

By: Wray

H.B. No. 1974

A BILL TO BE ENTITLED

AN ACT

relating to durable powers of attorney.

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

SECTION 1. Subchapter A, Chapter 751, Estates Code, is amended by adding Section 751.0015 to read as follows:

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

(1) a power of attorney to the extent it is coupled with an interest in the subject of 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, 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. Subchapter A, Chapter 751, Estates Code, is amended by amending Sections 751.002, 751.003, and 751.006 and adding Sections 751.00201, 751.0021, 751.0022, 751.0023, 751.0024, and 751.007 to read as follows:

Sec. 751.002. DEFINITIONS [~~DEFINITION OF DURABLE POWER OF ATTORNEY~~]. In this subtitle:

1 (1) "Actual knowledge" means the knowledge of a person
2 without that person making any due inquiry, and without any imputed
3 knowledge, except as expressly set forth in Section 751.211(c).

4 (2) "Affiliate" means a business entity that directly
5 or indirectly controls, is controlled by, or is under common
6 control with another business entity.

7 (3) "Agent" includes:

8 (A) an attorney in fact; and

9 (B) a co-agent, successor agent, or successor
10 co-agent.

11 (4) "Durable power of attorney" means a writing or
12 other record that complies with the requirements of Section
13 751.0021(a) or is described by Section 751.0021(b).

14 (5) "Principal" means an adult person who signs or
15 directs the signing of the person's name on a power of attorney that
16 designates an agent to act on the person's behalf.

17 (6) "Record" means information that is inscribed on a
18 tangible medium or that is stored in an electronic or other medium
19 and is retrievable in perceivable form.

20 Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR
21 PURPOSES OF DURABLE POWER OF ATTORNEY. Unless otherwise defined by
22 a durable power of attorney, a person is considered disabled or
23 incapacitated for purposes of the durable power of attorney if a
24 physician certifies in writing at a date later than the date the
25 durable power of attorney is executed that, based on the
26 physician's medical examination of the person, the person is
27 determined to be mentally incapable of managing the person's

1 financial affairs.

2 Sec. 751.0021. REQUIREMENTS OF DURABLE POWER OF ATTORNEY.

3 (a) An instrument is a durable power of attorney for purposes of
4 this subtitle if the [A "durable power of attorney" means a written]
5 instrument [~~that~~]:

6 (1) is a writing or other record that designates
7 another person as [~~attorney in fact or~~] agent and grants authority
8 to that agent to act in the place of the principal, regardless of
9 whether the term "power of attorney" is used;

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

13 (3) contains:

14 (A) the words:

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

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

19 (B) words similar to those of Paragraph (A) that
20 clearly indicate [show the principal's intent] that the authority
21 conferred on the [~~attorney in fact or~~] agent shall be exercised
22 notwithstanding the principal's subsequent disability or
23 incapacity; and

24 (4) is acknowledged by the principal or another adult
25 directed by the principal as authorized by Subdivision (2) before
26 an officer authorized under the laws of this state or another state
27 to:

1 (A) take acknowledgments to deeds of conveyance;
2 and

3 (B) administer oaths.

4 (b) If the law of a jurisdiction other than this state
5 determines the meaning and effect of a writing or other record that
6 grants authority to an agent to act in the place of the principal,
7 regardless of whether the term "power of attorney" is used, and that
8 law provides that the authority conferred on the agent is
9 exercisable notwithstanding the principal's subsequent disability
10 or incapacity, the writing or other record is considered a durable
11 power of attorney under this subtitle.

12 Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE. A
13 signature on a durable power of attorney that purports to be the
14 signature of the principal or of another adult directed by the
15 principal as authorized by Section 751.0021(a)(2) is presumed to be
16 genuine, and the durable power of attorney is presumed to have been
17 executed under Section 751.0021(a) if the officer taking the
18 acknowledgment has complied with the requirements of Section
19 121.004(b), Civil Practice and Remedies Code.

