

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As part of its ongoing review of Texas law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (a.k.a. the REPTL Section) has proposed S.B. 926, which provides several changes to the Texas Durable Power of Attorney Act (the Act). These changes are intended to ensure that validly executed durable powers of attorney can be used more effectively in Texas, in furtherance of the legislative goal of reducing the need for guardianship proceedings, and to provide additional powers to the designated agents. Many clarification and modernization changes are also proposed.

New provisions have been included to address acceptance and reliance issues, as many Texas citizens have been unable to effectively use durable powers of attorney in Texas due to rejection of those powers for arbitrary and often unexplained reasons. These new provisions balance the rights of principals and those asked to rely upon the durable powers of attorney so that principals can be more confident that their wishes will be followed while still affording numerous options for third parties to reasonably refuse acceptance without any increased liability.

As proposed, S.B. 926 amends current law relating to durable powers of attorney.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 751, Estates Code, by adding Section 751.0015, as follows:

Sec. 751.0015. **APPLICABILITY OF SUBTITLE.** Provides that this subtitle (Durable Powers of Attorney) applies to all powers of attorney except:

- (1) a power of attorney to the extent it is coupled with an interest in the subject of the power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;
- (2) a medical power of attorney, as defined by Section 166.002 (Definitions), Health and Safety Code;
- (3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or
- (4) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 2. Amends Subchapter A, Chapter 751, Estates Code, by amending Section 751.002 and adding Sections 751.0021, 751.0022, 751.0023, 751.0024, and 751.007, as follows:

Sec. 751.002. New heading: DEFINITIONS. Defines “actual knowledge,” “agent,” “durable power of attorney,” “power of attorney,” “principal,” and “record.”

Sec. 751.0021. REQUIREMENTS OF DURABLE POWER OF ATTORNEY. (a) Creates this subsection from existing text. Deletes existing text defining “durable power of attorney.” Provides that an instrument is a durable power of attorney if the instrument:

(1) is a writing or other record;

(1-a) designates another person as agent, rather than designates another person as attorney in fact or agent. Redesignates text of existing Subdivision (1) as Subdivision (1-a);

(2) is signed by an adult principal or in the adult principal’s conscious presence by another adult directed by the principal to sign the principal’s name on the instrument;

(3) contains:

(A) makes no changes to this paragraph;

(B) certain words that show the principal’s intent that the authority conferred on the agent, rather than conferred on the attorney in fact or agent, are required to be exercised notwithstanding the principal’s subsequent disability or incapacity; and

(4) is acknowledged by the principal or another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to take certain actions.

(b) Provides that, if the law of the jurisdiction that determines the meaning and effect of a power of attorney under Section 751.0024 provides that the authority conferred on the agent is exercisable notwithstanding the principal’s subsequent disability or incapacity, the power of attorney is considered a durable power of attorney under this subtitle.

Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE. Provides that a signature on a durable power of attorney that purports to be the signature of the principal or of another adult directed by the principal as authorized by Section 751.0021(a)(2) is presumed to be genuine, and the durable power of attorney is presumed to have been executed under Section 751.0021(a) if the officer taking the acknowledgment has complied with the requirements of Section 121.004(b) (relating to requiring the officer to take certain actions relating to the acknowledgment of a written instrument), Civil Practice and Remedies Code.

Sec. 751.0023. VALIDITY OF POWER OF ATTORNEY. (a) Provides that a durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.0021(a).

(b) Provides that a durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with certain requirements by law.

(c) Provides that, except as otherwise provided by statute other than this subtitle or by the durable power of attorney, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and authorizes it to be relied on, without liability, by a person who is asked to accept the durable power of attorney to the same extent as the original.

Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF ATTORNEY. Provides that the meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by certain laws.

Sec. 751.007. CONFLICT WITH OTHER LAW. Provides that this subtitle does not supersede any other law applicable to financial institutions or other entities and provides that, to the extent of any conflict between this subtitle and another law applicable to an entity, the other law controls.

