

By: Thompson of Harris

H.B. No. 3095

A BILL TO BE ENTITLED

AN ACT

relating to durable powers of attorney and advance directives.

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

ARTICLE 1. DURABLE POWERS OF ATTORNEY

SECTION 1.01. Subchapter A, Chapter 751, Estates Code, is amended by adding Section 751.0015 to read as follows:

Sec. 751.0015. APPLICABILITY. This subtitle applies to all durable powers of attorney except:

(1) a power of attorney to the extent it is coupled with an interest in the subject of that power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;

(2) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or

(3) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 1.02. Section 751.002, Estates Code, is amended to read as follows:

Sec. 751.002. DEFINITIONS [~~DEFINITION~~] OF DURABLE POWER OF ATTORNEY AND AGENT. (a) A "durable power of attorney" means a written instrument that:

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

1 (2) is signed by an adult principal or in the adult
2 principal's conscious presence by another individual directed by
3 the principal to sign the principal's name on the durable power of
4 attorney;

5 (3) contains:

6 (A) the words:

7 (i) "This power of attorney is not affected
8 by subsequent disability or incapacity of the principal"; or

9 (ii) "This power of attorney becomes
10 effective on the disability or incapacity of the principal"; or

11 (B) words similar to those of Paragraph (A) that
12 show the principal's intent that the authority conferred on the
13 ~~[attorney in fact or]~~ agent shall be exercised notwithstanding the
14 principal's subsequent disability or incapacity; and

15 (4) is acknowledged by the principal before an officer
16 authorized under the laws of this state or another state to:

17 (A) take acknowledgments to deeds of conveyance;
18 and

19 (B) administer oaths.

20 **(b) If the law of the jurisdiction that determines the**
21 **meaning and effect of a power of attorney under Section 751.009**
22 **provides that the authority conferred on the agent is exercisable**
23 **notwithstanding the principal's subsequent disability or**
24 **incapacity, the power of attorney is considered a durable power of**
25 **attorney under this subtitle.**

26 **(c) In this subtitle, the term "agent" includes an "attorney**
27 **in fact."**

1 SECTION 1.03. Subchapter A, Chapter 751, Estates Code, is
2 amended by adding Sections 751.007, 751.008, 751.009, 751.010,
3 751.011, 751.012, and 751.013 to read as follows:

4 Sec. 751.007. PRESUMPTION OF GENUINE SIGNATURE. A
5 signature that purports to be the signature of the principal on a
6 durable power of attorney is presumed to be genuine, and the durable
7 power of attorney is presumed to have been executed under Section
8 751.002 if the officer taking the acknowledgment has complied with
9 the requirements of Section 121.004(b), Civil Practice and Remedies
10 Code.

11 Sec. 751.008. VALIDITY OF POWER OF ATTORNEY. (a) A durable
12 power of attorney executed in this state is valid if the execution
13 of the instrument complies with Section 751.002.

14 (b) A durable power of attorney executed in a jurisdiction
15 other than this state is valid in this state if, when executed, the
16 execution of the durable power of attorney complied with:

17 (1) the law of the jurisdiction that determines the
18 meaning and effect of the durable power of attorney as provided by
19 Section 751.009; or

20 (2) the requirements for a military power of attorney
21 as provided by 10 U.S.C. Section 1044b.

22 (c) Except as otherwise provided by statute other than this
23 subtitle, a photocopy or electronically transmitted copy of an
24 original durable power of attorney has the same effect as the
25 original instrument and may be relied on by a person who is
26 requested to accept the durable power of attorney, without
27 liability, to the same extent as the original instrument.

1 Sec. 751.009. MEANING AND EFFECT OF DURABLE POWER OF
2 ATTORNEY. The meaning and effect of a durable power of attorney is
3 determined by the law of the jurisdiction indicated in the durable
4 power of attorney and, in the absence of an indication of
5 jurisdiction, by:

6 (1) the law of the jurisdiction of the principal's
7 domicile, if the principal's domicile is indicated in the power of
8 attorney; or

9 (2) the law of the jurisdiction in which the durable
10 power of attorney was executed, if the principal's domicile is not
11 indicated in the power of attorney.

12 Sec. 751.010. JUDICIAL RELIEF. (a) The following may bring
13 an action in which a court is requested to construe a durable power
14 of attorney or review the agent's conduct and grant appropriate
15 relief:

16 (1) the principal or the agent;

17 (2) a guardian, conservator, or other fiduciary acting
18 for the principal;

19 (3) a person named as a beneficiary to receive any
20 property, benefit, or contractual right on the principal's death;

21 (4) a governmental agency having regulatory authority
22 to protect the welfare of the principal; and

23 (5) a person who demonstrates to the court sufficient
24 interest in the principal's welfare or estate.

25 (b) A person who is requested to accept a durable power of
26 attorney may bring an action in a court for declaratory relief to
27 construe the durable power of attorney.

1 (c) On motion by the principal, the court shall dismiss an
2 action filed under this section unless the court finds that the
3 principal lacks capacity to revoke the agent's authority or the
4 durable power of attorney.

5 Sec. 751.011. ACCEPTANCE OF APPOINTMENT AS AGENT. Except
6 as otherwise provided in the durable power of attorney, a person
7 accepts appointment as an agent under a durable power of attorney by
8 exercising authority or performing duties as an agent or by any
9 other assertion or conduct indicating acceptance of the
10 appointment.

11 Sec. 751.012. CO-AGENTS AND SUCCESSOR AGENTS. (a) A
12 principal may designate two or more persons to act as co-agents.
13 Unless the durable power of attorney otherwise provides, the
14 co-agents must act jointly.

15 (b) A principal may designate one or more successor agents
16 to act if an agent resigns, dies, or becomes incapacitated, is not
17 qualified to serve, or declines to serve. A principal may grant
18 authority to designate one or more successor agents to an agent or
19 other person designated by name, office, or function. Unless the
20 durable power of attorney otherwise provides, a successor agent:

21 (1) has the same authority as the authority granted to
22 the predecessor agent; and

23 (2) is not considered an agent under this subtitle and
24 may not act until all predecessor agents to the successor agent have
25 resigned, died, or become incapacitated, are not or are no longer
26 qualified to serve, or have declined to serve.

27 (c) If the principal has designated co-agents and one or

1 more successor agents for a specified co-agent:

2 (1) the authority granted to a successor agent is the
3 same as the authority granted to the predecessor co-agent whom the
4 successor agent is designated to succeed; and

5 (2) the specified co-agent is considered an agent
6 under this subtitle and may act in that capacity only when the
7 predecessor co-agent whom the successor agent is designated to
8 succeed has died, becomes incapacitated, resigns, is not or is no
9 longer qualified to serve, or has declined to serve.

10 (d) Except as otherwise provided by Subsection (e) or the
11 durable power of attorney, an agent who does not participate in or
12 conceal a breach of fiduciary duty committed by another agent,
13 including a predecessor agent, is not liable for the actions of the
14 other agent.

15 (e) An agent who has actual knowledge of a breach or
16 imminent breach of fiduciary duty by another agent shall notify the
17 principal and, if the principal is incapacitated, shall take any
18 action reasonably appropriate under the circumstances to safeguard
19 the principal's best interest. An agent who fails to notify the
20 principal or take action as required by this subsection is liable
21 for the reasonably foreseeable damages that could have been avoided
22 if the agent had notified the principal or taken the action.

23 Sec. 751.013. REIMBURSEMENT AND COMPENSATION OF AGENT.
24 Unless the durable power of attorney otherwise provides or is in
25 conflict with another agreement or instrument, an agent is entitled
26 to reimbursement of reasonable expenses incurred on the principal's
27 behalf and to compensation that is reasonable under the

1 circumstances.

2 SECTION 1.04. The heading to Subchapter B, Chapter 751,
3 Estates Code, is amended to read as follows:

4 SUBCHAPTER B. EFFECT OF CERTAIN ACTS ON EXERCISE OF DURABLE POWER
5 OF ATTORNEY; DURATION; ACCEPTANCE AND RELIANCE

6 SECTION 1.05. Section 751.051, Estates Code, is amended to
7 read as follows:

8 Sec. 751.051. EFFECT OF ACTS PERFORMED BY [~~ATTORNEY IN FACT~~
9 ~~OR~~] AGENT [~~DURING PRINCIPAL'S DISABILITY OR INCAPACITY~~]. An [~~Each~~]
10 act performed by an [~~attorney in fact or~~] agent under a durable
11 power of attorney [~~during a period of the principal's disability or~~
12 ~~incapacity~~] has the same effect[~~7~~] and inures to the benefit of and
13 binds the principal and the principal's successors in interest[~~7~~]
14 as if the principal had performed the act [~~were not disabled or~~
15 ~~incapacitated~~].

