

A BILL TO BE ENTITLED

AN ACT

relating to durable powers of attorney and advance directives;
affecting laws subject to criminal penalties.

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

ARTICLE 1. DURABLE POWERS OF ATTORNEY

SECTION 1.01. 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;

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

(3) contains:

(A) the words:

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

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

(B) words similar to those of Paragraph (A) that
show the principal's intent that the authority conferred on the

1 attorney in fact or agent shall be exercised notwithstanding the
2 principal's subsequent disability or incapacity; and

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

5 (A) take acknowledgments to deeds of conveyance;
6 and

7 (B) administer oaths.

8 (b) If the law of the jurisdiction that determines the
9 meaning and effect of a power of attorney under Section 751.009
10 provides that the authority conferred on the agent is exercisable
11 notwithstanding the principal's subsequent disability or
12 incapacity, the power of attorney is considered a durable power of
13 attorney under this subtitle.

14 (c) In this subtitle, the term "agent" includes an "attorney
15 in fact."

16 SECTION 1.02. Subchapter A, Chapter 751, Estates Code, is
17 amended by adding Sections 751.007, 751.008, 751.009, 751.010,
18 751.011, and 751.012 to read as follows:

19 Sec. 751.007. PRESUMPTION OF GENUINE SIGNATURE. A
20 signature that purports to be the signature of the principal on a
21 durable power of attorney is presumed to be genuine, and the durable
22 power of attorney is presumed to have been executed under Section
23 751.002 if the officer taking the acknowledgment has complied with
24 the requirements of Section 121.004(b), Civil Practice and Remedies
25 Code.

26 Sec. 751.008. VALIDITY OF POWER OF ATTORNEY. (a) A durable
27 power of attorney executed in this state is valid if the execution

1 of the instrument complies with Section 751.002.

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

5 (1) the law of the jurisdiction that determines the
6 meaning and effect of the durable power of attorney as provided by
7 Section 751.009; or

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

10 (c) Except as otherwise provided by statute other than this
11 subtitle, a photocopy or electronically transmitted copy of an
12 original durable power of attorney has the same effect as the
13 original instrument.

14 Sec. 751.009. MEANING AND EFFECT OF DURABLE POWER OF
15 ATTORNEY. The meaning and effect of a durable power of attorney is
16 determined by the law of the jurisdiction indicated in the durable
17 power of attorney and, in the absence of an indication of
18 jurisdiction, by the law of the jurisdiction in which the durable
19 power of attorney was executed.

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

24 (1) the principal or the agent;

25 (2) a guardian, conservator, or other fiduciary acting
26 for the principal;

27 (3) a person named as a beneficiary to receive any

1 property, benefit, or contractual right on the principal's death;

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

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

6 (b) A person who is requested to accept a durable power of
7 attorney may bring an action in a court to construe the durable
8 power of attorney.

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

13 Sec. 751.011. CO-AGENTS AND SUCCESSOR AGENTS. (a) A
14 principal may designate two or more persons to act as co-agents.
15 Unless the durable power of attorney otherwise provides, each
16 co-agent may exercise authority independently of the other
17 co-agent.

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

24 (1) has the same authority as the authority granted to
25 the predecessor agent; and

26 (2) is not considered an agent under this subtitle and
27 may not act until all predecessor agents have resigned, died,

1 become incapacitated, are no longer qualified to serve, or have
2 declined to serve.

3 (c) Except as otherwise provided by Subsection (d) or the
4 durable power of attorney, an agent who does not participate in or
5 conceal a breach of fiduciary duty committed by another agent,
6 including a predecessor agent, is not liable for the actions of the
7 other agent.

8 (d) An agent who has actual knowledge of a breach or
9 imminent breach of fiduciary duty by another agent shall notify the
10 principal and, if the principal is incapacitated, shall take any
11 action reasonably appropriate under the circumstances to safeguard
12 the principal's best interest. An agent who fails to notify the
13 principal or take action as required by this subsection is liable
14 for the reasonably foreseeable damages that could have been avoided
15 if the agent had notified the principal or taken the action.

16 Sec. 751.012. REIMBURSEMENT AND COMPENSATION OF AGENT.
17 Unless the durable power of attorney otherwise provides, an agent
18 is entitled to reimbursement of reasonable expenses incurred on the
19 principal's behalf and to compensation that is reasonable under the
20 circumstances.

21 SECTION 1.03. The heading to Subchapter B, Chapter 751,
22 Estates Code, is amended to read as follows:

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

25 SECTION 1.04. Section 751.051, Estates Code, is amended to
26 read as follows:

27 Sec. 751.051. EFFECT OF ACTS PERFORMED BY [~~ATTORNEY IN FACT~~

1 OR] AGENT [~~DURING PRINCIPAL'S DISABILITY OR INCAPACITY~~]. (a) An
2 ~~[Each]~~ act performed by an ~~[attorney in fact or]~~ agent under a
3 durable power of attorney ~~[during a period of the principal's~~
4 ~~disability or incapacity]~~ has the same effect~~[r]~~ and inures to the
5 benefit of and binds the principal and the principal's successors
6 in interest~~[r]~~ as if the principal had performed the act ~~[were not~~
7 ~~disabled or incapacitated]~~.