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

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

26 (1) the law of the jurisdiction that determines the
27 meaning and effect of the durable power of attorney as provided by

1 Section 751.0024; or

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

4 (c) Except as otherwise provided by statute other than this
5 subtitle or by the durable power of attorney, a photocopy or
6 electronically transmitted copy of an original durable power of
7 attorney has the same effect as the original instrument and may be
8 relied on, without liability, by a person who is asked to accept the
9 durable power of attorney to the same extent as the original.

10 Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF
11 ATTORNEY. The meaning and effect of a durable power of attorney is
12 determined by the law of the jurisdiction indicated in the durable
13 power of attorney and, in the absence of an indication of
14 jurisdiction, by:

15 (1) the law of the jurisdiction of the principal's
16 domicile, if the principal's domicile is indicated in the power of
17 attorney; or

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

21 Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
22 This subtitle shall be applied and construed to effect the general
23 purpose of this subtitle, which is to make uniform to the fullest
24 extent possible the law with respect to the subject of this subtitle
25 among states enacting these provisions.

26 Sec. 751.006. REMEDIES UNDER OTHER LAW [~~RIGHTS CUMULATIVE~~].
27 The remedies [~~rights set out~~] under this chapter [~~subtitle~~] are not

1 exclusive and do not abrogate any right or remedy under any law of
2 this state other than this chapter [~~cumulative of any other rights~~
3 ~~or remedies the principal may have at common law or other applicable~~
4 ~~statutes and are not in derogation of those rights~~].

5 Sec. 751.007. CONFLICT WITH OR EFFECT ON OTHER LAW. This
6 subtitle does not:

7 (1) supersede any other law applicable to financial
8 institutions or other entities, and to the extent of any conflict
9 between this subtitle and another law applicable to an entity, the
10 other law controls; or

11 (2) have the effect of validating a conveyance of an
12 interest in real property executed by an agent under a durable power
13 of attorney if the conveyance is determined under a statute or
14 common law to be void but not voidable.

15 SECTION 3. Chapter 751, Estates Code, is amended by adding
16 Subchapters A-1 and A-2 to read as follows:

17 SUBCHAPTER A-1. APPOINTMENT OF AGENTS

18 Sec. 751.021. CO-AGENTS. A principal may designate in a
19 durable power of attorney two or more persons to act as co-agents.
20 Unless the durable power of attorney otherwise provides, each
21 co-agent may exercise authority independently of the other
22 co-agent.

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

1 appointment.

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

6 (b) A principal may grant authority to designate one or more
7 successor agents to an agent or other person designated by name,
8 office, or function.

9 (c) Unless the durable power of attorney otherwise
10 provides, a successor agent:

11 (1) has the same authority as the authority granted to
12 the predecessor agent; and

13 (2) is not considered an agent under this subtitle and
14 may not act until all predecessor agents, including co-agents, to
15 the successor agent have resigned, died, or become incapacitated,
16 are not qualified to serve, or have declined to serve.

17 Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT.
18 Unless the durable power of attorney otherwise provides, an agent
19 is entitled to:

20 (1) reimbursement of reasonable expenses incurred on
21 the principal's behalf; and

22 (2) compensation that is reasonable under the
23 circumstances.

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

25 Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN
26 LIMITATIONS. (a) Subject to Subsections (b), (c), and (d) and
27 Section 751.032, if a durable power of attorney grants to an agent

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

4 (b) An agent may take the following actions on the
5 principal's behalf or with respect to the principal's property only
6 if the durable power of attorney designating the agent expressly
7 grants the agent the authority and the exercise of the authority is
8 not otherwise prohibited by another agreement or instrument to
9 which the authority or property is subject:

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

12 (2) make a gift;

13 (3) create or change rights of survivorship;

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

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

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

25 (d) Subject to Subsections (b) and (c) and Section 751.032,
26 if the subjects over which authority is granted in a durable power
27 of attorney are similar or overlap, the broadest authority

1 controls.

2 (e) Authority granted in a durable power of attorney is
3 exercisable with respect to property that the principal has when
4 the power of attorney is executed or acquires later, regardless of
5 whether:

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

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

9 Sec. 751.032. GIFT AUTHORITY. (a) In this section, a gift
10 for the benefit of a person includes a gift to:

11 (1) a trust;

12 (2) an account under the Texas Uniform Transfers to
13 Minors Act (Chapter 141, Property Code) or a similar law of another
14 state; and

15 (3) a qualified tuition program of any state that
16 meets the requirements of Section 529, Internal Revenue Code of
17 1986.