16 SECTION 1.06. Section 751.052, Estates Code, is amended to
17 read as follows:

18 Sec. 751.052. RELATION OF [~~ATTORNEY IN FACT OR~~] AGENT TO
19 COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after execution of a
20 durable power of attorney, a court of the principal's domicile
21 appoints a permanent guardian of the estate of the principal, the
22 powers of the [~~attorney in fact or~~] agent terminate on the
23 qualification of the guardian of the estate. The [~~attorney in fact~~
24 ~~or~~] agent shall:

25 (1) deliver to the guardian of the estate all assets of
26 the ward's estate that are in the possession of the [~~attorney in~~
27 ~~fact or~~] agent; and

1 (2) account to the guardian of the estate as the
2 ~~[attorney in fact or]~~ agent would account to the principal if the
3 principal had terminated the powers of the ~~[attorney in fact or]~~
4 agent.

5 (b) If, after execution of a durable power of attorney, a
6 court of the principal's domicile appoints a temporary guardian of
7 the estate of the principal, the court may suspend the powers of the
8 ~~[attorney in fact or]~~ agent on the qualification of the temporary
9 guardian of the estate until the date the term of the temporary
10 guardian expires. This subsection may not be construed to prohibit
11 the application for or issuance of a temporary restraining order
12 under applicable law.

13 SECTION 1.07. Section 751.057, Estates Code, is amended to
14 read as follows:

15 Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING. (a) The
16 filing of a voluntary or involuntary petition in bankruptcy in
17 connection with the debts of a principal who has executed a durable
18 power of attorney does not revoke or terminate the agency as to the
19 principal's ~~[attorney in fact or]~~ agent.

20 (b) Any act the ~~[attorney in fact or]~~ agent may undertake
21 with respect to the principal's property is subject to the
22 limitations and requirements of the United States Bankruptcy Code
23 (11 U.S.C. Section 101 et seq.) until a final determination is made
24 in the bankruptcy proceeding.

25 SECTION 1.08. Chapter 751, Estates Code, is amended by
26 adding Subchapter B-1 to read as follows:

1 SUBCHAPTER B-1. DURATION OF DURABLE POWER OF ATTORNEY; ACCEPTANCE
2 OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

3 Sec. 751.061. TERMINATION OF DURABLE POWER OF ATTORNEY. A
4 durable power of attorney terminates when:

5 (1) the principal dies;

6 (2) the principal revokes the durable power of
7 attorney;

8 (3) the durable power of attorney provides that it
9 terminates;

10 (4) the purpose of the durable power of attorney is
11 accomplished;

12 (5) the principal revokes the agent's authority or the
13 agent dies, becomes incapacitated, or resigns, and the durable
14 power of attorney does not provide for another agent to act under
15 the durable power of attorney;

16 (6) a permanent guardian of the estate of the
17 principal has qualified to serve in that capacity as provided by
18 Section 751.052; or

19 (7) the agent's authority is otherwise terminated
20 under Section 751.062 and the durable power of attorney does not
21 provide for another agent to act under the durable power of
22 attorney.

23 Sec. 751.062. TERMINATION OF AGENT'S AUTHORITY. (a) An
24 agent's authority under a durable power of attorney terminates
25 when:

26 (1) the principal revokes the authority;

27 (2) the agent dies, becomes incapacitated, or resigns;

1 (3) the agent's marriage to the principal is dissolved
2 by court decree of divorce or annulment or is declared void by a
3 court, unless the durable power of attorney otherwise provides; or

4 (4) the durable power of attorney terminates.

5 (b) Unless the durable power of attorney otherwise
6 provides, an agent's authority may be exercised until the agency's
7 authority terminates under Subsection (a), notwithstanding a lapse
8 of time since the execution of the durable power of attorney.

9 Sec. 751.063. EFFECT OF TERMINATION OF DURABLE POWER OF
10 ATTORNEY OR AGENT'S AUTHORITY ON CERTAIN PERSONS. Termination of an
11 agent's authority or of a durable power of attorney is not effective
12 as to the agent or another person who, without actual knowledge of
13 the termination, acts in good faith under or in reliance on the
14 durable power of attorney. An act performed as described by this
15 section, unless otherwise invalid or unenforceable, binds the
16 principal and the principal's successors in interest.

17 Sec. 751.064. EFFECT ON PREVIOUS DURABLE POWER OF ATTORNEY.
18 The execution of a durable power of attorney does not revoke a
19 durable power of attorney previously executed by the principal
20 unless the subsequent durable power of attorney provides that the
21 previous durable power of attorney is revoked or that all other
22 durable powers of attorney are revoked.

23 Sec. 751.065. ACCEPTANCE OF AND RELIANCE ON POWER OF
24 ATTORNEY. (a) A person who accepts a durable power of attorney
25 without actual knowledge that the signature of the principal is not
26 genuine may rely on the presumption under Section 751.007 that the
27 signature is genuine and that the durable power of attorney was

1 properly executed.

2 (b) A person who accepts a durable power of attorney without
3 actual knowledge that the durable power of attorney is void,
4 invalid, or terminated, that the purported agent's authority is
5 void, invalid, or terminated, or that the agent is exceeding or
6 improperly exercising the agent's authority may rely on the power
7 of attorney as if:

8 (1) the power of attorney were genuine, valid, and
9 still in effect;

10 (2) the agent's authority were genuine, valid, and
11 still in effect; and

12 (3) the agent had not exceeded and had properly
13 exercised the authority.

14 (c) A person who is requested to accept a durable power of
15 attorney may request, and rely on, without further investigation:

16 (1) an agent's certification under penalty of perjury
17 of any factual matter concerning the principal, agent, or power of
18 attorney, which is conclusive proof of the matter;

19 (2) an English translation of the power of attorney if
20 the power of attorney contains, wholly or partly, language other
21 than English; and

22 (3) an opinion of counsel containing no material
23 qualifications as to any matter of law concerning the power of
24 attorney if the person making the request provides in a writing or
25 other record the reason for the request.

26 (d) An English translation or an opinion of counsel
27 requested under this section must be provided by the agent at the

1 agent's own expense unless the request is made not earlier than the
2 10th business day after the date the power of attorney is presented
3 for acceptance.

4 (e) For purposes of this section, a person who conducts
5 activities through employees is without actual knowledge of a fact
6 relating to a durable power of attorney, a principal, or an agent if
7 the employee conducting the transaction involving the power of
8 attorney is without actual knowledge of the fact.

9 (f) A certification described by Subsection (c) may be in
10 the following form:

11 CERTIFICATION OF POWER OF ATTORNEY BY AGENT

12 I, _____ (agent), certify under penalty of perjury
13 that:

14 1. I am the agent named in the power of attorney validly
15 executed by _____ (principal) ("principal") on _____
16 (date), and the power of attorney is now in full force and effect.

17 2. The principal is not deceased and is presently domiciled
18 in _____ (city and state/territory or foreign country).

19 3. To the best of my knowledge after diligent search and
20 inquiry:

21 a. The power of attorney has not been revoked by the
22 principal or suspended or partially or completely terminated by the
23 occurrence of any event, whether or not referenced in the power of
24 attorney;

25 b. A permanent or temporary guardian of the estate of
26 the principal has not qualified to serve in that capacity;

27 c. If I am (or was) the principal's spouse, my marriage

1 to the principal has not been dissolved by court decree of divorce
2 or annulment or declared void by a court (or the power of attorney
3 provides specifically that my appointment as the agent for the
4 principal does not terminate if my marriage to the principal is
5 dissolved by court decree of divorce or annulment or is declared
6 void by a court);

7 d. No proceeding has been commenced for a temporary or
8 permanent guardianship of the person or estate, or both, of the
9 principal; and

10 e. The exercise of my authority is not prohibited by
11 another agreement or instrument.

12 4. If under its terms the power of attorney becomes
13 effective on the disability or incapacity of the principal or at a
14 future time or on the occurrence of a contingency, the principal is
15 now disabled or incapacitated or the specified future time or
16 contingency has occurred.

17 5. I am acting within the scope of my authority under the
18 power of attorney, and my authority has not been altered or
19 terminated.