SECTION 3. Amends Chapter 751, Estates Code, by adding Subchapters A-1 and A-2, as follows:

SUBCHAPTER A-1. APPOINTMENT OF AGENTS

Sec. 751.021. CO-AGENTS. Authorizes a principal to designate in a durable power of attorney two or more persons to act as co-agents and authorizes each co-agent, unless the power of attorney otherwise provides, to exercise authority independently of the other co-agent.

Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT. Provides that, except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

Sec. 751.023. SUCCESSOR AGENTS. (a) Authorizes a principal to designate in a durable power of attorney one or more successor agents to act if an agent resigns, dies, or becomes incapacitated, is not qualified to serve, or declines to serve.

(b) Authorizes a principal to grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function.

(c) Provides that, unless the durable power of attorney otherwise provides, a successor agent has the same authority as the authority granted to the predecessor agent and is not considered an agent under this subtitle. Prohibits the successor agent from acting until all predecessor agents, including co-agents, to the successor agent have resigned, died, or become incapacitated, are not qualified to serve, or have declined to serve.

Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT. Provides that, unless the durable power of attorney otherwise provides or is in conflict with another applicable agreement or instrument to which the principal is a party, an agent is entitled to reimbursement of reasonable expenses incurred on the principal's behalf and compensation that is reasonable under the circumstances.

SUBCHAPTER A-2. AUTHORITY OF AGENT UNDER DURABLE POWER OF ATTORNEY

Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN LIMITATIONS. (a) Provides that, subject to Subsections (b), (c), and (d) and Section 751.032, if a durable power of attorney grants to an agent the authority to perform all acts that the principal could perform, the agent has the general authority conferred by Subchapter C (Construction of Powers Related to Statutory Durable Power of Attorney), Chapter 752 (Statutory Durable Power of Attorney).

(b) Authorizes the agent to take certain actions on the principal's behalf or with respect to the principal's property only if the durable power of attorney designating the agent expressly grants the agent the authority, and the exercise of

the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject.

(c) Prohibits an agent who is not an ancestor, spouse, or descendant of the principal, notwithstanding a grant of authority to perform an act described by Subsection (b), from exercising authority under the power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise, unless the durable power of attorney otherwise provides.

(d) Provides that, subject to Subsections (b) and (c) and Section 751.032 and if the subjects over which authority is granted in a durable power of attorney are similar or overlap, the broadest authority controls.

(e) Provides that authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether the property is located in this state and the authority is exercised in this state or the power of attorney is executed in this state.

Sec. 751.032. GIFT AUTHORITY. (a) Provides that, in this section, a gift for the benefit of a person includes a gift to a trust, an account under the Texas Uniform Transfers to Minors Act (Chapter 141, Property Code) or a similar law of another state, and a qualified tuition program of any state that meets the requirements of Section 529, Internal Revenue Code of 1986.

(b) Provides that, unless the durable power of attorney otherwise provides, a grant of authority to make a gift is subject to the limitations prescribed by this section.

(c) Provides that language in a durable power of attorney granting general authority with respect to gifts authorizes the agent to only:

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

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

(d) Authorizes an agent to make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if the agent actually knows those objectives. Authorizes the agent, if the agent does not know the principal's objectives, to make a gift of the principal's property only as the agent determines is consistent with the principal's best interest based on all relevant factors, including the factors listed in Section 751.122, as added by this Act, and the principal's personal history of making or joining in making gifts.

Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN BENEFICIARY DESIGNATIONS. (a) Provides that, unless the durable power of attorney otherwise provides and except as provided by Section 751.031(c), authority granted to an agent under Section 751.031(b)(4) (relating to authorizing an agent to create or change a beneficiary designation) empowers the agent to take certain actions relating to a beneficiary designation.

(b) Provides that, if an agent is granted authority under Section 751.031(b)(4) and the durable power of attorney grants the authority to the agent described in

Section 752.108 (Insurance and Annuity Transactions) or 752.113 (Retirement Plan Transactions), then, unless the power of attorney otherwise provides, the authority of the agent to designate the agent as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) (relating to authorizing an attorney in fact or agent to be named a beneficiary of an insurance contract) and 752.113(c) (relating to authorizing an attorney in fact or agent to be named a beneficiary under a retirement plan).

