

By: Thompson of Harris

H.B. No. 2918

A BILL TO BE ENTITLED

1 AN ACT

2 relating to statutory durable powers of attorney.

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

4 SECTION 1. Section 752.051, Estates Code, as effective
5 January 1, 2014, is amended to read as follows:

6 Sec. 752.051. FORM. The following form is known as a
7 "statutory durable power of attorney":

8 STATUTORY DURABLE POWER OF ATTORNEY

9 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND
10 SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT,
11 SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT
12 THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES
13 NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE
14 DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU
15 LATER WISH TO DO SO.

16 You should select someone you trust to serve as your agent
17 (attorney in fact). Unless you specify otherwise, generally the
18 agent's (attorney in fact's) authority will continue until:

19 (1) you die or revoke the power of attorney;

20 (2) your agent (attorney in fact) resigns or is unable
21 to act for you; or

22 (3) a guardian is appointed for your estate.

23 I, _____ (insert your name and address), appoint
24 _____ (insert the name and address of the person appointed) as

1 my agent (attorney in fact) to act for me in any lawful way with
2 respect to all of the following powers that I have initialed below.

3 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
4 FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
5 LISTED IN (A) THROUGH (M).

6 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
7 POWER YOU ARE GRANTING.

8 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
9 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD
10 [except for a power that I have crossed out below.

11 [TO WITHHOLD A POWER, YOU MUST CROSS OUT EACH POWER
12 WITHHELD].

- 13 (A) Real property transactions;
- 14 (B) Tangible personal property transactions;
- 15 (C) Stock and bond transactions;
- 16 (D) Commodity and option transactions;
- 17 (E) Banking and other financial institution
18 transactions;
- 19 (F) Business operating transactions;
- 20 (G) Insurance and annuity transactions;
- 21 (H) Estate, trust, and other beneficiary transactions;
- 22 (I) Claims and litigation;
- 23 (J) Personal and family maintenance;
- 24 (K) Benefits from social security, Medicare, Medicaid,
25 or other governmental programs or civil or military service;
- 26 (L) Retirement plan transactions;
- 27 (M) Tax matters;

1 (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO
2 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
3 INITIAL LINE (N).

4 ~~[IF NO POWER LISTED ABOVE IS CROSSED OUT, THIS DOCUMENT SHALL~~
5 ~~BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY~~
6 ~~AGENT (ATTORNEY IN FACT) SHALL HAVE THE POWER AND AUTHORITY TO~~
7 ~~PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I~~
8 ~~WERE PERSONALLY PRESENT.]~~

9 SPECIAL INSTRUCTIONS:

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

12 I grant my agent (attorney in fact) the power to apply my
13 property to make gifts outright to or for the benefit of a person,
14 including by the exercise of a presently exercisable general power
15 of appointment held by me, except that the amount of a gift to an
16 individual may not exceed the amount of annual exclusions allowed
17 from the federal gift tax for the calendar year of the gift.

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

20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

1 _____
2 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS
3 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

4 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
5 ALTERNATIVE NOT CHOSEN:

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

8 (B) This power of attorney becomes effective upon my
9 disability or incapacity.

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

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

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

27 I agree that any third party who receives a copy of this

1 document may act under it. Revocation of the durable power of
2 attorney is not effective as to a third party until the third party
3 receives actual notice of the revocation. I agree to indemnify the
4 third party for any claims that arise against the third party
5 because of reliance on this power of attorney.