20 6. If applicable, I am the successor to _____
21 (predecessor agent), who has resigned, died, or become
22 incapacitated, is not or is no longer qualified to serve, has
23 declined to serve as agent, or is otherwise unable to act. There is
24 no prior agent remaining under the power of attorney that precludes
25 my acting as successor agent.

26 7. I agree not to exercise any powers granted by the power of
27 attorney if I attain knowledge that the power of attorney has been

1 revoked, suspended, or partially or completely terminated.

2 8. A true and correct copy of the power of attorney is
3 attached to this document.

4 9. If applicable, the power of attorney was executed in the
5 law office of _____.

6 Date: _____, 20__.

7 _____ (signature of agent)

8 SECTION 1.09. Sections 751.101, 751.102, 751.103, 751.104,
9 751.105, and 751.106, Estates Code, are amended to read as follows:

10 Sec. 751.101. FIDUCIARY DUTIES. An [~~attorney in fact or~~]
11 agent who accepts appointment as an agent under a durable power of
12 attorney as provided by Section 751.011 is a fiduciary and has a
13 duty to inform and to account for actions taken under the power of
14 attorney.

15 Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) The
16 [~~attorney in fact or~~] agent shall timely inform the principal of
17 each action taken under the power of attorney.

18 (b) Failure of an [~~attorney in fact or~~] agent to timely
19 inform, as to third parties, does not invalidate any action of the
20 [~~attorney in fact or~~] agent.

21 Sec. 751.103. MAINTENANCE OF RECORDS. (a) The [~~attorney~~
22 ~~in fact or~~] agent shall maintain records of each action taken or
23 decision made by the [~~attorney in fact or~~] agent.

24 (b) The [~~attorney in fact or~~] agent shall maintain all
25 records until delivered to the principal, released by the
26 principal, or discharged by a court.

27 Sec. 751.104. ACCOUNTING. (a) The principal may demand an

1 accounting by the [~~attorney in fact or~~] agent.

2 (b) Unless otherwise directed by the principal, an
3 accounting under Subsection (a) must include:

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

7 (2) each action taken or decision made by the
8 [~~attorney in fact or~~] agent;

9 (3) a complete account of receipts, disbursements, and
10 other actions of the [~~attorney in fact or~~] agent that includes
11 the source and nature of each receipt, disbursement, or action,
12 with receipts of principal and income shown separately;

13 (4) a listing of all property over which the [~~attorney~~
14 ~~in fact or~~] agent has exercised control that includes:

15 (A) an adequate description of each asset; and

16 (B) the asset's current value, if the value is
17 known to the [~~attorney in fact or~~] agent;

18 (5) the cash balance on hand and the name and location
19 of the depository at which the cash balance is kept;

20 (6) each known liability; and

21 (7) any other information and facts known to the
22 [~~attorney in fact or~~] agent as necessary for a full and definite
23 understanding of the exact condition of the property belonging to
24 the principal.

25 (c) Unless directed otherwise by the principal, the
26 [~~attorney in fact or~~] agent shall also provide to the principal all
27 documentation regarding the principal's property.

1 Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the
2 ~~[attorney in fact or]~~ agent fails or refuses to inform the
3 principal, provide documentation, or deliver an accounting under
4 Section 751.104 within 60 days of a demand under that section, or a
5 longer or shorter period as demanded by the principal or ordered by
6 a court, the principal may file suit to:

7 (1) compel the ~~[attorney in fact or]~~ agent to deliver
8 the accounting or the assets; or

9 (2) terminate the power of attorney.

10 Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S
11 RIGHTS. This subchapter does not limit the right of the principal
12 to terminate the power of attorney or to make additional
13 requirements of, ~~[or to]~~ give additional instructions to, or
14 expressly modify the duties or obligations of the ~~[attorney in fact~~
15 ~~or]~~ agent.

16 SECTION 1.10. Section 751.151, Estates Code, is amended to
17 read as follows:

18 Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS
19 REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power
20 of attorney for a real property transaction requiring the execution
21 and delivery of an instrument that is to be recorded, including a
22 release, assignment, satisfaction, mortgage, security agreement,
23 home equity lien, reverse mortgage, deed of trust, encumbrance,
24 deed of conveyance, oil, gas, or other mineral lease, memorandum of
25 a lease, lien, or other claim or right to real property, must be
26 recorded in the office of the county clerk of the county in which
27 the property is located.

1 SECTION 1.11. Chapter 751, Estates Code, is amended by
2 adding Subchapter E to read as follows:

3 SUBCHAPTER E. AUTHORITY OF AGENT UNDER POWER OF ATTORNEY

4 Sec. 751.201. GRANT OF GENERAL AUTHORITY; AUTHORITY
5 REQUIRING SPECIFIC GRANT. (a) Only if the power of attorney
6 expressly grants the agent the authority and the exercise of the
7 authority is not otherwise prohibited by another agreement or
8 instrument to which the authority or property is subject, an agent
9 under a durable power of attorney, on behalf of the principal or
10 with respect to the principal's property, may:

11 (1) create, amend, revoke, or terminate an inter vivos
12 trust;

13 (2) make a gift;

14 (3) create or change rights of survivorship;

15 (4) create or change a beneficiary designation; or

16 (5) delegate authority granted under the power of
17 attorney.

18 (b) Notwithstanding a grant of authority to perform an act
19 described by Subsection (a), unless the durable power of attorney
20 otherwise provides, an agent who is not an ancestor, spouse, or
21 descendant of the principal may not exercise authority under the
22 power of attorney to create in the agent, or in an individual to
23 whom the agent owes a legal obligation of support, an interest in
24 the principal's property, whether by gift, right of survivorship,
25 beneficiary designation, disclaimer, or otherwise.

26 (c) Subject to Subsections (a), (b), (d), and (e), if a
27 durable power of attorney grants to an agent the authority to

1 perform all acts that a principal could perform, the agent has the
2 general authority conferred by Subchapter C, Chapter 752.

3 (d) Unless the durable power of attorney otherwise
4 provides, a grant of authority to make a gift is subject to Section
5 751.202.

6 (e) Subject to Subsections (a), (b), and (d), if the
7 subjects over which authority is granted in a durable power of
8 attorney are similar or overlap, the broadest authority controls.

9 (f) Authority granted in a durable power of attorney is
10 exercisable with respect to property that the principal has when
11 the power of attorney is executed or acquires later, regardless of
12 whether:

13 (1) the property is located in this state; and

14 (2) the authority is exercised in this state or the
15 power of attorney is executed in this state.

16 (g) An agent who is expressly granted any of the authority
17 under Subsection (a) shall attempt to preserve the principal's
18 estate plan, to the extent actually known by the agent, if
19 preserving the plan is consistent with the principal's best
20 interest based on all relevant factors, including:

21 (1) the value and nature of the principal's property;

22 (2) the principal's foreseeable obligations and need
23 for maintenance;

24 (3) minimization of taxes, including income, estate,
25 inheritance, generation-skipping transfer, and gift taxes; and

26 (4) eligibility for a benefit, a program, or
27 assistance under a statute or regulation.

1 Sec. 751.202. GIFTS. (a) In this section, a gift for the
2 benefit of a person includes:

3 (1) a gift to a trust;

4 (2) an account under the Texas Uniform Transfers to
5 Minors Act or a similar law of any other state; and

6 (3) a tuition savings account or prepaid tuition plan
7 as described by Section 529, Internal Revenue Code of 1986.

8 (b) Unless the durable power of attorney otherwise
9 provides, language in a power of attorney granting general
10 authority with respect to gifts authorizes the agent to only:

11 (1) make outright to, or for the benefit of, a person a
12 gift of any of the principal's property, including by the exercise
13 of a presently exercisable general power of appointment held by the
14 principal, in an amount per donee not to exceed:

15 (A) the annual dollar limits of the federal gift
16 tax exclusion under Section 2503(b), Internal Revenue Code of 1986,
17 without regard to whether the federal gift tax exclusion applies to
18 the gift; or

19 (B) if the principal's spouse agrees to consent
20 to a split gift as provided by Section 2513, Internal Revenue Code
21 of 1986, twice the annual federal gift tax exclusion limit; and

22 (2) consent, as provided by Section 2513, Internal
23 Revenue Code of 1986, to the splitting of a gift made by the
24 principal's spouse in an amount per donee not to exceed the
25 aggregate annual federal gift tax exclusions for both spouses.