8 (b) If a durable power of attorney grants an agent
9 appropriate authority with respect to a transaction, an agent may
10 execute and deliver the documents necessary for the transaction,
11 including documents creating a lien against the principal's
12 homestead under Section 50, Article XVI, Texas Constitution,
13 regardless of the fact that the durable power of attorney was signed
14 before the transaction.

15 SECTION 1.05. Section 751.052, Estates Code, is amended to
16 read as follows:

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

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

27 (2) account to the guardian of the estate as the

1 ~~[attorney in fact or]~~ agent would account to the principal if the
2 principal had terminated the powers of the ~~[attorney in fact or]~~
3 agent.

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

12 SECTION 1.06. Section 751.057, Estates Code, is amended to
13 read as follows:

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

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

24 SECTION 1.07. Chapter 751, Estates Code, is amended by
25 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; or

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.

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

22 (1) the principal revokes the authority;

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

24 (3) an action is filed for the dissolution or
25 annulment of the agent's marriage to the principal or to declare the
26 marriage of the agent and principal void, unless the durable power
27 of attorney otherwise provides; or

1 (4) the durable power of attorney terminates.

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

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

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

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

26 (b) A person who in good faith accepts a durable power of
27 attorney without actual knowledge that the durable power of

1 attorney is void, invalid, or terminated, that the purported
2 agent's authority is void, invalid, or terminated, or that the
3 agent is exceeding or improperly exercising the agent's authority
4 may rely on the power of attorney as if:

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

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

9 (3) the agent had not exceeded and had properly
10 exercised the authority.

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

13 (1) an agent's certification under penalty of perjury
14 of any factual matter concerning the principal, agent, or power of
15 attorney;

16 (2) an English translation of the power of attorney if
17 the power of attorney contains, wholly or partly, language other
18 than English; and

19 (3) an opinion of counsel as to any matter of law
20 concerning the power of attorney if the person making the request
21 provides in a writing or other record the reason for the request.

22 (d) An English translation or an opinion of counsel
23 requested under this section must be provided to the principal at
24 the principal's own expense unless the request is made not earlier
25 than the seventh business day after the date the power of attorney
26 is presented for acceptance.

27 (e) For purposes of this section and Section 751.066, a

1 person who conducts activities through employees is without actual
2 knowledge of a fact relating to a durable power of attorney, a
3 principal, or an agent if the employee conducting the transaction
4 involving the power of attorney is without actual knowledge of the
5 fact.

6 Sec. 751.066. LIABILITY FOR REFUSAL TO ACCEPT POWER OF
7 ATTORNEY. (a) Except as otherwise provided by Subsection (d), a
8 person shall either accept a durable power of attorney or request a
9 certification, a translation, or an opinion of counsel under
10 Section 751.065 not later than the seventh business day after the
11 date the durable power of attorney is presented for acceptance.

12 (b) A person who requests a certification, a translation, or
13 an opinion of counsel under Section 751.065 must accept the durable
14 power of attorney not later than the fifth business day after the
15 date on which the certification, translation, or opinion of counsel
16 is received.

17 (c) Except as provided by Subsection (d), a person may not:

18 (1) require an additional or different form of durable
19 power of attorney for authority granted in the durable power of
20 attorney presented; or

21 (2) require that the durable power of attorney be
22 recorded in the official public records of a county clerk unless the
23 recordation is required by Section 751.151.

24 (d) A person is not required to accept a durable power of
25 attorney if:

26 (1) the person is not otherwise required to engage in a
27 transaction with the principal in the same circumstances;

1 (2) the person's engagement in a transaction with the
2 agent or the principal in the same circumstances would be
3 inconsistent with state or federal law other than this chapter;

4 (3) the person has actual knowledge of the termination
5 of the agent's authority or of the power of attorney before exercise
6 of the power;

7 (4) a request for a certification, a translation, or
8 an opinion of counsel under Section 751.065 is refused;

9 (5) the person in good faith believes that the power is
10 not valid or that the agent does not have the authority to perform
11 the act requested, regardless of whether a certification, a
12 translation, or an opinion of counsel under Section 751.065 has
13 been requested or provided;

14 (6) the person makes, or has actual knowledge that
15 another person has made, a report to a law enforcement agency or
16 other federal or state agency, including the Department of Family
17 and Protective Services, stating a good faith belief that the
18 principal may be subject to physical or financial abuse, neglect,
19 exploitation, or abandonment by the agent or a person acting on
20 behalf of or with the agent; or

21 (7) the person has received conflicting instructions
22 or communications from co-agents regarding a matter, or in good
23 faith believes that co-agents do not agree regarding a matter, but
24 the person may refuse to accept the durable power of attorney only
25 with respect to that matter.

26 (e) A person who refuses to accept a durable power of
27 attorney in violation of this section is subject to:

1 (1) a judgment for damages to the same extent as if the
2 person had refused to allow the principal to act on the principal's
3 own behalf;

4 (2) a court order mandating acceptance of the durable
5 power of attorney; and

6 (3) liability for reasonable attorney's fees and costs
7 incurred in any proceeding that:

8 (A) confirms the validity of the durable power of
9 attorney;

10 (B) results in the award of damages against the
11 person; or

12 (C) mandates acceptance of the durable power of
13 attorney.