18 (b) Unless the durable power of attorney otherwise
19 provides, a grant of authority to make a gift is subject to the
20 limitations prescribed by this section.

21 (c) Language in a durable power of attorney granting general
22 authority with respect to gifts authorizes the agent to only:

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

27 (A) the annual dollar limits of the federal gift

1 tax exclusion under Section 2503(b), Internal Revenue Code of 1986,
2 regardless of whether the federal gift tax exclusion applies to the
3 gift; or

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

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

11 (d) An agent may make a gift of the principal's property
12 only as the agent determines is consistent with the principal's
13 objectives if the agent actually knows those objectives. If the
14 agent does not know the principal's objectives, the agent may make a
15 gift of the principal's property only as the agent determines is
16 consistent with the principal's best interest based on all relevant
17 factors, including the factors listed in Section 751.122 and the
18 principal's personal history of making or joining in making gifts.

19 Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN
20 BENEFICIARY DESIGNATIONS. (a) Unless the durable power of
21 attorney otherwise provides, and except as provided by Section
22 751.031(c), authority granted to an agent under Section
23 751.031(b)(4) empowers the agent to:

24 (1) create or change a beneficiary designation under
25 an account, contract, or another arrangement that authorizes the
26 principal to designate a beneficiary, including an insurance or
27 annuity contract, a qualified or nonqualified retirement plan,

1 including a retirement plan as defined by Section 752.113, an
2 employment agreement, including a deferred compensation agreement,
3 and a residency agreement;

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

6 (3) create or change a nontestamentary payment or
7 transfer under Chapter 111.

8 (b) If an agent is granted authority under Section
9 751.031(b)(4) and the durable power of attorney grants the
10 authority to the agent described in Section 752.108 or 752.113,
11 then, unless the power of attorney otherwise provides, the
12 authority of the agent to designate the agent as a beneficiary is
13 not subject to the limitations prescribed by Sections 752.108(b)
14 and 752.113(c).

15 (c) If an agent is not granted authority under Section
16 751.031(b)(4) but the durable power of attorney grants the
17 authority to the agent described in Section 752.108 or 752.113,
18 then, unless the power of attorney otherwise provides and
19 notwithstanding Section 751.031, the agent's authority to
20 designate the agent as a beneficiary is subject to the limitations
21 prescribed by Sections 752.108(b) and 752.113(c).

22 Sec. 751.034. INCORPORATION OF AUTHORITY. (a) An agent has
23 authority described in this chapter if the durable power of
24 attorney refers to general authority with respect to the
25 descriptive term for the subjects stated in Chapter 752 or cites the
26 section in which the authority is described.

27 (b) A reference in a durable power of attorney to general

1 authority with respect to the descriptive term for a subject in
2 Chapter 752 or a citation to one of those sections incorporates the
3 entire section as if the section were set out in its entirety in the
4 power of attorney.

5 (c) A principal may modify authority incorporated by
6 reference.

7 SECTION 4. Sections 751.051, 751.057, 751.101, 751.102,
8 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended
9 to read as follows:

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

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

23 (b) Any act the [~~attorney in fact or~~] agent may undertake
24 with respect to the principal's property is subject to the
25 limitations and requirements of the United States Bankruptcy Code
26 (11 U.S.C. Section 101 et seq.) until a final determination is made
27 in the bankruptcy proceeding.

1 Sec. 751.101. FIDUCIARY DUTIES. A person who accepts
2 appointment as an agent under a durable power of attorney as
3 provided by Section 751.022 [~~An attorney in fact or agent~~] is a
4 fiduciary as to the principal only when acting as an agent under the
5 power of attorney and has a duty to inform and to account for
6 actions taken under the power of attorney.

