, rescind, reform, release, or modify
13 the contract or another contract made by or on behalf of the
14 principal;

15 (4) execute, acknowledge, seal, and deliver a deed,
16 revocation, mortgage, lease, notice, check, release, or other
17 instrument the agent considers desirable to accomplish a purpose of
18 a transaction;

19 (5) prosecute, defend, submit to arbitration, settle,
20 and propose or accept a compromise with respect to a claim existing
21 in favor of or against the principal or intervene in an action or
22 litigation relating to the claim;

23 (6) seek on the principal's behalf the assistance of a
24 court to carry out an act authorized by the power of attorney;

25 (7) engage, compensate, and discharge an attorney,
26 accountant, expert witness, or other assistant;

27 (8) keep appropriate records of each transaction,

1 including an accounting of receipts and disbursements;

2 (9) prepare, execute, and file a record, report, or
3 other document the attorney in fact or agent considers necessary or
4 desirable to safeguard or promote the principal's interest under a
5 statute or governmental regulation;

6 (10) reimburse the attorney in fact or agent for
7 expenditures made in exercising the powers granted by the durable
8 power of attorney; and

9 (11) in general, do any other lawful act that the
10 principal may do with respect to a transaction.

11 SECTION 4. This Act applies only to a durable power of
12 attorney that is executed on or after the effective date of this
13 Act. A durable power of attorney that is executed before the
14 effective date of this Act is governed by the law in effect on the
15 date the power of attorney was executed, and the former law is
16 continued in effect for that purpose.

17 SECTION 5. This Act takes effect September 1, 2009.