14 SECTION 1.08. Sections 751.101, 751.102, 751.103, 751.104,
15 751.105, and 751.106, Estates Code, are amended to read as follows:

16 Sec. 751.101. FIDUCIARY DUTIES. An [~~attorney in fact or~~]
17 agent is a fiduciary and has a duty to inform and to account for
18 actions taken under the power of attorney.

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

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

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

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

4 Sec. 751.104. ACCOUNTING. (a) The principal may demand an
5 accounting by the [~~attorney in fact or~~] agent.

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

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

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

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

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

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

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

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

24 (6) each known liability; and

25 (7) any other information and facts known to the
26 [~~attorney in fact or~~] agent as necessary for a full and definite
27 understanding of the exact condition of the property belonging to

1 the principal.

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

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

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

13 (2) terminate the power of attorney.

14 Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S
15 RIGHTS. This subchapter does not limit the right of the principal
16 to terminate the power of attorney or to make additional
17 requirements of or to give additional instructions to the [~~attorney~~
18 ~~in fact or~~] agent.

19 SECTION 1.09. Section 751.151, Estates Code, is amended to
20 read as follows:

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

1 a lease, lien, or other claim or right to real property, must be
2 recorded in the office of the county clerk of the county in which
3 the property is located.

4 SECTION 1.10. Chapter 751, Estates Code, is amended by
5 adding Subchapter E to read as follows:

6 SUBCHAPTER E. AUTHORITY OF AGENT UNDER POWER OF ATTORNEY

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

14 (1) create, amend, revoke, or terminate an inter vivos
15 trust;

16 (2) make a gift;

17 (3) create or change rights of survivorship;

18 (4) create or change a beneficiary designation;

19 (5) delegate authority granted under the power of
20 attorney; or

21 (6) waive the principal's right to be a beneficiary of
22 a joint and survivor annuity, including a survivor benefit under a
23 retirement plan.

24 (b) Notwithstanding a grant of authority to perform an act
25 described by Subsection (a), unless the durable power of attorney
26 otherwise provides, an agent who is not an ancestor, spouse, or
27 descendant of the principal may not exercise authority under the

1 power of attorney to create in the agent, or in an individual to
2 whom the agent owes a legal obligation of support, an interest in
3 the principal's property, whether by gift, right of survivorship,
4 beneficiary designation, disclaimer, or otherwise.

5 (c) Subject to Subsections (a), (b), (d), and (e), if a
6 durable power of attorney grants to an agent the authority to
7 perform all acts that a principal could perform, the agent has the
8 general authority conferred by Subchapter C, Chapter 752.

9 (d) Unless the durable power of attorney otherwise
10 provides, a grant of authority to make a gift is subject to Section
11 751.202.

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

15 (f) Authority granted in a durable power of attorney is
16 exercisable with respect to property that the principal has when
17 the power of attorney is executed or acquires later, regardless of
18 whether:

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

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

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

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

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

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

5 (4) eligibility for a benefit, a program, or
6 assistance under a statute or regulation.

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

9 (1) a gift to a trust;

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

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

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

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

21 (A) the annual dollar limits of the federal gift
22 tax exclusion under Section 2503(b), Internal Revenue Code of 1986,
23 without regard to whether the federal gift tax exclusion applies to
24 the gift; or

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

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

5 (c) An agent may make a gift of the principal's property
6 only as the agent determines is consistent with the principal's
7 objectives if actually known by the agent and, if unknown, as the
8 agent determines is consistent with the principal's best interest
9 based on all relevant factors, including:

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

11 (2) the principal's foreseeable obligations and need
12 for maintenance;

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

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

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

19 Sec. 751.203. BENEFICIARY DESIGNATIONS. (a) Unless the
20 durable power of attorney otherwise provides, authority granted to
21 an agent under Section 751.201(a)(4) includes the power to:

22 (1) create or change a beneficiary designation under
23 an account, a contract, or another arrangement that authorizes the
24 principal to designate a beneficiary, including insurance and
25 annuity contracts, qualified and nonqualified retirement plans,
26 including those retirement plans defined by Section 752.113,
27 employment agreements, including deferred compensation agreements,

1 and residency agreements;

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

4 (3) create or change a nontestamentary payment or
5 transfer under Chapter 111.

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

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

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

24 (b) A reference in a durable power of attorney to general
25 authority with respect to the descriptive term for a subject in
26 Chapter 752 or a citation to one of those sections incorporates the
27 entire section as if the section were set out in its entirety in the

1 durable power of attorney.

2 (c) A principal may modify authority incorporated by
3 reference.

4 SECTION 1.11. Section 752.051, Estates Code, is amended to
5 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
25 my agent (attorney in fact) to act for me in any lawful way with
26 respect to all of the following powers that I have initialed below.

27 (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE,

1 CO-AGENTS MAY ACT INDEPENDENTLY.)

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

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

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

- 9 _____ (A) Real property transactions;
- 10 _____ (B) Tangible personal property transactions;
- 11 _____ (C) Stock and bond transactions;
- 12 _____ (D) Commodity and option transactions;
- 13 _____ (E) Banking and other financial institution
14 transactions;
- 15 _____ (F) Business operating transactions;
- 16 _____ (G) Insurance and annuity transactions;
- 17 _____ (H) Estate, trust, and other beneficiary transactions;
- 18 _____ (I) Claims and litigation;
- 19 _____ (J) Personal and family maintenance;
- 20 _____ (K) Benefits from social security, Medicare, Medicaid,
21 or other governmental programs or civil or military service;
- 22 _____ (L) Retirement plan transactions;
- 23 _____ (M) Tax matters;
- 24 _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO
25 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
26 INITIAL LINE (N).