(c) Provides that, if an agent is not granted authority under Section 751.031(b)(4) but the durable power of attorney grants the authority to the agent described in Section 752.108 or 752.113, then, unless the power of attorney otherwise provides and notwithstanding Section 751.031, the agent's authority to designate the agent as a beneficiary is subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

Sec. 751.034. INCORPORATION OF AUTHORITY. (a) Provides that an agent has authority described in this chapter (General Provisions Regarding Durable Powers of Attorney) if the durable power of attorney refers to general authority with respect to the descriptive term for the subjects stated in Chapter 752 or cites the section in which the authority is described.

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

(c) Authorizes a principal to modify authority incorporated by reference.

SECTION 4. Amends Sections 751.051, 751.057, 751.101, 751.102, 751.103, 751.104, 751.105, and 751.106, Estates Code, as follows:

Sec. 751.051. New heading: EFFECT OF ACTS PERFORMED BY AGENT. Provides that an act performed by an agent under a durable power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act. Deletes existing text providing that each act performed by an attorney in fact or agent under a durable power of attorney during a period of the principal's disability or incapacity has the same effect, and inures to the benefit of and binds the principal and the principal's successors in interest, as if the principal were not disabled or incapacitated.

Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING. Makes conforming changes.

Sec. 751.101. FIDUCIARY DUTIES. Provides that a person who accepts appointment as an agent under a durable power of attorney as provided by Section 751.022, rather than an attorney in fact or agent, is a fiduciary and has a duty to inform and to account for actions taken under the power of attorney.

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) Requires the agent to timely inform the principal of each action taken under a durable power of attorney, rather than under the power of attorney. Makes a conforming change.

(b) Makes conforming changes.

Sec. 751.103. MAINTENANCE OF RECORDS. Makes conforming changes.

Sec. 751.104. ACCOUNTING. (a) Makes a conforming change.

(b) Requires an account under Subsection (a) (relating to authorizing the principal to demand an accounting by the agent), unless otherwise directed by the principal,

to include, among certain other items, the property belonging to the principal that has come to the agent's knowledge or into the agent's possession, rather than the property belonging to the principal that has come to the attorney in fact's or agent's knowledge or into the attorney in fact's or agent's possession. Makes conforming changes.

(c) Makes a conforming change.

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. Authorizes the principal, if the agent fails or refuses to complete certain tasks within a certain period, to file suit to terminate the durable power of attorney. Makes conforming changes.

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS. Makes conforming changes.

SECTION 5. Amends Chapter 751, Estates Code, by adding Subchapters C-1 and C-2, as follows:

SUBCHAPTER C-1. OTHER DUTIES OF AGENT

Sec. 751.121. DUTY TO NOTIFY OF BREACH OF FIDUCIARY DUTY BY OTHER AGENT. (a) Requires an agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent to notify the principal and, if the principal is incapacitated, take any action reasonably appropriate under the circumstances to safeguard the principal's best interest. Provides that an agent who fails to notify the principal or take the required action is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action.

(b) Provides that, except as otherwise provided by Subsection (a) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

Sec. 751.122. DUTY TO PRESERVE PRINCIPAL'S ESTATE PLAN. Requires an agent to preserve to the extent reasonably possible the principal's estate plan to the extent the agent has actual knowledge of the plan if preserving the plan is consistent with the principal's best interest based on certain relevant factors.

SUBCHAPTER C-2. DURATION OF DURABLE POWER OF ATTORNEY AND AGENT'S AUTHORITY

Sec. 751.131. TERMINATION OF DURABLE POWER OF ATTORNEY. Provides that a durable power of attorney terminates under certain circumstances.

Sec. 751.132. TERMINATION OF AGENT'S AUTHORITY. (a) Provides that an agent's authority under a durable power of attorney terminates under certain circumstances.

(b) Authorizes an agent's authority, unless the durable power of attorney otherwise provides, to be exercised until the agent's authority terminates under Subsection (a), notwithstanding a lapse of time since the execution of the power of attorney.