26 (c) An agent may make a gift of the principal's property
27 only as the agent determines is consistent with the principal's

1 objectives if actually known by the agent and, if unknown, as the
2 agent determines is consistent with the principal's best interest
3 based on all relevant factors, including:

4 (1) the value and nature of the principal's property;

5 (2) the principal's foreseeable obligations and need
6 for maintenance;

7 (3) minimization of taxes, including income, estate,
8 inheritance, generation-skipping transfer, and gift taxes;

9 (4) eligibility for a benefit, a program, or
10 assistance under a statute or regulation; and

11 (5) the principal's personal history of making or
12 joining in making gifts.

13 Sec. 751.203. BENEFICIARY DESIGNATIONS. (a) Unless the
14 durable power of attorney otherwise provides, and except as
15 provided by Section 751.201(b), authority granted to an agent under
16 Section 751.201(a)(4) includes the power to:

17 (1) create or change a beneficiary designation under
18 an account, a contract, or another arrangement that authorizes the
19 principal to designate a beneficiary, including insurance and
20 annuity contracts, qualified and nonqualified retirement plans,
21 including those retirement plans defined by Section 752.113,
22 employment agreements, including deferred compensation agreements,
23 and residency agreements;

24 (2) enter into or change a P.O.D. account or trust
25 account under Chapter 113; or

26 (3) create or change a nontestamentary payment or
27 transfer under Chapter 111.

1 (b) If an agent is granted authority under Section
2 751.201(a)(4) and if the durable power of attorney grants the
3 authority to the agent in Section 752.108 or 752.113, then, unless
4 the durable power of attorney otherwise provides, the authority of
5 the agent to designate the agent as a beneficiary is not subject to
6 the limitations prescribed by Sections 752.108(b) and 752.113(c).

7 (c) If an agent is not granted authority under Section
8 751.201(a)(4) and if the durable power of attorney grants the
9 authority to the agent in Section 752.108 or 752.113, then, unless
10 the durable power of attorney otherwise provides and
11 notwithstanding Section 751.201, the agent's authority to
12 designate the agent as a beneficiary is subject to the limitations
13 prescribed by Sections 752.108(b) and 752.113(c).

14 Sec. 751.204. INCORPORATION OF AUTHORITY. (a) An agent has
15 authority described in this chapter if the durable power of
16 attorney refers to general authority with respect to the
17 descriptive term for the subjects stated in Chapter 752 or cites the
18 section in which the authority is described.

19 (b) A reference in a durable power of attorney to general
20 authority with respect to the descriptive term for a subject in
21 Chapter 752 or a citation to one of those sections incorporates the
22 entire section as if the section were set out in its entirety in the
23 durable power of attorney.

24 (c) A principal may modify authority incorporated by
25 reference.

26 SECTION 1.12. Section 752.051, Estates Code, is amended to
27 read as follows:

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

3 STATUTORY DURABLE POWER OF ATTORNEY

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

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

- 14 (1) you die or revoke the power of attorney;
15 (2) your agent (attorney in fact) resigns or is unable
16 to act for you; or
17 (3) a guardian is appointed for your estate.

18 I, _____ (insert your name and address), appoint
19 _____ (insert the name and address of the person appointed) as
20 my agent (attorney in fact) to act for me in any lawful way with
21 respect to all of the following powers that I have initialed below.

22 (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE,
23 CO-AGENTS MUST ACT JOINTLY.)

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

27 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE

1 POWER YOU ARE GRANTING.

2 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
3 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

4 _____ (A) Real property transactions;

5 _____ (B) Tangible personal property transactions;

6 _____ (C) Stock and bond transactions;

7 _____ (D) Commodity and option transactions;

8 _____ (E) Banking and other financial institution
9 transactions;

10 _____ (F) Business operating transactions;

11 _____ (G) Insurance and annuity transactions;

12 _____ (H) Estate, trust, and other beneficiary transactions;

13 _____ (I) Claims and litigation;

14 _____ (J) Personal and family maintenance;

15 _____ (K) Benefits from social security, Medicare, Medicaid,
16 or other governmental programs or civil or military service;

17 _____ (L) Retirement plan transactions;

18 _____ (M) Tax matters;

19 _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO
20 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
21 INITIAL LINE (N).

22 SPECIAL INSTRUCTIONS:

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

25 _____ I grant my agent (attorney in fact) the power to apply my
26 property to make gifts outright to or for the benefit of a person,
27 including by the exercise of a presently exercisable general power

1 of appointment held by me, except that the amount of a gift to an
2 individual may not exceed the amount of annual exclusions allowed
3 from the federal gift tax for the calendar year of the gift.

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

6 _____

7 _____

8 _____

9 _____

10 _____

11 _____

12 _____

13 _____

14 _____

15 UNLESS YOU DIRECT OTHERWISE BELOW [~~ABOVE~~], THIS POWER OF
16 ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT
17 TERMINATES [~~IS REVOKED~~].

18 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
19 ALTERNATIVE NOT CHOSEN:

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

22 (B) This power of attorney becomes effective upon my
23 disability or incapacity.

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

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

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

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

21 If any agent named by me dies, becomes legally disabled,
22 resigns, or refuses to act, or if my marriage to an agent named by me
23 is dissolved by court decree of divorce or annulment or is declared
24 void by a court (unless I provided in this document that the
25 dissolution or declaration does not terminate the agent's authority
26 to act under this power of attorney), I name the following (each to
27 act alone and successively, in the order named) as successor(s) to

1 that agent: _____.

2 Signed this _____ day of _____, _____

3 _____

4 (your signature)

5 State of _____

6 County of _____

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

8 _____

9 (name of principal)

10 _____

11 (signature of notarial

12 officer)

13 (Seal, if any, of notary) _____

14 (printed name)

15 My commission expires: _____

16 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

17 Agent's Duties

18 When you accept the authority granted under this power of
19 attorney, you establish a "fiduciary" relationship with the
20 principal. This is a special legal relationship that imposes on
21 you legal duties that continue until you resign or the power of
22 attorney is terminated or revoked by the principal or by operation
23 of law. A fiduciary duty generally includes the duty to:

24 (1) act in good faith;

25 (2) do nothing beyond the authority granted in this
26 power of attorney;

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

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

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

7 (Principal's Name) by (Your Signature) as Agent (or as
8 Attorney in Fact)

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

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

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

15 (3) if requested by the principal, provide an
16 accounting to the principal that, unless otherwise directed by the
17 principal or otherwise provided in the Special Instructions, must
18 include:

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

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

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

27 (D) a listing of all property over which you have

1 exercised control that includes an adequate description of each
2 asset and the asset's current value, if known to you;

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

5 (F) each known liability;

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

9 (H) all documentation regarding the principal's
10 property.

11 Termination of Agent's Authority

12 You must stop acting on behalf of the principal if you learn
13 of any event that terminates this power of attorney or your
14 authority under this power of attorney. An event that terminates
15 this power of attorney or your authority to act under this power of
16 attorney includes:

17 (1) the principal's death;

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

20 (3) the occurrence of a termination event stated in
21 this power of attorney;

22 (4) if you are married to the principal, the
23 dissolution of your marriage by court decree of divorce or
24 annulment or declaration that your marriage is void, unless
25 otherwise provided in this power of attorney;

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

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

4 Liability of Agent

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

12 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
13 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
14 RESPONSIBILITIES OF AN AGENT.

15 SECTION 1.13. Subchapter B, Chapter 752, Estates Code, is
16 amended by adding Section 752.052 to read as follows:

17 Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC
18 AUTHORITY. The statutory durable power of attorney may be modified
19 to allow the principal to grant the agent the specific authority
20 described by Section 751.201 by including the following language:

21 "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

22 My agent MAY NOT do any of the following specific acts for me
23 UNLESS I have INITIALED the specific authority listed below:

24 (CAUTION: Granting any of the following will give your agent the
25 authority to take actions that could significantly reduce your
26 property or change how your property is distributed at your death.

27 INITIAL ONLY the specific authority you WANT to give your agent. If

1 you DO NOT want to grant your agent one or more of the following
2 powers, you may also CROSS OUT such power.)

3 () Create, amend, revoke, or terminate an inter vivos
4 trust

5 () Make a gift, subject to the limitations of Section
6 751.202, the Durable Power of Attorney Act, and any special
7 instructions in this power of attorney

8 () Create or change rights of survivorship

9 () Create or change a beneficiary designation

10 () Authorize another person to exercise the authority
11 granted under this power of attorney".