27 SPECIAL INSTRUCTIONS:

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

3 ____ I grant my agent (attorney in fact) the power to apply my
4 property to make gifts outright to or for the benefit of a person,
5 including by the exercise of a presently exercisable general power
6 of appointment held by me, except that the amount of a gift to an
7 individual may not exceed the amount of annual exclusions allowed
8 from the federal gift tax for the calendar year of the gift.

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

11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____
18 _____
19 _____

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

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

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

27 (B) This power of attorney becomes effective upon my

1 disability or incapacity.

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

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

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

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

26 If any agent named by me dies, becomes legally disabled,
27 resigns, or refuses to act, I name the following (each to act alone

1 and successively, in the order named) as successor(s) to that
2 agent: _____.

3 Signed this _____ day of _____, _____
4 _____
5 (your signature)

6 State of _____
7 County of _____

8 This document was acknowledged before me on _____(date) by
9 _____
10 (name of principal)

11 _____
12 (signature of notarial
13 officer)

14 (Seal, if any, of notary) _____
15 (printed name)

16 My commission expires: _____

17 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

18 Agent's Duties

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

- 25 (1) act in good faith;
- 26 (2) do nothing beyond the authority granted in this
27 power of attorney;

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (F) each known liability;

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

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

12 Termination of Agent's Authority

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

18 (1) the principal's death;

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

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

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

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 1.12. 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 () Waive the principal's right to be a beneficiary of a
13 joint and survivor annuity, including a survivor benefit under a
14 retirement plan".

15 SECTION 1.13. Section 752.102, Estates Code, is amended to
16 read as follows:

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

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

25 (2) sell, exchange, convey with or without covenants,
26 quitclaim, release, surrender, mortgage, encumber, partition or
27 consent to partitioning, subdivide, apply for zoning, rezoning, or

1 other governmental permits, plat or consent to platting, develop,
2 grant options concerning, lease or sublet, or otherwise dispose of
3 an estate or interest in real property or a right incident to real
4 property;

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

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

13 (A) insure against a casualty, liability, or
14 loss;

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

17 (C) pay, compromise, or contest taxes or
18 assessments or apply for and receive refunds in connection with the
19 taxes or assessments;

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

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

24 ~~[(i) entering into a lease for oil, gas, and~~
25 ~~mineral purposes,~~

26 ~~[(ii) making contracts for development of~~
27 ~~the mineral estate, or~~

1 [~~(iii) making pooling and unitization~~
2 ~~agreements~~];

3 (5) use, develop, alter, replace, remove, erect, or
4 install structures or other improvements on real property in which
5 the principal has or claims to have an estate, interest, or right;

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

11 (A) selling or otherwise disposing of the shares
12 or obligations;

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

15 (C) voting the shares or obligations in person or
16 by proxy;

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

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

22 (9) enter into mineral transactions, including:

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

26 (B) pooling and unitizing all or part of the
27 principal's land, mineral leasehold, mineral, royalty, or other

1 interest with land, mineral leasehold, mineral, royalty, or other
2 interest of one or more persons for the purpose of developing and
3 producing oil, gas, or other minerals, and making leases or
4 assignments granting the right to pool and unitize;

5 (C) entering into contracts and agreements
6 concerning the installation and operation of plants or other
7 facilities for the cycling, repressuring, processing, or other
8 treating or handling of oil, gas, or other minerals;

9 (D) conducting or contracting for the conducting
10 of seismic evaluation operations;

11 (E) drilling or contracting for the drilling of
12 wells for oil, gas, or other minerals;

13 (F) contracting for and making "dry hole" and
14 "bottom hole" contributions of cash, leasehold interests, or other
15 interests towards the drilling of wells;

16 (G) using or contracting for the use of any
17 method of secondary or tertiary recovery of any mineral, including
18 the injection of water, gas, air, or other substances;

19 (H) purchasing oil, gas, or other mineral leases,
20 leasehold interests, or other interests for any type of
21 consideration, including farmout agreements requiring the drilling
22 or reworking of wells or participation therein;

23 (I) entering into farmout agreements committing
24 the principal to assign oil, gas, or other mineral leases or
25 interests in consideration for the drilling of wells or other oil,
26 gas, or mineral operations;

27 (J) negotiating the transfer of and transferring

1 oil, gas, or other mineral leases or interests for any
2 consideration, such as retained overriding royalty interests of any
3 nature, drilling or reworking commitments, or production
4 interests; and

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

19 (10) designate the property that constitutes the
20 principal's homestead.

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

27 SECTION 1.14. Section 752.108(b), Estates Code, is amended

1 to read as follows:

2 (b) Unless the principal has expressly granted the
3 authority to create or change a beneficiary designation under
4 Section 751.201(a)(4), an [An] attorney in fact or agent may be
5 named a beneficiary of an insurance contract or an extension,
6 renewal, or substitute for the contract only to the extent the
7 attorney in fact or agent was named as a beneficiary under a
8 contract procured by the principal before executing the power of
9 attorney.