Sec. 751.134. EFFECT ON CERTAIN PERSONS OF TERMINATION OF DURABLE POWER OF ATTORNEY OR AGENT'S AUTHORITY. Provides that termination of an agent's authority or of a durable power of attorney is not effective as to the agent or another person who, without actual knowledge of the termination, acts in good faith under or in reliance on the power of attorney. Provides that an act performed as described by this section, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Sec. 751.135. PREVIOUS DURABLE POWER OF ATTORNEY CONTINUES IN EFFECT UNTIL REVOKED. Provides that the execution of a durable power of attorney does not revoke a durable power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other durable powers of attorney are revoked.

SECTION 6. Transfers Section 751.052, Estates Code, to Subchapter C-2, Chapter 751, Estates Code, as added by this Act, redesignates it as Section 751.133, Estates Code, and amends it, as follows:

Sec. 751.133. New heading: RELATION OF AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) Provides that, if, after execution of a durable power of attorney, a court of the principal's domicile appoints a permanent guardian of the estate of the principal, the powers of the agent, rather than the powers of the attorney in fact or agent, terminate on the qualification of the guardian of the estate. Makes conforming changes.

(b) Makes a conforming change.

SECTION 7. Amends Section 751.151, Estates Code, to require a durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, including a reverse mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, including a home equity lien, or other claim or right to real property to be recorded in the office of the county clerk of the county in which the property is located not later than a certain date.

SECTION 8. Amends Chapter 751, Estates Code, by adding Subchapters E and F, as follows:

SUBCHAPTER E. ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY REQUIRED; EXCEPTIONS. (a) Requires a person who is presented with and asked to accept a durable power of attorney by an agent with authority to act under the power of attorney, unless there exists one or more grounds for refusal under Section 751.206, which is added by this Act, to accept the power of attorney or, before accepting the power of attorney, make certain requests, as applicable.

(b) Requires a person who requests a certification or an opinion of counsel, unless one or more grounds for refusal under Section 751.206 exist and except as provided by Subsection (c), to accept the durable power of attorney not later than a certain date.

(c) Authorizes an agent presenting a durable power of attorney for acceptance and the person to whom the power of attorney is presented to agree to extend a period prescribed by Subsection (a) or (b).

(d) Provides that, if an English translation of a durable power of attorney is requested as authorized by Subsection (a)(2)(B) (relating to a request of an English translation not later than a certain date), the power of attorney is not considered presented for acceptance under Subsection (a) until the date the requestor receives the translation. Requires the power of attorney, on and after that date, to be treated as a power of attorney originally prepared in English for all the purposes of this subchapter.

(e) Provides that a person is not required to accept a durable power of attorney under this section if the agent refuses to or does not provide a requested certification, opinion of counsel, or English translation under this subchapter.

Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED. Prohibits a person who is asked to accept a durable power of attorney under Section 751.201 to require that an additional or different form of the power of attorney be presented for authority that is granted in the power of attorney presented to the person or to require the power of attorney be recorded in the office of a county clerk unless the recording of the instrument is required by Section 751.151 or another law of this state.

Sec. 751.203. AGENT'S CERTIFICATION. (a) Authorizes the person to whom the power of attorney is presented, before accepting a durable power of attorney under Section 751.201, to request that the agent presenting the power of attorney provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney.

(b) Sets forth the authorized language and content used in an agent's certification form.

(c) Provides that a certification made in compliance with this section is conclusive proof of the factual matter that is the subject of the certification.

Sec. 751.204. OPINION OF COUNSEL. (a) Authorizes the person to whom the power of attorney is presented, before accepting a durable power of attorney under Section 751.201, to request from the agent presenting the power of attorney an opinion of counsel regarding any matter of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

(b) Requires a requested opinion of counsel, except as otherwise provided in an agreement to extend the request period under Section 751.201(c), to be provided by the principal or agent, at the principal's expense. Authorizes, but does not require, the principal or agent, if without an extension, the requestor requests the opinion later than a certain date, to provide the opinion, at the requestor's expense.