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (6) each known liability; and

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

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

20 Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the
21 [~~attorney in fact or~~] agent fails or refuses to inform the
22 principal, provide documentation, or deliver an accounting under
23 Section [751.104](#) within 60 days of a demand under that section, or a
24 longer or shorter period as demanded by the principal or ordered by
25 a court, the principal may file suit to:

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

1 (2) terminate the durable power of attorney.

2 Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S
3 RIGHTS. This subchapter does not limit the right of the principal
4 to terminate the durable power of attorney or to make additional
5 requirements of or to give additional instructions to the [~~attorney~~
6 ~~in fact or~~] agent.

7 SECTION 5. Chapter 751, Estates Code, is amended by adding
8 Subchapters C-1 and C-2 to read as follows:

9 SUBCHAPTER C-1. OTHER DUTIES OF AGENT

10 Sec. 751.121. DUTY TO NOTIFY OF BREACH OF FIDUCIARY DUTY BY
11 OTHER AGENT. (a) An agent who has actual knowledge of a breach or
12 imminent breach of fiduciary duty by another agent shall notify the
13 principal and, if the principal is incapacitated, take any action
14 reasonably appropriate under the circumstances to safeguard the
15 principal's best interest. An agent who fails to notify the
16 principal or take action as required by this subsection is liable
17 for the reasonably foreseeable damages that could have been avoided
18 if the agent had notified the principal or taken the action.

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

24 Sec. 751.122. DUTY TO PRESERVE PRINCIPAL'S ESTATE PLAN. An
25 agent shall preserve to the extent reasonably possible the
26 principal's estate plan to the extent the agent has actual
27 knowledge of the plan if preserving the plan is consistent with the

1 principal's best interest based on all relevant factors, including:

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

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

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

7 (4) eligibility for a benefit, a program, or
8 assistance under a statute or regulation.

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

10 AUTHORITY

11 Sec. 751.131. TERMINATION OF DURABLE POWER OF ATTORNEY. A
12 durable power of attorney terminates when:

13 (1) the principal dies;

14 (2) the principal revokes the power of attorney;

15 (3) the power of attorney provides that it terminates;

16 (4) the purpose of the power of attorney is
17 accomplished;

18 (5) one of the circumstances with respect to an agent
19 described by Section 751.132(a)(1), (2), or (3) arises and the
20 power of attorney does not provide for another agent to act under
21 the power of attorney; or

22 (6) a permanent guardian of the estate of the
23 principal has qualified to serve in that capacity as provided by
24 Section 751.133.

25 Sec. 751.132. TERMINATION OF AGENT'S AUTHORITY. (a) An
26 agent's authority under a durable power of attorney terminates
27 when:

1 (1) the principal revokes the authority;

2 (2) the agent dies, becomes incapacitated, is no
3 longer qualified, or resigns;

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

7 (4) the power of attorney terminates.

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

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

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

26 SECTION 6. Section 751.052, Estates Code, is transferred to
27 Subchapter C-2, Chapter 751, Estates Code, as added by this Act,

1 redesignated as Section 751.133, Estates Code, and amended to read
2 as follows:

3 Sec. 751.133 [~~751.052~~]. RELATION OF [~~ATTORNEY IN FACT OR~~]
4 AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after
5 execution of a durable power of attorney, a court of the principal's
6 domicile appoints a permanent guardian of the estate of the
7 principal, the powers of the [~~attorney in fact or~~] agent terminate
8 on the qualification of the guardian of the estate. The [~~attorney~~
9 ~~in fact or~~] agent shall:

10 (1) deliver to the guardian of the estate all assets of
11 the incapacitated person's [~~ward's~~] estate that are in the
12 possession of the [~~attorney in fact or~~] agent; and

13 (2) account to the guardian of the estate as the
14 [~~attorney in fact or~~] agent would account to the principal if the
15 principal had terminated the powers of the [~~attorney in fact or~~]
16 agent.

17 (b) If, after execution of a durable power of attorney, a
18 court of the principal's domicile appoints a temporary guardian of
19 the estate of the principal, the court may suspend the powers of the
20 [~~attorney in fact or~~] agent on the qualification of the temporary
21 guardian of the estate until the date the term of the temporary
22 guardian expires. This subsection may not be construed to prohibit
23 the application for or issuance of a temporary restraining order
24 under applicable law.