10 SECTION 1.15. Sections 752.109 and 752.111, Estates Code,
11 are amended to read as follows:

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

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

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

27 (3) initiate, participate in, or oppose a legal or

1 judicial proceeding to:

2 (A) ascertain the meaning, validity, or effect of
3 a deed, will, declaration of trust, or other instrument or
4 transaction affecting the interest of the principal; or

5 (B) remove, substitute, or surcharge a
6 fiduciary;

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

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

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

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

21 (A) providing living quarters by purchase,
22 lease, or other contract; or

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

26 (2) provide for the individuals described by
27 Subdivision (1):

- 1 (A) normal domestic help;
2 (B) usual vacations and travel expenses; and
3 (C) money for shelter, clothing, food,
4 appropriate education, and other living costs;

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

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

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

17 (6) continue:

18 (A) payments incidental to the membership or
19 affiliation of the principal in a church, club, society, order, or
20 other organization; or

21 (B) contributions to those organizations; and

22 (7) subject to the needs of the individuals described
23 by Subdivision (1), provide for the reasonable care of the
24 principal's pets.

25 SECTION 1.16. Section 752.113(c), Estates Code, is amended
26 to read as follows:

27 (c) Unless the principal has expressly granted the

1 authority to create or change a beneficiary designation under
2 Section 751.201(a)(4), an [An] attorney in fact or agent may be
3 named a beneficiary under a retirement plan only to the extent the
4 attorney in fact or agent was a named beneficiary under the
5 retirement plan before the durable power of attorney was executed.

6 SECTION 1.17. The changes in law made by this Act to
7 Subchapters B, C, and D, Chapter 751, Estates Code, and by
8 Subchapter E, Chapter 751, Estates Code, as added by this Act, apply
9 to a durable power of attorney, including a statutory durable power
10 of attorney, executed on or after the effective date of this Act. A
11 durable power of attorney, including a statutory durable power of
12 attorney executed before the effective date of this Act, is
13 governed by the law as it existed on the date the durable power of
14 attorney was executed, and the former law is continued in effect for
15 that purpose.

16 SECTION 1.18. (a) Except as otherwise provided by this Act,
17 this Act applies to:

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

20 (2) a judicial proceeding concerning a durable power
21 of attorney commenced on or after the effective date of this Act;
22 and

23 (3) a judicial proceeding concerning a durable power
24 of attorney commenced before the effective date of this Act that is
25 pending.

26 (b) If the court finds that application of a provision of
27 this Act would substantially interfere with the effective conduct

1 of a judicial proceeding concerning a durable power of attorney
2 commenced before the effective date of this Act or would prejudice
3 the rights of a party to the proceeding, the provision of this Act
4 does not apply and the former law applies in those circumstances.

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

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

10 SECTION 1.19. The following sections of Title 2, Estates
11 Code, are repealed:

- 12 (1) Section 751.004;
- 13 (2) Section 751.053;
- 14 (3) Section 751.054;
- 15 (4) Section 751.055;
- 16 (5) Section 751.056; and
- 17 (6) Section 751.058.

18 ARTICLE 2. ADVANCE DIRECTIVES

19 SECTION 2.01. Sections 166.002(4) and (8), Health and
20 Safety Code, are amended to read as follows:

21 (4) "Competent" means possessing the ability, based on
22 the attending physician's opinion [~~reasonable medical judgment~~],
23 to understand and appreciate the nature and consequences of a
24 treatment decision, including the significant benefits and harms of
25 and reasonable alternatives to a proposed treatment decision.

26 (8) "Incompetent" means lacking the ability, based on
27 the attending physician's opinion [~~reasonable medical judgment~~],

1 to understand and appreciate the nature and consequences of a
2 treatment decision, including the significant benefits and harms of
3 and reasonable alternatives to a proposed treatment decision.

4 SECTION 2.02. Section 166.003, Health and Safety Code, is
5 amended to read as follows:

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

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

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

12 (A) a person designated by the declarant to make
13 a treatment decision;

14 (B) a person related to the declarant by blood or
15 marriage;

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

19 (D) the attending physician;

20 (E) an employee of the attending physician;

21 (F) an owner, operator, or employee of a health
22 care facility in which the declarant is a patient [~~if the employee~~
23 ~~is providing direct patient care to the declarant or is an officer,~~
24 ~~director, partner, or business office employee of the health care~~
25 ~~facility or of any parent organization of the health care~~
26 ~~facility~~]; or

27 (G) a person who, at the time the written advance

1 directive is executed or, if the directive is a nonwritten
2 directive issued under this chapter, at the time the nonwritten
3 directive is issued, has a claim against any part of the declarant's
4 estate after the declarant's death.

5 SECTION 2.03. Section 166.033, Health and Safety Code, is
6 amended to read as follows:

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

9 DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

10 Instructions for completing this document:

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

19 You are encouraged to discuss your values and wishes with
20 your family or chosen spokesperson, as well as your physician. Your
21 physician, other health care provider, or medical institution may
22 provide you with various resources to assist you in completing your
23 advance directive. Brief definitions are listed below and may aid
24 you in your discussions and advance planning. Initial the
25 treatment choices that best reflect your personal preferences.
26 Provide a copy of your directive to your physician, usual hospital,
27 and family or spokesperson. Consider a periodic review of this

1 document. By periodic review, you can best assure that the
2 directive reflects your preferences.