Sec. 751.205. ENGLISH TRANSLATION. (a) Authorizes the person to whom the power of attorney is presented, before accepting a durable power of attorney under Section 751.201 that contains, wholly or partly, language other than English, to request from the agent presenting the power of attorney an English translation of the power of attorney.

(b) Requires a requested English translation, except as otherwise provided in an agreement to extend the request period under Section 751.201(c), to be provided by the principal or agent, at the principal's expense. Authorizes, but does not require, the principal or agent, if without an extension, the requestor requests the translation later than a certain date, to provide the translation, at the requestor's expense.

Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. Sets forth the conditions under which a person is not required to accept a durable power of attorney under this subchapter.

Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE REQUIRED. (a) Requires a person who refuses to accept a durable power of attorney under this subchapter, except as provided by Subsection (b), to provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

(b) Requires a person, if the reason the person is refusing to accept a durable power of attorney is a certain reason, to provide to the agent presenting the power of attorney for acceptance a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a certain reason.

(c) Requires the person to provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

Sec. 751.208. DATE OF ACCEPTANCE. Provides that a durable power of attorney is considered accepted by a person under Section 751.201 on the first day the person agrees to act at the agent's direction under the power of attorney.

Sec. 751.209. GOOD FAITH RELIANCE ON POWER OF ATTORNEY. (a) Authorizes a person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal or of another adult directed by the principal to sign the principal's name as authorized by Section 751.0021 is not genuine to rely on the presumption under Section 751.0022 that the signature is genuine and that the power of attorney was properly executed.

(b) Authorizes a person who in good faith accepts a durable power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority to rely on the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION. Authorizes a person to rely on, without further investigation or liability to another person, an agent's certification, opinion of counsel, or English translation that is provided to the person under this subchapter.

Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS CONDUCTED THROUGH EMPLOYEES. (a) Provides that this section applies to a person who conducts a transaction or activity through an employee of the person.

(b) Provides that, for the purposes of this subchapter, a person is not considered to have actual knowledge of a fact relating to a durable power of attorney, principal, or agent if the employee conducting the transaction or activity involving the power of attorney does not have actual knowledge of the fact.

Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE POWER OF ATTORNEY. (a) Authorizes the principal or an agent acting on the principal's behalf to bring an action against a person who refuses to accept a durable power of attorney in violation of this subchapter.

(b) Prohibits an action to be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

(c) Requires the court, if the court finds that the person refused to accept the durable power of attorney in violation of this subchapter, to order the person to accept the power of attorney and award the plaintiff court costs and reasonable and necessary attorney's fees.

(d) Requires the court to dismiss an action that was commenced after the date a written statement described by Section 751.207(b) was provided to the agent.

(e) Prohibits the court, notwithstanding Subsection (c) and if the agent receives a written statement described by Section 751.207(b) after the date a timely action is commenced under this section, from ordering the person to accept the durable power of attorney, but instead authorizes the court to award the plaintiff court costs and reasonable and necessary attorney's fees.

Sec. 751.213. **LIABILITY OF PRINCIPAL.** Authorizes the principal, in an action under Section 751.212, to be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred in defending the action if the court arrives at certain conclusions.

SUBCHAPTER F. CIVIL REMEDIES

Sec. 751.251. **JUDICIAL RELIEF.** (a) Authorizes certain individuals and entities to bring an action requesting a court to construe a durable power of attorney, or to review an agent's conduct under a durable power of attorney and grant appropriate relief.

(b) Authorizes a person who is asked to accept a durable power of attorney to bring an action requesting a court to construe the power of attorney.

(c) Requires the court, on the principal's motion, to dismiss an action under Subsection (a) unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

SECTION 9. Amends Section 752.051, Estates Code, to set forth the language and content of a "statutory durable power of attorney" form.

SECTION 10. Amends Subchapter B, Chapter 752, Estates Code, by adding Section 752.052, as follows:

Sec. 752.052. **MODIFYING STATUTORY FORM TO GRANT SPECIFIC AUTHORITY.** Authorizes the statutory durable power of attorney to be modified to allow the principal to grant the agent the specific authority described by Section 751.031(b) by including certain language. Sets forth the language.