12 SECTION 1.14. Section 752.102, Estates Code, is amended to
13 read as follows:

14 Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The language
15 conferring authority with respect to real property transactions in
16 a statutory durable power of attorney empowers the attorney in fact
17 or agent, without further reference to a specific description of
18 the real property, to:

19 (1) accept as a gift or as security for a loan or
20 reject, demand, buy, lease, receive, or otherwise acquire an
21 interest in real property or a right incident to real property;

22 (2) sell, exchange, convey with or without covenants,
23 quitclaim, release, surrender, mortgage, encumber, partition or
24 consent to partitioning, subdivide, apply for zoning, rezoning, or
25 other governmental permits, plat or consent to platting, develop,
26 grant options concerning, lease or sublet, or otherwise dispose of
27 an estate or interest in real property or a right incident to real

1 property;

2 (3) release, assign, satisfy, and enforce by
3 litigation, action, or otherwise a mortgage, deed of trust,
4 encumbrance, lien, or other claim to real property that exists or is
5 claimed to exist;

6 (4) perform any act of management or of conservation
7 with respect to an interest in real property, or a right incident to
8 real property, owned or claimed to be owned by the principal,
9 including the authority to:

10 (A) insure against a casualty, liability, or
11 loss;

12 (B) obtain or regain possession or protect the
13 interest or right by litigation, action, or otherwise;

14 (C) pay, compromise, or contest taxes or
15 assessments or apply for and receive refunds in connection with the
16 taxes or assessments;

17 (D) purchase supplies, hire assistance or labor,
18 or make repairs or alterations to the real property; and

19 (E) manage and supervise an interest in real
20 property, including the mineral estate [~~by, for example:~~

21 ~~(i) entering into a lease for oil, gas, and~~
22 ~~mineral purposes,~~

23 ~~(ii) making contracts for development of~~
24 ~~the mineral estate, or~~

25 ~~(iii) making pooling and unitization~~
26 ~~agreements];~~

27 (5) use, develop, alter, replace, remove, erect, or

1 install structures or other improvements on real property in which
2 the principal has or claims to have an estate, interest, or right;

3 (6) participate in a reorganization with respect to
4 real property or a legal entity that owns an interest in or right
5 incident to real property, receive and hold shares of stock or
6 obligations received in a plan or reorganization, and act with
7 respect to the shares or obligations, including:

8 (A) selling or otherwise disposing of the shares
9 or obligations;

10 (B) exercising or selling an option, conversion,
11 or similar right with respect to the shares or obligations; and

12 (C) voting the shares or obligations in person or
13 by proxy;

14 (7) change the form of title of an interest in or right
15 incident to real property; ~~and~~

16 (8) dedicate easements or other real property in which
17 the principal has or claims to have an interest to public use, with
18 or without consideration;

19 (9) enter into mineral transactions, including:

20 (A) negotiating and making oil, gas, and other
21 mineral leases covering any land, mineral, or royalty interest in
22 which the principal has or claims to have an interest;

23 (B) pooling and unitizing all or part of the
24 principal's land, mineral leasehold, mineral, royalty, or other
25 interest with land, mineral leasehold, mineral, royalty, or other
26 interest of one or more persons for the purpose of developing and
27 producing oil, gas, or other minerals, and making leases or

- 1 assignments granting the right to pool and unitize;
2 (C) entering into contracts and agreements
3 concerning the installation and operation of plants or other
4 facilities for the cycling, repressuring, processing, or other
5 treating or handling of oil, gas, or other minerals;
6 (D) conducting or contracting for the conducting
7 of seismic evaluation operations;
8 (E) drilling or contracting for the drilling of
9 wells for oil, gas, or other minerals;
10 (F) contracting for and making "dry hole" and
11 "bottom hole" contributions of cash, leasehold interests, or other
12 interests toward the drilling of wells;
13 (G) using or contracting for the use of any
14 method of secondary or tertiary recovery of any mineral, including
15 the injection of water, gas, air, or other substances;
16 (H) purchasing oil, gas, or other mineral leases,
17 leasehold interests, or other interests for any type of
18 consideration, including farmout agreements requiring the drilling
19 or reworking of wells or participation therein;
20 (I) entering into farmout agreements committing
21 the principal to assign oil, gas, or other mineral leases or
22 interests in consideration for the drilling of wells or other oil,
23 gas, or mineral operations;
24 (J) negotiating the transfer of and transferring
25 oil, gas, or other mineral leases or interests for any
26 consideration, such as retained overriding royalty interests of any
27 nature, drilling or reworking commitments, or production

1 interests; and
2 (K) executing and entering into contracts,
3 conveyances, and other agreements or transfers considered
4 necessary or desirable to carry out the powers granted in this
5 section, regardless of whether the action is now or subsequently
6 recognized or considered as a common or proper practice by those
7 engaged in the business of prospecting for, developing, producing,
8 processing, transporting, or marketing minerals, including
9 entering into and executing division orders, oil, gas, or other
10 mineral sales contracts, exploration agreements, processing
11 agreements, and other contracts relating to the processing,
12 handling, treating, transporting, and marketing of oil, gas, or
13 other mineral production from or accruing to the principal and
14 receiving and receipting for the proceeds thereof on behalf of the
15 principal; and

16 (10) designate the property that constitutes the
17 principal's homestead.

18 (b) The power to mortgage and encumber real property
19 provided by this section includes the power to execute documents
20 necessary to create a lien against the principal's homestead as
21 provided by Section 50, Article XVI, Texas Constitution, and to
22 consent to the creation of a lien against property owned by the
23 principal's spouse in which the principal has a homestead interest.

24 SECTION 1.15. Section 752.108(b), Estates Code, is amended
25 to read as follows:

26 (b) Unless the principal has expressly granted the
27 authority to create or change a beneficiary designation under

1 Section 751.201(a)(4), an ~~An~~ attorney in fact or agent may be
2 named a beneficiary of an insurance contract or an extension,
3 renewal, or substitute for the contract only to the extent the
4 attorney in fact or agent was named as a beneficiary under a
5 contract procured by the principal before executing the power of
6 attorney.

7 SECTION 1.16. Sections 752.109 and 752.111, Estates Code,
8 are amended to read as follows:

9 Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY
10 TRANSACTIONS. The language conferring authority with respect to
11 estate, trust, and other beneficiary transactions in a statutory
12 durable power of attorney empowers the attorney in fact or agent to
13 act for the principal in all matters that affect a trust, probate
14 estate, guardianship, conservatorship, life estate, escrow,
15 custodianship, or other fund from which the principal is, may
16 become, or claims to be entitled, as a beneficiary, to a share or
17 payment, including to:

18 (1) accept, reject, disclaim, receive, receipt for,
19 sell, assign, release, pledge, exchange, or consent to a reduction
20 in or modification of a share in or payment from the fund;

21 (2) demand or obtain by litigation, action, or
22 otherwise money or any other thing of value to which the principal
23 is, may become, or claims to be entitled because of the fund;

24 (3) initiate, participate in, or oppose a legal or
25 judicial proceeding to:

26 (A) ascertain the meaning, validity, or effect of
27 a deed, will, declaration of trust, or other instrument or

1 transaction affecting the interest of the principal; or

2 (B) remove, substitute, or surcharge a
3 fiduciary;

4 (4) conserve, invest, disburse, or use anything
5 received for an authorized purpose; and

6 (5) transfer all or part of the principal's interest in
7 real property, stocks, bonds, accounts with financial
8 institutions, insurance, and other property to the trustee of a
9 revocable trust created by the principal as settlor.

10 Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The
11 language conferring authority with respect to personal and family
12 maintenance in a statutory durable power of attorney empowers the
13 attorney in fact or agent to:

14 (1) perform the acts necessary to maintain the
15 customary standard of living of the principal, the principal's
16 spouse and children, and other individuals customarily or legally
17 entitled to be supported by the principal, including:

18 (A) providing living quarters by purchase,
19 lease, or other contract; or

20 (B) paying the operating costs, including
21 interest, amortization payments, repairs, and taxes on premises
22 owned by the principal and occupied by those individuals;

23 (2) provide for the individuals described by
24 Subdivision (1):

25 (A) normal domestic help;

26 (B) usual vacations and travel expenses; and

27 (C) money for shelter, clothing, food,

1 appropriate education, and other living costs;

2 (3) pay necessary medical, dental, and surgical care,
3 hospitalization, and custodial care for the individuals described
4 by Subdivision (1);

5 (4) continue any provision made by the principal for
6 the individuals described by Subdivision (1) for automobiles or
7 other means of transportation, including registering, licensing,
8 insuring, and replacing the automobiles or other means of
9 transportation;

10 (5) maintain or open charge accounts for the
11 convenience of the individuals described by Subdivision (1) and
12 open new accounts the attorney in fact or agent considers desirable
13 to accomplish a lawful purpose; ~~and~~

14 (6) continue:

15 (A) payments incidental to the membership or
16 affiliation of the principal in a church, club, society, order, or
17 other organization; or

18 (B) contributions to those organizations; and

19 (7) subject to the needs of the individuals described
20 by Subdivision (1), provide for the reasonable care of the
21 principal's pets.