3 In addition to this advance directive, Texas law provides for
4 two other types of directives that can be important during a serious
5 illness. These are the Medical Power of Attorney and the
6 Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss
7 these with your physician, family, hospital representative, or
8 other advisers. You may also wish to complete a directive related
9 to the donation of organs and tissues.

10 DIRECTIVE

11 I, _____, recognize that the best health care is based
12 upon a partnership of trust and communication with my physician. My
13 physician and I will make health care decisions together as long as
14 I am of sound mind and able to make my wishes known. If there comes
15 a time that I am unable to make medical decisions about myself
16 because of illness or injury, I direct that the following treatment
17 preferences be honored:

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

22 _____ I request that all treatments
23 other than those needed to keep
24 me comfortable be discontinued or
25 withheld and my physician allow
26 me to die as gently as possible;
27 OR

1 _____ I request that I be kept alive in
2 this terminal condition using
3 available life-sustaining
4 treatment. (THIS SELECTION DOES
5 NOT APPLY TO HOSPICE CARE.)

6 If, in the judgment of my physician, I am suffering with an
7 irreversible condition so that I cannot care for myself or make
8 decisions for myself and am expected to die without life-sustaining
9 treatment provided in accordance with prevailing standards of care:

10 _____ I request that all treatments
11 other than those needed to keep
12 me comfortable be discontinued or
13 withheld and my physician allow
14 me to die as gently as possible;
15 OR

16 _____ I request that I be kept alive in
17 this irreversible condition
18 using available life-sustaining
19 treatment. (THIS SELECTION DOES
20 NOT APPLY TO HOSPICE CARE.)

21 Additional requests: (After discussion with your physician,
22 you may wish to consider listing particular treatments in this
23 space that you do or do not want in specific circumstances, such as
24 artificial nutrition and fluids, intravenous antibiotics, etc. Be
25 sure to state whether you do or do not want the particular
26 treatment.)

27 _____

1 _____
2 _____

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

7 If I do not have a Medical Power of Attorney, and I am unable
8 to make my wishes known, I designate the following person(s) to make
9 treatment decisions with my physician compatible with my personal
10 values:

- 11 1. _____
- 12 2. _____

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

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

27 Signed _____ Date _____ City, County, State of

1 Residence _____

2 Either a notary public or two ~~[Two]~~ competent adult witnesses
3 must sign below, acknowledging the signature of the declarant. If
4 this instrument is acknowledged before two witnesses, the ~~[The]~~
5 witness designated as Witness 1 may not be a person designated to
6 make a treatment decision for the patient and may not be related to
7 the patient by blood or marriage. This witness may not be entitled
8 to any part of the estate and may not have a claim against the estate
9 of the patient. This witness may not be the attending physician or
10 an employee of the attending physician. ~~[If this witness is an~~
11 ~~employee of a health care facility in which the patient is being~~
12 ~~cared for, this witness may not be involved in providing direct~~
13 ~~patient care to the patient.]~~ This witness may not be an officer,
14 director, partner, or business office employee of a health care
15 facility in which the patient is being cared for or of any parent
16 organization of the health care facility.

17 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

18 State of Texas

19 County of _____

20 This instrument was acknowledged before me on _____

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

22 _____

23 NOTARY PUBLIC, State of

24 Texas

25 Notary's printed name:

26 _____

27 My commission expires:

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OR

SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

Witness 1 _____ Witness 2 _____

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

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

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

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

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

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a

1 particular outcome. This is a very personal decision that you may
2 wish to discuss with your physician, family, or other important
3 persons in your life.

4 "Life-sustaining treatment" means treatment that, based on
5 reasonable medical judgment, sustains the life of a patient and
6 without which the patient will die. The term includes both
7 life-sustaining medications and artificial life support such as
8 mechanical breathing machines, kidney dialysis treatment, and
9 artificial hydration and nutrition. The term does not include the
10 administration of pain management medication, the performance of a
11 medical procedure necessary to provide comfort care, or any other
12 medical care provided to alleviate a patient's pain.

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

18 Explanation: Many serious illnesses may be considered
19 irreversible early in the course of the illness, but they may not be
20 considered terminal until the disease is fairly advanced. In
21 thinking about terminal illness and its treatment, you again may
22 wish to consider the relative benefits and burdens of treatment and
23 discuss your wishes with your physician, family, or other important
24 persons in your life.

25 SECTION 2.04. Sections [166.152\(b\)](#) and (g), Health and
26 Safety Code, are amended to read as follows:

27 (b) An agent may exercise authority only when, in the

1 opinion of the principal's attending physician, the principal is
2 incompetent or unable to make and communicate a choice about a
3 specific health care decision [~~if the principal's attending~~
4 ~~physician certifies in writing and files the certification in the~~
5 ~~principal's medical record that, based on the attending physician's~~
6 ~~reasonable medical judgment, the principal is incompetent~~].

7 (g) The power of attorney is effective indefinitely on
8 execution as provided by this subchapter and delivery of the
9 document to the agent, unless it is revoked as provided by this
10 subchapter [~~or the principal becomes competent~~]. If the medical
11 power of attorney includes an expiration date and on that date the
12 principal is incompetent or unable to make and communicate a health
13 care decision, the power of attorney continues to be effective
14 until the principal becomes competent and capable of making and
15 communicating a health care decision, unless it is revoked as
16 provided by this subchapter.