25 SECTION 7. Section 751.151, Estates Code, is amended to
26 read as follows:

27 Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS

1 REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power
2 of attorney for a real property transaction requiring the execution
3 and delivery of an instrument that is to be recorded, including a
4 release, assignment, satisfaction, mortgage, including a reverse
5 mortgage, security agreement, deed of trust, encumbrance, deed of
6 conveyance, oil, gas, or other mineral lease, memorandum of a
7 lease, lien, including a home equity lien, or other claim or right
8 to real property, must be recorded in the office of the county clerk
9 of the county in which the property is located not later than the
10 30th day after the date the instrument is filed for recording.

11 SECTION 8. Chapter 751, Estates Code, is amended by adding
12 Subchapters E and F to read as follows:

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

15 Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY
16 REQUIRED; EXCEPTIONS. (a) Unless one or more grounds for refusal
17 under Section 751.206 exist, a person who is presented with and
18 asked to accept a durable power of attorney by an agent with
19 authority to act under the power of attorney shall:

20 (1) accept the power of attorney; or

21 (2) before accepting the power of attorney:

22 (A) request an agent's certification under
23 Section 751.203 or an opinion of counsel under Section 751.204 not
24 later than the 10th business day after the date the power of
25 attorney is presented, except as provided by Subsection (c); or

26 (B) if applicable, request an English
27 translation under Section 751.205 not later than the fifth business

1 day after the date the power of attorney is presented, except as
2 provided by Subsection (c).

3 (b) Unless one or more grounds for refusal under Section
4 751.206 exist and except as provided by Subsection (c), a person who
5 requests:

6 (1) an agent's certification must accept the durable
7 power of attorney not later than the seventh business day after the
8 date the person receives the requested certification; and

9 (2) an opinion of counsel must accept the durable
10 power of attorney not later than the seventh business day after the
11 date the person receives the requested opinion.

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

15 (d) If an English translation of a durable power of attorney
16 is requested as authorized by Subsection (a)(2)(B), the power of
17 attorney is not considered presented for acceptance under
18 Subsection (a) until the date the requestor receives the
19 translation. On and after that date, the power of attorney shall be
20 treated as a power of attorney originally prepared in English for
21 all the purposes of this subchapter.

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

26 Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF
27 ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED. A person who is

1 asked to accept a durable power of attorney under Section 751.201
2 may not require that:

3 (1) an additional or different form of the power of
4 attorney be presented for authority that is granted in the power of
5 attorney presented to the person; or

6 (2) the power of attorney be recorded in the office of
7 a county clerk unless the recording of the instrument is required by
8 Section 751.151 or another law of this state.

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

15 (b) A certification described by Subsection (a) may be in
16 the following form:

17 CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

18 I, _____ (agent), certify under penalty of perjury
19 that:

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

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

25 3. To the best of my knowledge after diligent search and
26 inquiry:

27 a. The power of attorney has not been revoked by the

1 principal or suspended or terminated by the occurrence of any
2 event, whether or not referenced in the power of attorney;

3 b. A permanent guardian of the estate of the principal
4 has not qualified to serve in that capacity;

5 c. My powers under the power of attorney have not been
6 suspended by a court in a temporary guardianship or other
7 proceeding;

8 d. If I am (or was) the principal's spouse, my marriage
9 to the principal has not been dissolved by court decree of divorce
10 or annulment or declared void by a court, or the power of attorney
11 provides specifically that my appointment as the agent for the
12 principal does not terminate if my marriage to the principal has
13 been dissolved by court decree of divorce or annulment or declared
14 void by a court;

15 e. No proceeding has been commenced for a temporary or
16 permanent guardianship of the person or estate, or both, of the
17 principal; and

18 f. The exercise of my authority is not prohibited by
19 another agreement or instrument.

20 4. If under its terms the power of attorney becomes
21 effective on the disability or incapacity of the principal or at a
22 future time or on the occurrence of a contingency, the principal now
23 has a disability or is incapacitated or the specified future time or
24 contingency has occurred.