22 SECTION 1.17. Sections 752.113(b) and (c), Estates Code,
23 are amended to read as follows:

24 (b) The language conferring authority with respect to
25 retirement plan transactions in a statutory durable power of
26 attorney empowers the attorney in fact or agent to perform any
27 lawful act the principal may perform with respect to a transaction

1 relating to a retirement plan, including to:

2 (1) apply for service or disability retirement
3 benefits;

4 (2) select payment options under any retirement plan
5 in which the principal participates, including plans for
6 self-employed individuals;

7 (3) designate or change the designation of a
8 beneficiary or benefits payable by a retirement plan, except as
9 provided by Subsection (c);

10 (4) make voluntary contributions to retirement plans
11 if authorized by the plan;

12 (5) exercise the investment powers available under any
13 self-directed retirement plan;

14 (6) make rollovers of plan benefits into other
15 retirement plans;

16 (7) borrow from, sell assets to, and purchase assets
17 from retirement plans if authorized by the plan;

18 (8) waive the principal's right to be a beneficiary of
19 a joint or survivor annuity if the principal is not the participant
20 in the retirement plan providing those payments [~~a spouse who is not~~
21 ~~employed~~];

22 (9) receive, endorse, and cash payments from a
23 retirement plan;

24 (10) waive the principal's right to receive all or a
25 portion of benefits payable by a retirement plan; and

26 (11) request and receive information relating to the
27 principal from retirement plan records.

1 (c) Unless the principal has expressly granted the
2 authority to create or change a beneficiary designation under
3 Section 751.201(a)(4), an [An] attorney in fact or agent may be
4 named a beneficiary under a retirement plan only to the extent the
5 attorney in fact or agent was a named beneficiary under the
6 retirement plan, or in the case of a rollover or trustee-to-trustee
7 transfer, the predecessor retirement plan, before the durable power
8 of attorney was executed.

9 SECTION 1.18. The changes in law made by this Act to
10 Subchapters B, C, and D, Chapter 751, Estates Code, and by
11 Subchapters B-1 and E, Chapter 751, Estates Code, as added by this
12 Act, apply to a durable power of attorney, including a statutory
13 durable power of attorney, executed on or after the effective date
14 of this Act. A durable power of attorney, including a statutory
15 durable power of attorney, executed before the effective date of
16 this Act is governed by the law as it existed on the date the durable
17 power of attorney was executed, and the former law is continued in
18 effect for that purpose.

19 SECTION 1.19. (a) Except as otherwise provided by this Act,
20 this Act applies to:

21 (1) a durable power of attorney created before, on, or
22 after the effective date of this Act;

23 (2) a judicial proceeding concerning a durable power
24 of attorney commenced on or after the effective date of this Act;
25 and

26 (3) a judicial proceeding concerning a durable power
27 of attorney commenced before the effective date of this Act that is

1 pending.

2 (b) If the court finds that application of a provision of
3 this Act would substantially interfere with the effective conduct
4 of a judicial proceeding concerning a durable power of attorney
5 commenced before the effective date of this Act or would prejudice
6 the rights of a party to the proceeding, the provision of this Act
7 does not apply and the former law applies in those circumstances.

8 (c) An act performed before the effective date of this Act
9 is not affected by this Act.

10 (d) Section 751.012, Estates Code, as added by this Act,
11 applies to a durable power of attorney executed on or after the
12 effective date of this Act.

13 SECTION 1.20. The following sections of Title 2, Estates
14 Code, are repealed:

- 15 (1) Section 751.004;
- 16 (2) Section 751.053;
- 17 (3) Section 751.054;
- 18 (4) Section 751.055;
- 19 (5) Section 751.056; and
- 20 (6) Section 751.058.

21 ARTICLE 2. ADVANCE DIRECTIVES

22 SECTION 2.01. Section 166.003, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 166.003. WITNESSES. In any circumstance in which this
25 chapter requires the execution of an advance directive or the
26 issuance of a nonwritten advance directive to be witnessed:

- 27 (1) each witness must be a competent adult; and

1 (2) at least one of the witnesses must be a person who
2 is not:

3 (A) a person designated by the declarant to make
4 a treatment decision;

5 (B) a person related to the declarant by blood or
6 marriage;

7 (C) a person entitled to any part of the
8 declarant's estate after the declarant's death under a will or
9 codicil executed by the declarant or by operation of law;

10 (D) the attending physician;

11 (E) an employee of the attending physician;

12 (F) an owner, operator, or employee of a health
13 care facility in which the declarant is a patient [~~if the employee~~
14 ~~is providing direct patient care to the declarant or is an officer,~~
15 ~~director, partner, or business office employee of the health care~~
16 ~~facility or of any parent organization of the health care~~
17 ~~facility~~]; or

18 (G) a person who, at the time the written advance
19 directive is executed or, if the directive is a nonwritten
20 directive issued under this chapter, at the time the nonwritten
21 directive is issued, has a claim against any part of the declarant's
22 estate after the declarant's death.

23 SECTION 2.02. Section 166.033, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written
26 directive may be in the following form:

1 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

2 Instructions for completing this document:

3 This is an important legal document known as an Advance
4 Directive. It is designed to help you communicate your wishes about
5 medical treatment at some time in the future when you are unable to
6 make your wishes known because of illness or injury. These wishes
7 are usually based on personal values. In particular, you may want
8 to consider what burdens or hardships of treatment you would be
9 willing to accept for a particular amount of benefit obtained if you
10 were seriously ill.

11 You are encouraged to discuss your values and wishes with
12 your family or chosen spokesperson, as well as your physician. Your
13 physician, other health care provider, or medical institution may
14 provide you with various resources to assist you in completing your
15 advance directive. Brief definitions are listed below and may aid
16 you in your discussions and advance planning. Initial the
17 treatment choices that best reflect your personal preferences.
18 Provide a copy of your directive to your physician, usual hospital,
19 and family or spokesperson. Consider a periodic review of this
20 document. By periodic review, you can best assure that the
21 directive reflects your preferences.

22 In addition to this advance directive, Texas law provides for
23 two other types of directives that can be important during a serious
24 illness. These are the Medical Power of Attorney and the
25 Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss
26 these with your physician, family, hospital representative, or
27 other advisers. You may also wish to complete a directive related

1 to the donation of organs and tissues.

2 DIRECTIVE

3 I, _____, recognize that the best health care is based
4 upon a partnership of trust and communication with my physician. My
5 physician and I will make health care decisions together as long as
6 I am of sound mind and able to make my wishes known. If there comes
7 a time that I am unable to make medical decisions about myself
8 because of illness or injury, I direct that the following treatment
9 preferences be honored:

10 If, in the judgment of my physician, I am suffering with a
11 terminal condition from which I am expected to die within six
12 months, even with available life-sustaining treatment provided in
13 accordance with prevailing standards of medical care:

14 _____ I request that all treatments
15 other than those needed to keep
16 me comfortable be discontinued or
17 withheld and my physician allow
18 me to die as gently as possible;
19 OR

20 _____ I request that I be kept alive in
21 this terminal condition using
22 available life-sustaining
23 treatment. (THIS SELECTION DOES
24 NOT APPLY TO HOSPICE CARE.)

25 If, in the judgment of my physician, I am suffering with an
26 irreversible condition so that I cannot care for myself or make
27 decisions for myself and am expected to die without life-sustaining

1 treatment provided in accordance with prevailing standards of care:

2 _____ I request that all treatments
3 other than those needed to keep
4 me comfortable be discontinued or
5 withheld and my physician allow
6 me to die as gently as possible;

7 OR

8 _____ I request that I be kept alive in
9 this irreversible condition
10 using available life-sustaining
11 treatment. (THIS SELECTION DOES
12 NOT APPLY TO HOSPICE CARE.)

13 Additional requests: (After discussion with your physician,
14 you may wish to consider listing particular treatments in this
15 space that you do or do not want in specific circumstances, such as
16 artificial nutrition and fluids, intravenous antibiotics, etc. Be
17 sure to state whether you do or do not want the particular
18 treatment.)