17 SECTION 2.05. Subchapter D, Chapter 166, Health and Safety
18 Code, is amended by adding Section 166.1525 to read as follows:

19 Sec. 166.1525. DESIGNATION OF CO-AGENTS. A medical power
20 of attorney may provide for co-agents. Unless the medical power of
21 attorney provides otherwise, each co-agent is authorized by the
22 principal to act independently, and third parties may rely on the
23 decisions of any co-agent.

24 SECTION 2.06. Section 166.155, Health and Safety Code, is
25 amended to read as follows:

26 Sec. 166.155. REVOCATION; EFFECT OF DIVORCE. (a) A medical
27 power of attorney is revoked by:

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

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

8 (b) Divorce [~~(3) the divorce~~] of the principal and spouse
9 revokes any designation in a medical power of attorney of the
10 divorced [~~, if the~~] spouse as an agent [~~is the principal's agent,~~]
11 unless the medical power of attorney specifically provides
12 otherwise. Divorce does not revoke the designation of other agents
13 listed in the medical power of attorney.

14 (c) [~~(b)~~] A principal's licensed or certified health or
15 residential care provider who is informed of or provided with a
16 revocation of a medical power of attorney or revocation of the
17 designation of a divorced spouse as an agent shall immediately
18 record the revocation in the principal's medical record and give
19 notice of the revocation to the agent and any known health and
20 residential care providers currently responsible for the
21 principal's care.

22 SECTION 2.07. Subchapter D, Chapter 166, Health and Safety
23 Code, is amended by adding Section 166.1625 to read as follows:

24 Sec. 166.1625. PERMISSIBLE FORMS OF MEDICAL POWER OF
25 ATTORNEY. (a) A medical power of attorney may be in the form
26 described by Section 166.164 or may be in another form that meets
27 the requirements of this subchapter or that is authorized under

1 Section 166.005. An example alternative form is the health care
2 power of attorney form produced by the Commission on Law and Aging,
3 American Bar Association, which may be accessible on the American
4 Bar Association's Internet website.

5 (b) A durable power of attorney or similar document executed
6 by a veteran of the United States armed forces that is in compliance
7 with the advance directive requirements of the United States
8 Department of Veterans Affairs is valid and enforceable in this
9 state. This subsection does not authorize the administration,
10 withholding, or withdrawal of health care otherwise prohibited by
11 the laws of this state.

12 SECTION 2.08. Section 166.164, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The
15 medical power of attorney may [~~must~~] be in [~~substantially~~] the
16 following form:

17 MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

18 I, _____ (insert your name) appoint:

19 Name: _____

20 Address: _____

21 Phone _____

22 as my agent to make any and all health care decisions for me,
23 except to the extent I state otherwise in this document. This
24 medical power of attorney is effective only when, in the opinion of
25 my attending physician, I am incompetent or I am unable to make and
26 communicate a choice about a particular health care decision [~~takes~~
27 ~~effect if I become unable to make my own health care decisions and~~

1 ~~this fact is certified in writing by my physician]~~.

2 LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE
3 AS FOLLOWS:_____

4 _____

5 DESIGNATION OF ALTERNATE AGENT.

6 (You are not required to designate an alternate agent but you
7 may do so. An alternate agent may make the same health care
8 decisions as the designated agent if the designated agent is unable
9 or unwilling to act as your agent. If the agent designated is your
10 spouse, the designation of that spouse is automatically revoked by
11 law if your marriage is dissolved unless this document provides
12 otherwise, but the remainder of this document is valid.)

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

17 A. First Alternate Agent

18 Name:_____

19 Address:_____

20 Phone _____

21 B. Second Alternate Agent

22 Name:_____

23 Address:_____

24 Phone _____

25 I intend to keep the [~~The~~] original of this document [~~is~~

26 ~~kept~~] at:

27 _____

1 _____
2 _____

3 I intend for the [The] following individuals or
4 institutions to have signed copies:

5 Name: _____

6 Address: _____

7 _____

8 Name: _____

9 Address: _____

10 _____

11 DURATION.

12 I understand that this power of attorney exists indefinitely
13 from the date I execute this document unless I establish a shorter
14 time or revoke the power of attorney.

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

17 If I am incompetent or unable to make and communicate health
18 care decisions for myself when this power of attorney expires, the
19 authority I have granted my agent continues to exist until the time
20 I become able to make and communicate health care decisions for
21 myself.

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

24 PRIOR DESIGNATIONS REVOKED.

25 I revoke any prior medical power of attorney.

26 INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

27 The medical power of attorney is an important legal document.

1 Before signing this document, you should know these important
2 facts:

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

8 Because "health care" means any treatment, service, or
9 procedure to maintain, diagnose, or treat your physical or mental
10 condition, your agent has the power to make a broad range of health
11 care decisions for you. Your agent may consent, refuse to consent,
12 or withdraw consent to medical treatment and may make decisions
13 about withdrawing or withholding life-sustaining treatment. Your
14 agent may not consent to voluntary inpatient mental health
15 services, convulsive treatment, psychosurgery, or abortion.

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

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

21 Your agent is obligated to follow your instructions when
22 making decisions on your behalf. Unless you state otherwise, your
23 agent, when making decisions about your health care, has the same
24 authority to make those decisions as you would have if you were
25 competent or able to communicate.