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

10 Signed this _____ day of _____, _____
11 _____

(your signature)

12 State of _____

13 County of _____

14 This document was acknowledged before me on _____ (date) by
15 _____
16 _____

(name of principal)

17 _____

(signature of notarial officer)

18 (Seal, if any, of notary) _____
19 _____

(printed name)

20 My commission expires: _____

21 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

22 Agent's Duties

23 When you accept the authority granted under this power of
24 attorney, you establish a "fiduciary" relationship with the
25 principal. This is a special legal relationship that imposes on you
26
27

1 legal duties that continue until you resign or the power of attorney
2 is terminated or revoked by the principal or by operation of law. A
3 fiduciary duty generally includes the duty to:

4 (1) act in good faith;

5 (2) do nothing beyond the authority granted in this
6 power of attorney;

7 (3) act loyally for the principal's benefit;

8 (4) avoid conflicts that would impair your ability to
9 act in the principal's best interest; and

10 (5) disclose your identity as an agent or attorney in
11 fact when you act for the principal by writing or printing the name
12 of the principal and signing your own name as "agent" or "attorney
13 in fact" in the following manner:

14 (Principal's Name) by (Your Signature) as Agent (or as
15 Attorney in Fact)

16 In addition, the Durable Power of Attorney Act (Subtitle P,
17 Title 2, Estates Code) requires you to:

18 (1) maintain records of each action taken or decision
19 made on behalf of the principal;

20 (2) maintain all records until delivered to the
21 principal, released by the principal, or discharged by a court; and

22 (3) if requested by the principal, provide an
23 accounting to the principal that, unless otherwise directed by the
24 principal or otherwise provided in the Special Instructions, must
25 include:

26 (A) the property belonging to the principal that
27 has come to your knowledge or into your possession;

1 (B) each action taken or decision made by you as
2 agent or attorney in fact;

3 (C) a complete account of receipts,
4 disbursements, and other actions of you as agent or attorney in fact
5 that includes the source and nature of each receipt, disbursement,
6 or action, with receipts of principal and income shown separately;

7 (D) a listing of all property over which you have
8 exercised control that includes an adequate description of each
9 asset and the asset's current value, if known to you;

10 (E) the cash balance on hand and the name and
11 location of the depository at which the cash balance is kept;

12 (F) each known liability;

13 (G) any other information and facts known to you
14 as necessary for a full and definite understanding of the exact
15 condition of the property belonging to the principal; and

16 (H) all documentation regarding the principal's
17 property.

18 Termination of Agent's Authority

19 You must stop acting on behalf of the principal if you learn
20 of any event that terminates this power of attorney or your
21 authority under this power of attorney. An event that terminates
22 this power of attorney or your authority to act under this power of
23 attorney includes:

24 (1) the principal's death;

25 (2) the principal's revocation of this power of
26 attorney or your authority;

27 (3) the occurrence of a termination event stated in

1 this power of attorney;

2 (4) if you are married to the principal, the
3 dissolution of your marriage by court decree of divorce or
4 annulment;

5 (5) the appointment and qualification of a permanent
6 guardian of the principal's estate; or

7 (6) if ordered by a court, the suspension of this power
8 of attorney on the appointment and qualification of a temporary
9 guardian until the date the term of the temporary guardian expires.

10 Liability of Agent

11 The authority granted to you under this power of attorney is
12 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
13 Estates Code). If you violate the Durable Power of Attorney Act or
14 act beyond the authority granted, you may be liable for any damages
15 caused by the violation or subject to prosecution for
16 misapplication of property by a fiduciary under Chapter 32 of the
17 Texas Penal Code.

18 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
19 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
20 RESPONSIBILITIES OF AN AGENT.

21 SECTION 2. Section 752.002, Estates Code, as effective
22 January 1, 2014, is amended to read as follows:

23 Sec. 752.002. VALIDITY NOT AFFECTED. A power of attorney is
24 valid with respect to meeting the requirements for a statutory
25 durable power of attorney regardless of the fact that:

26 (1) one or more of the categories of optional powers
27 listed in the form prescribed by Section 752.051 are not initialed

1 ~~[struck]~~; or

2 (2) the form includes specific limitations on, or
3 additions to, the powers of the attorney in fact or agent.

4 SECTION 3. The changes in law made by this Act apply only to
5 a power of attorney executed on or after the effective date of this
6 Act. A power of attorney executed before the effective date of this
7 Act is governed by the law in effect on the date the power of
8 attorney was executed, and that law is continued in effect for that
9 purpose.

10 SECTION 4. This Act takes effect January 1, 2014.