19 _____
20 _____
21 _____

22 After signing this directive, if my representative or I elect
23 hospice care, I understand and agree that only those treatments
24 needed to keep me comfortable would be provided and I would not be
25 given available life-sustaining treatments.

26 If I do not have a Medical Power of Attorney, and I am unable
27 to make my wishes known, I designate the following person(s) to make

1 treatment decisions with my physician compatible with my personal
2 values:

3 1. _____

4 2. _____

5 (If a Medical Power of Attorney has been executed, then an
6 agent already has been named and you should not list additional
7 names in this document.)

8 If the above persons are not available, or if I have not
9 designated a spokesperson, I understand that a spokesperson will be
10 chosen for me following standards specified in the laws of Texas.
11 If, in the judgment of my physician, my death is imminent within
12 minutes to hours, even with the use of all available medical
13 treatment provided within the prevailing standard of care, I
14 acknowledge that all treatments may be withheld or removed except
15 those needed to maintain my comfort. I understand that under Texas
16 law this directive has no effect if I have been diagnosed as
17 pregnant. This directive will remain in effect until I revoke it.
18 No other person may do so.

19 Signed _____ Date _____ City, County, State of
20 Residence _____

21 Either a notary public or two [~~Two~~] competent adult witnesses
22 must sign below, acknowledging the signature of the declarant. If
23 this instrument is acknowledged before two witnesses, the [~~The~~]
24 witness designated as Witness 1 may not be a person designated to
25 make a treatment decision for the patient and may not be related to
26 the patient by blood or marriage. This witness may not be entitled
27 to any part of the estate and may not have a claim against the estate

1 of the patient. This witness may not be the attending physician or
2 an employee of the attending physician. [~~If this witness is an~~
3 ~~employee of a health care facility in which the patient is being~~
4 ~~cared for, this witness may not be involved in providing direct~~
5 ~~patient care to the patient.] This witness may not be an owner,
6 operator, [~~officer, director, partner,~~] or [~~business office~~]
7 employee of a health care facility in which you as the declarant are
8 a [the] patient [is being cared for or of any parent organization of
9 the health care facility].~~

10 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

11 State of Texas

12 County of _____

13 This instrument was acknowledged before me on _____

14 (date) by _____ (name of person acknowledging).

15 _____
16 NOTARY PUBLIC, State of
17 Texas

18 Notary's printed name:

19 _____
20 My commission expires:

21 _____

22 OR

23 SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

24 Witness 1 _____ Witness 2 _____

25 Definitions:

26 "Artificial nutrition and hydration" means the provision of
27 nutrients or fluids by a tube inserted in a vein, under the skin in

1 the subcutaneous tissues, or in the stomach (gastrointestinal
2 tract).

3 "Irreversible condition" means a condition, injury, or
4 illness:

5 (1) that may be treated, but is never cured or
6 eliminated;

7 (2) that leaves a person unable to care for or make
8 decisions for the person's own self; and

9 (3) that, without life-sustaining treatment provided
10 in accordance with the prevailing standard of medical care, is
11 fatal.

12 Explanation: Many serious illnesses such as cancer, failure
13 of major organs (kidney, heart, liver, or lung), and serious brain
14 disease such as Alzheimer's dementia may be considered irreversible
15 early on. There is no cure, but the patient may be kept alive for
16 prolonged periods of time if the patient receives life-sustaining
17 treatments. Late in the course of the same illness, the disease may
18 be considered terminal when, even with treatment, the patient is
19 expected to die. You may wish to consider which burdens of
20 treatment you would be willing to accept in an effort to achieve a
21 particular outcome. This is a very personal decision that you may
22 wish to discuss with your physician, family, or other important
23 persons in your life.

24 "Life-sustaining treatment" means treatment that, based on
25 reasonable medical judgment, sustains the life of a patient and
26 without which the patient will die. The term includes both
27 life-sustaining medications and artificial life support such as

1 mechanical breathing machines, kidney dialysis treatment, and
2 artificial hydration and nutrition. The term does not include the
3 administration of pain management medication, the performance of a
4 medical procedure necessary to provide comfort care, or any other
5 medical care provided to alleviate a patient's pain.

6 "Terminal condition" means an incurable condition caused by
7 injury, disease, or illness that according to reasonable medical
8 judgment will produce death within six months, even with available
9 life-sustaining treatment provided in accordance with the
10 prevailing standard of medical care.

11 Explanation: Many serious illnesses may be considered
12 irreversible early in the course of the illness, but they may not be
13 considered terminal until the disease is fairly advanced. In
14 thinking about terminal illness and its treatment, you again may
15 wish to consider the relative benefits and burdens of treatment and
16 discuss your wishes with your physician, family, or other important
17 persons in your life.

18 SECTION 2.03. Sections [166.152\(b\)](#) and (g), Health and
19 Safety Code, are amended to read as follows:

20 (b) An agent may exercise authority only when, in the
21 opinion of the principal's attending physician, the principal is
22 incompetent or unable to make and communicate a choice about a
23 specific health care decision [~~if the principal's attending~~
24 ~~physician certifies in writing and files the certification in the~~
25 ~~principal's medical record that, based on the attending physician's~~
26 ~~reasonable medical judgment, the principal is incompetent~~].

27 (g) The power of attorney is effective indefinitely on

1 execution as provided by this subchapter and delivery of the
 2 document to the agent, unless it is revoked as provided by this
 3 subchapter [~~or the principal becomes competent~~]. If the medical
 4 power of attorney includes an expiration date and on that date the
 5 principal is incompetent or unable to make and communicate a health
 6 care decision, the power of attorney continues to be effective
 7 until the principal becomes competent and capable of making and
 8 communicating a health care decision, unless it is revoked as
 9 provided by this subchapter.

10 SECTION 2.04. Section 166.155, Health and Safety Code, is
 11 amended to read as follows:

12 Sec. 166.155. REVOCATION; EFFECT OF TERMINATION OF
 13 MARRIAGE. (a) A medical power of attorney is revoked by:

14 (1) oral or written notification at any time by the
 15 principal to the agent or a licensed or certified health or
 16 residential care provider or by any other act evidencing a specific
 17 intent to revoke the power, without regard to whether the principal
 18 is competent or the principal's mental state; or

19 (2) execution by the principal of a subsequent medical
 20 power of attorney. [~~or~~]

21 (b) An agent's authority under a medical power of attorney
 22 terminates if the agent's marriage to [(3) the divorce of] the
 23 principal is dissolved, annulled, or declared void [and spouse, if
 24 the spouse is the principal's agent,] unless the medical power of
 25 attorney specifically provides otherwise. The authority of other
 26 agents under the medical power of attorney is not terminated.

27 (c) [(b)] A principal's licensed or certified health or

1 residential care provider who is informed of or provided with a
2 revocation of a medical power of attorney or is informed of the
3 termination of an agent's authority under Subsection (b) shall
4 immediately record the revocation or termination in the principal's
5 medical record and give notice of the revocation or termination to
6 the agent and any known health and residential care providers
7 currently responsible for the principal's care.

8 SECTION 2.05. Subchapter D, Chapter 166, Health and Safety
9 Code, is amended by adding Section 166.1625 to read as follows:

10 Sec. 166.1625. PERMISSIBLE FORMS OF MEDICAL POWER OF
11 ATTORNEY. (a) A medical power of attorney may be in the form
12 described by Section 166.164 or may be in another form that meets
13 the requirements of this subchapter or that is authorized under
14 Section 166.005. An example alternative form is the health care
15 power of attorney form produced by the Commission on Law and Aging,
16 American Bar Association, which may be accessible on the American
17 Bar Association's Internet website.

18 (b) A durable power of attorney or similar document executed
19 by a veteran of the United States armed forces that is in compliance
20 with the advance directive requirements of the United States
21 Department of Veterans Affairs is valid and enforceable in this
22 state. This subsection does not authorize the administration,
23 withholding, or withdrawal of health care otherwise prohibited by
24 the laws of this state.

25 SECTION 2.06. Section 166.164, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The

1 medical power of attorney may [~~must~~] be in [~~substantially~~] the
2 following form:

3 MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

4 I, _____ (insert your name) appoint:

5 Name: _____

6 Address: _____

7 Phone: _____

8 as my agent to make any and all health care decisions for me,
9 except to the extent I state otherwise in this document. This
10 medical power of attorney is effective only when, in the opinion of
11 my attending physician, I am incompetent or I am unable to make and
12 communicate a choice about a particular health care decision [~~takes~~
13 ~~effect if I become unable to make my own health care decisions and~~
14 ~~this fact is certified in writing by my physician~~].