26 It is important that you discuss your medical power of
27 attorney with your physician or other health care provider. Before

1 you sign any medical power of attorney, make sure that you
2 understand the nature and range of decisions that may be made on
3 your behalf. If you do not have a physician, you should talk with
4 someone else who is knowledgeable about these issues and can answer
5 your questions. You do not need a lawyer's assistance to complete
6 this document, but if there is anything in this document that you do
7 not understand, you should ask a lawyer to explain it to you.

8 The person you appoint as agent should be someone you know and
9 trust. The person must be 18 years of age or older or a person under
10 18 years of age who has had the disabilities of minority removed.
11 If you appoint your health or residential care provider (e.g., your
12 physician or an employee of a home health agency, hospital, nursing
13 home, or residential care home, other than a relative), that person
14 has to choose between acting as your agent or as your health or
15 residential care provider; the law does not permit a person to do
16 both at the same time.

17 You should inform the person you appoint that you want the
18 person to be your health care agent. You should discuss your
19 medical power of attorney with your agent and your physician and
20 give each a signed copy. You may indicate on the document itself
21 the people and institutions that you intend to have signed copies.
22 Your agent is not liable for health care decisions made in good
23 faith on your behalf.

24 After you have signed your medical power of attorney, you
25 retain the right to make health care decisions for yourself as long
26 as you are competent and can communicate your health care
27 decisions, and treatment cannot be given to you or stopped over your

1 objection. You have the right to revoke the authority granted to
2 your agent by informing your agent or your health or residential
3 care provider orally or in writing or by your execution of a
4 subsequent medical power of attorney. Unless you state otherwise,
5 your appointment of a spouse dissolves on divorce.

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

9 You may wish to designate an alternate agent in the event that
10 your agent is unwilling, unable, or ineligible to act as your agent.
11 Any alternate agent you designate has the same authority as the
12 agent to make health care decisions for you.

13 You may wish to provide for co-agents to serve. Unless your
14 medical power of attorney states differently, each co-agent is
15 authorized to act independently and third parties may rely on the
16 decisions of either co-agent.

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

18 (1) the person you have designated as your agent;
19 (2) a person related to you by blood or marriage;
20 (3) a person entitled to any part of your estate after
21 your death under a will or codicil executed by you or by operation
22 of law;

23 (4) your attending physician;
24 (5) an employee of your attending physician;
25 (6) an owner, operator, or employee of a health care
26 facility in which you are a patient; or

27 (7) a person who, at the time this medical power of

1 attorney is executed, has a claim against any part of your estate
2 after your death.

3 ~~[ACKNOWLEDGMENT OF DISCLOSURE STATEMENT.~~

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

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

10 SIGNATURE ACKNOWLEDGED BEFORE NOTARY

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

13 _____

14 (City and State)

15 _____

16 (Signature)

17 _____

18 (Print Name)

19 State of Texas

20 County of _____

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

23 _____

24 NOTARY PUBLIC, State of Texas

25 Notary's printed name:

26 _____

27 My commission expires:

1 _____

2 OR

3 SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES

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

5 day of _____ (month, year) at

6 _____

7 (City and State)

8 _____

9 (Signature)

10 _____

11 (Print Name)

12 STATEMENT OF FIRST WITNESS.

13 I am not the person appointed as agent by this document. I am
14 not related to the principal by blood or marriage. I would not be
15 entitled to any portion of the principal's estate on the principal's
16 death. I am not the attending physician of the principal or an
17 employee of the attending physician. I have no claim against any
18 portion of the principal's estate on the principal's
19 death. [~~Furthermore, if~~] I am not an owner, operator, or employee
20 of a health care facility in which the principal is a patient[~~, I am~~
21 ~~not involved in providing direct patient care to the principal and~~
22 ~~am not an officer, director, partner, or business office employee~~
23 ~~of the health care facility or of any parent organization of the~~
24 ~~health care facility~~].

25 Signature: _____

26 Print Name: _____ Date: _____

27 Address: _____

1 SIGNATURE OF SECOND WITNESS.

2 Signature:_____

3 Print Name:_____ Date:_____

4 Address:_____

5 SECTION 2.09. Sections 166.162 and 166.163, Health and
6 Safety Code, are repealed.

7 SECTION 2.10. The changes in law made by this article apply
8 only to the validity of a document executed on or after the
9 effective date of this Act. The validity of a document executed
10 before the effective date of this Act is governed by the law in
11 effect on the date the document was executed, and that law continues
12 in effect for that purpose.

13 SECTION 2.11. (a) Except as otherwise provided in this
14 section, the changes in law made by this article to the Health and
15 Safety Code apply to:

16 (1) a medical power of attorney created before, on, or
17 after the effective date of this Act; and

18 (2) a judicial proceeding concerning a medical power
19 of attorney that:

20 (A) commences on or after the effective date of
21 this Act; or

22 (B) is pending on the effective date of this Act.

23 (b) If the court finds that application of a provision of
24 this article would substantially interfere with the effective
25 conduct of a judicial proceeding concerning a medical power of
26 attorney that is pending on the effective date of this Act or
27 prejudice the rights of a party to the proceeding, the provision of

1 this article does not apply, and the law in effect immediately
2 before the effective date of this Act applies in those
3 circumstances.

4 ARTICLE 3. EFFECTIVE DATE

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