SECTION 11. Amends Section 752.102, Estates Code, as follows:

Sec. 752.102. **REAL PROPERTY TRANSACTIONS.** (a) Creates this subsection from existing text. Provides that the language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific description of the real property, to, among certain other actions, perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to manage and supervise an interest in real property, including the mineral estate, rather than manage and supervise an interest in real property, including the mineral estate, by, for example: entering into a lease for oil, gas, and mineral purposes; making contracts for development of the mineral estate; or making pooling and unitization agreements. Provides that the language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific description of the real property, to, among certain other actions, enter into certain mineral transactions and designate the property that constitutes the principal's homestead.

(b) Provides the power to mortgage and encumber real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50 (Homestead; Protection from Forced Sale; Mortgages, Trust Deeds, and Liens), Article XVI (General Provisions), Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

SECTION 12. Amends Section 752.108(b), Estates Code, to authorize an attorney in fact or agent, unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), to be named a beneficiary of an insurance contract or an extension, renewal, or substitute for the contract only to the extent the attorney in

fact or agent was named as a beneficiary by the principal, rather than named as a beneficiary under a contract procured by the principal before executing the power of attorney.

SECTION 13. Amends Sections 752.109 and 752.111, Estates Code, as follows:

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

Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. Provides that the language conferring authority with respect to personal and family maintenance in a statutory durable power of attorney empowers the attorney in fact or agent to, among certain other actions, perform certain acts necessary in relation to the principal's mail and, subject to the needs of the individuals described by Subdivision (1) (relating to performing certain acts necessary to maintain the customary standard of living of certain persons), provide for the reasonable care of the principal's pets.

SECTION 14. Amends Sections 752.113(b) and (c), Estates Code, as follows:

(b) Provides that the language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the attorney in fact or agent to perform any lawful act the principal may perform with respect to a transaction relating to a retirement plan, including to, among certain other actions, waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan, rather than waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

(c) Authorizes an attorney in fact or agent, unless the principal has granted the authority to create or change a beneficiary designation expressly as required by Section 751.031(b)(4), to be named a beneficiary under a retirement plan only to the extent the attorney in fact or agent was a named a beneficiary by the principal under the retirement plan or, in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan. Deletes existing text authorizing an attorney in fact or agent to be named a beneficiary under a retirement plan only to the extent the attorney in fact or agent was a named beneficiary under the retirement plan before the durable power of attorney was executed.

SECTION 15. Repealers: Sections 751.004 (Duration of Durable Power of Attorney), 751.053 (Effect of Principal's Divorce or Marriage Annulment if Former Spouse is Attorney in Fact or Agent), 751.054 (Knowledge of Termination of Power; Good-Faith Acts), 751.055 (Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance), 751.056 (Nonliability of Third Party on Good-Faith Reliance), and 751.058 (Effect of Revocation of Durable Power of Attorney on Third Party), Estates Code.

SECTION 16. (a) Provides that, except as otherwise provided by this Act, this Act applies to a durable power of attorney, including a statutory durable power of attorney, created before, on, or after the effective date of this Act and a judicial proceeding concerning a durable power of attorney pending on, or commenced on or after, the effective date of this Act.

(b) Provides that the following provisions apply only to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act:

(1) Section 751.024, Estates Code, as added by this Act;

(2) Subchapter A-2, Chapter 751, Estates Code, as added by this Act;

(3) Subchapters B, C, and D, Chapter 751, Estates Code, as amended by this Act; and

(4) Chapter 752, Estates Code, as amended by this Act.

(c) Provides that a durable power of attorney, including a statutory durable power of attorney, executed before the effective date of this Act is governed by the provisions specified in Subsections (b)(3) and (4) as those provisions existed on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose.

(d) Provides that, if the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning a durable power of attorney commenced before the effective date of this Act or would prejudice the rights of a party to the proceeding, the provision of this Act does not apply and the former law continues in effect for that purpose and applies in those circumstances.

(e) Provides that an act performed by a principal or agent with respect to a durable power of attorney before the effective date of this Act is not affected by this Act.

SECTION 17. Effective date: September 1, 2017.