25 5. I am acting within the scope of my authority under the
26 power of attorney, and my authority has not been altered or
27 terminated.

1 6. If applicable, I am the successor to _____
2 (predecessor agent), who has resigned, died, or become
3 incapacitated, is not qualified to serve or has declined to serve as
4 agent, or is otherwise unable to act. There are no unsatisfied
5 conditions remaining under the power of attorney that preclude my
6 acting as successor agent.

7 7. I agree not to:

8 a. Exercise any powers granted by the power of
9 attorney if I attain knowledge that the power of attorney has been
10 revoked, suspended, or terminated; or

11 b. Exercise any specific powers that have been
12 revoked, suspended, or terminated.

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

15 9. If used in connection with an extension of credit under
16 Section 50(a)(6), Article XVI, Texas Constitution, the power of
17 attorney was executed in the office of the lender, the office of a
18 title company, or the law office of _____.

19 Date: _____, 20__.

20 _____ (signature of agent)

21 (c) A certification made in compliance with this section is
22 conclusive proof of the factual matter that is the subject of the
23 certification.

24 Sec. 751.204. OPINION OF COUNSEL. (a) Before accepting a
25 durable power of attorney under Section 751.201, the person to whom
26 the power of attorney is presented may request from the agent
27 presenting the power of attorney an opinion of counsel regarding

1 any matter of law concerning the power of attorney so long as the
2 person provides to the agent the reason for the request in a writing
3 or other record.

4 (b) Except as otherwise provided in an agreement to extend
5 the request period under Section 751.201(c), an opinion of counsel
6 requested under this section must be provided by the principal or
7 agent, at the principal's expense. If, without an extension, the
8 requestor requests the opinion later than the 10th business day
9 after the date the durable power of attorney is presented to the
10 requestor, the principal or agent may, but is not required to,
11 provide the opinion, at the requestor's expense.

12 Sec. 751.205. ENGLISH TRANSLATION. (a) Before accepting a
13 durable power of attorney under Section 751.201 that contains,
14 wholly or partly, language other than English, the person to whom
15 the power of attorney is presented may request from the agent
16 presenting the power of attorney an English translation of the
17 power of attorney.

18 (b) Except as otherwise provided in an agreement to extend
19 the request period under Section 751.201(c), an English translation
20 requested under this section must be provided by the principal or
21 agent, at the principal's expense. If, without an extension, the
22 requestor requests the translation later than the fifth business
23 day after the date the durable power of attorney is presented to the
24 requestor, the principal or agent may, but is not required to,
25 provide the translation, at the requestor's expense.

26 Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. A person is
27 not required to accept a durable power of attorney under this

1 subchapter if:

2 (1) the person would not otherwise be required to
3 engage in a transaction with the principal under the same
4 circumstances, including a circumstance in which the agent seeks
5 to:

6 (A) establish a customer relationship with the
7 person under the power of attorney when the principal is not already
8 a customer of the person or expand an existing customer
9 relationship with the person under the power of attorney; or

10 (B) acquire a product or service under the power
11 of attorney that the person does not offer;

12 (2) the person's engaging in the transaction with the
13 agent or with the principal under the same circumstances would be
14 inconsistent with:

15 (A) another law of this state or a federal
16 statute, rule, or regulation;

17 (B) a request from a law enforcement agency; or

18 (C) a policy adopted by the person in good faith
19 that is necessary to comply with another law of this state or a
20 federal statute, rule, regulation, regulatory directive, guidance,
21 or executive order applicable to the person;

22 (3) the person would not engage in a similar
23 transaction with the agent because the person or an affiliate of the
24 person:

25 (A) has filed a suspicious activity report as
26 described by 31 U.S.C. Section 5318(g) with respect to the
27 principal or agent;

1 (B) believes in good faith that the principal or
2 agent has a prior criminal history involving financial crimes; or

3 (C) has had a previous, unsatisfactory business
4 relationship with the agent due to or resulting in:

5 (i) material loss to the person;

6 (ii) financial mismanagement by the agent;

7 (iii) litigation between the person and the
8 agent alleging substantial damages; or