15 LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE
16 AS FOLLOWS: _____

17 _____

18 DESIGNATION OF ALTERNATE AGENT.

19 (You are not required to designate an alternate agent but you
20 may do so. An alternate agent may make the same health care
21 decisions as the designated agent if the designated agent is unable
22 or unwilling to act as your agent. If the agent designated is your
23 spouse, the designation of that spouse is automatically terminated
24 [~~revoked~~] by law if your marriage is dissolved, annulled, or
25 declared void unless this document provides otherwise, but the
26 remainder of this document is valid and the authority of other
27 agents under the document is not terminated.)

1 If the person designated as my agent is unable or unwilling to
2 make health care decisions for me, I designate the following
3 persons to serve as my agent to make health care decisions for me as
4 authorized by this document, who serve in the following order:

5 A. First Alternate Agent

6 Name: _____
7 Address: _____
8 Phone _____

9 B. Second Alternate Agent

10 Name: _____
11 Address: _____
12 Phone _____

13 I intend to keep the [~~The~~] original of this document [~~is~~
14 ~~kept~~] at:

15 _____
16 _____
17 _____

18 I intend for the [~~The~~] following individuals or
19 institutions to have signed copies:

20 Name: _____
21 Address: _____
22 _____

23 Name: _____
24 Address: _____
25 _____

26 DURATION.

27 I understand that this power of attorney exists indefinitely

1 from the date I execute this document unless I establish a shorter
2 time or revoke the power of attorney.

3 (IF A SPECIFIC TERMINATION DATE IS SELECTED) This power of
4 attorney ends on the following date: _____.

5 If I am incompetent or unable to make and communicate health
6 care decisions for myself when this power of attorney expires, the
7 authority I have granted my agent continues to exist until the time
8 I become able to make and communicate health care decisions for
9 myself.

10 [~~(IF APPLICABLE) This power of attorney ends on the~~
11 ~~following date: _____]~~

12 PRIOR DESIGNATIONS REVOKED.

13 I revoke any prior medical power of attorney.

14 INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

15 The medical power of attorney is an important legal document.
16 Before signing this document, you should know these important
17 facts:

18 Except to the extent you state otherwise or as provided by
19 Texas law, this document gives the person you name as your agent the
20 authority to make any and all health care decisions for you in
21 accordance with your wishes, including your religious and moral
22 beliefs, when you are no longer capable of making them yourself.

23 Because "health care" means any treatment, service, or
24 procedure to maintain, diagnose, or treat your physical or mental
25 condition, your agent has the power to make a broad range of health
26 care decisions for you. Your agent may consent, refuse to consent,
27 or withdraw consent to medical treatment and may make decisions

1 about withdrawing or withholding life-sustaining treatment. Your
2 agent may not consent to voluntary inpatient mental health
3 services, convulsive treatment, psychosurgery, or abortion.

4 A physician must comply with your agent's instructions or
5 allow you to be transferred to another physician.

6 Your agent's authority is effective when, in your doctor's
7 opinion, you are incompetent or you are unable to make and
8 communicate a choice about a particular health care decision.

9 Your agent is obligated to follow your instructions when
10 making decisions on your behalf. Unless you state otherwise, your
11 agent, when making decisions about your health care, has the same
12 authority to make those decisions as you would have if you were
13 competent or able to communicate.

14 It is important that you discuss your medical power of
15 attorney with your physician or other health care provider. Before
16 you sign any medical power of attorney, make sure that you
17 understand the nature and range of decisions that may be made on
18 your behalf. If you do not have a physician, you should talk with
19 someone else who is knowledgeable about these issues and can answer
20 your questions. You do not need a lawyer's assistance to complete
21 this document, but if there is anything in this document that you do
22 not understand, you should ask a lawyer to explain it to you.

23 The person you appoint as agent should be someone you know and
24 trust. The person must be 18 years of age or older or a person under
25 18 years of age who has had the disabilities of minority removed.
26 If you appoint your health or residential care provider (e.g., your
27 physician or an employee of a home health agency, hospital, nursing

1 home, or residential care home, other than a relative), that person
2 has to choose between acting as your agent or as your health or
3 residential care provider; the law does not permit a person to do
4 both at the same time.

5 You should inform the person you appoint that you want the
6 person to be your health care agent. You should discuss your
7 medical power of attorney with your agent and your physician and
8 give each a signed copy. You may indicate on the document itself
9 the people and institutions that you intend to have signed copies.
10 Your agent is not liable for health care decisions made in good
11 faith on your behalf.

12 After you have signed your medical power of attorney, you
13 retain the right to make health care decisions for yourself as long
14 as you are competent and can communicate your health care
15 decisions, and treatment cannot be given to you or stopped over your
16 objection. You have the right to revoke the authority granted to
17 your agent by informing your agent or your health or residential
18 care provider orally or in writing or by your execution of a
19 subsequent medical power of attorney. Unless you state otherwise
20 in the document, your appointment of a spouse terminates on
21 divorce.

22 A signed medical power of attorney may not be changed or
23 modified. If you want to make changes in a medical power of
24 attorney, you must execute a new medical power of attorney.

25 You may wish to designate an alternate agent in the event that
26 your agent is unwilling, unable, or ineligible to act as your agent.
27 Any alternate agent you designate has the same authority as the

1 agent to make health care decisions for you.

2 THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

3 (1) the person you have designated as your agent;

4 (2) a person related to you by blood or marriage;

5 (3) a person entitled to any part of your estate after
6 your death under a will or codicil executed by you or by operation
7 of law;

8 (4) your attending physician;

9 (5) an employee of your attending physician;

10 (6) an owner, operator, or employee of a health care
11 facility in which you are a patient; or

12 (7) a person who, at the time this medical power of
13 attorney is executed, has a claim against any part of your estate
14 after your death.

15 ~~[ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.~~

16 ~~[I have been provided with a disclosure statement explaining~~
17 ~~the effect of this document. I have read and understand that~~
18 ~~information contained in the disclosure statement.]~~

19 (YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN
20 IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR
21 YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

22 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

23 I sign my name to this medical power of attorney on _____

24 day of _____ (month, year) at

25 _____

26 (City and State)

27 _____

(Signature)

(Print Name)

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by
_____ (name of person acknowledging).

NOTARY PUBLIC, State of Texas

Notary's printed name:

My commission expires:

OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

I sign my name to this medical power of attorney on _____
day of _____ (month, year) at

(City and State)

(Signature)

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am
not related to the principal by blood or marriage. I would not be
entitled to any portion of the principal's estate on the principal's

1 death. I am not the attending physician of the principal or an
2 employee of the attending physician. I have no claim against any
3 portion of the principal's estate on the principal's
4 death. [~~Furthermore, if~~] I am not an owner, operator, or employee
5 of a health care facility in which the principal is a patient [~~, I am~~
6 ~~not involved in providing direct patient care to the principal and~~
7 ~~am not an officer, director, partner, or business office employee~~
8 ~~of the health care facility or of any parent organization of the~~
9 ~~health care facility~~].

10 Signature:_____

11 Print Name:_____ Date:_____

12 Address:_____

13 SIGNATURE OF SECOND WITNESS.

14 Signature:_____

15 Print Name:_____ Date:_____

16 Address:_____

17 SECTION 2.07. Sections [166.162](#) and [166.163](#), Health and
18 Safety Code, are repealed.

19 SECTION 2.08. The changes in law made by this article apply
20 only to the validity of a document executed on or after the
21 effective date of this Act. The validity of a document executed
22 before the effective date of this Act is governed by the law in
23 effect on the date the document was executed, and that law continues
24 in effect for that purpose.

25 SECTION 2.09. (a) Except as otherwise provided in this
26 section, the changes in law made by this article to the Health and
27 Safety Code apply to:

1 (1) a medical power of attorney created on or after the
2 effective date of this Act; and

3 (2) a judicial proceeding concerning a medical power
4 of attorney that commences on or after the effective date of this
5 Act.

6 (b) If the court finds that application of a provision of
7 this article would substantially interfere with the effective
8 conduct of a judicial proceeding concerning a medical power of
9 attorney that is pending on the effective date of this Act or
10 prejudice the rights of a party to the proceeding, the provision of
11 this article does not apply, and the law in effect immediately
12 before the effective date of this Act applies in those
13 circumstances.

14 ARTICLE 3. EFFECTIVE DATE

15 SECTION 3.01. This Act takes effect September 1, 2015.