9 (iv) multiple nuisance lawsuits filed by
10 the agent;

11 (4) the person has actual knowledge of the termination
12 of the agent's authority or of the power of attorney before an
13 agent's exercise of authority under the power of attorney;

14 (5) the agent refuses to comply with a request for a
15 certification, opinion of counsel, or translation under Section
16 751.201 or, if the agent complies with one or more of those
17 requests, the requestor in good faith is unable to determine the
18 validity of the power of attorney or the agent's authority to act
19 under the power of attorney because the certification, opinion, or
20 translation is incorrect, incomplete, unclear, limited, qualified,
21 or otherwise deficient in a manner that makes the certification,
22 opinion, or translation ineffective for its intended purpose, as
23 determined in good faith by the requestor;

24 (6) regardless of whether an agent's certification,
25 opinion of counsel, or translation has been requested or received
26 by the person under this subchapter, the person believes in good
27 faith that:

- 1 (A) the power of attorney is not valid;
2 (B) the agent does not have the authority to act
3 as attempted; or
4 (C) the performance of the requested act would
5 violate the terms of:
6 (i) a business entity's governing
7 documents; or
8 (ii) an agreement affecting a business
9 entity, including how the entity's business is conducted;
10 (7) the person commenced, or has actual knowledge that
11 another person commenced, a judicial proceeding to construe the
12 power of attorney or review the agent's conduct and that proceeding
13 is pending;
14 (8) the person commenced, or has actual knowledge that
15 another person commenced, a judicial proceeding for which a final
16 determination was made that found:
17 (A) the power of attorney invalid with respect to
18 a purpose for which the power of attorney is being presented for
19 acceptance; or
20 (B) the agent lacked the authority to act in the
21 same manner in which the agent is attempting to act under the power
22 of attorney;
23 (9) the person makes, has made, or has actual
24 knowledge that another person has made a report to a law enforcement
25 agency or other federal or state agency, including the Department
26 of Family and Protective Services, stating a good faith belief that
27 the principal may be subject to physical or financial abuse,

1 neglect, exploitation, or abandonment by the agent or a person
2 acting with or on behalf of the agent;

3 (10) the person receives conflicting instructions or
4 communications with regard to a matter from co-agents acting under
5 the same power of attorney or from agents acting under different
6 powers of attorney signed by the same principal or another adult
7 acting for the principal as authorized by Section 751.0021,
8 provided that the person may refuse to accept the power of attorney
9 only with respect to that matter; or

10 (11) the person is not required to accept the durable
11 power of attorney by the law of the jurisdiction that applies in
12 determining the power of attorney's meaning and effect, or the
13 powers conferred under the durable power of attorney that the agent
14 is attempting to exercise are not included within the scope of
15 activities to which the law of that jurisdiction applies.

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

22 (b) If the reason a person is refusing to accept a durable
23 power of attorney is a reason described by Section 751.206(2) or
24 (3):

25 (1) the person shall provide to the agent presenting
26 the power of attorney for acceptance a written statement signed by
27 the person under penalty of perjury stating that the reason for the

1 refusal is a reason described by Section 751.206(2) or (3); and

2 (2) the person refusing to accept the power of
3 attorney is not required to provide any additional explanation for
4 refusing to accept the power of attorney.

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

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

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

21 (b) A person who in good faith accepts a durable power of
22 attorney without actual knowledge that the power of attorney is
23 void, invalid, or terminated, that the purported agent's authority
24 is void, invalid, or terminated, or that the agent is exceeding or
25 improperly exercising the agent's authority may rely on the power
26 of attorney as if:

27 (1) the power of attorney were genuine, valid, and

1 still in effect;

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

4 (3) the agent had not exceeded and had properly
5 exercised the authority.

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

11 Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS
12 CONDUCTED THROUGH EMPLOYEES. (a) This section applies to a person
13 who conducts a transaction or activity through an employee of the
14 person.

15 (b) For purposes of this chapter, a person is not considered
16 to have actual knowledge of a fact relating to a durable power of
17 attorney, principal, or agent if the employee conducting the
18 transaction or activity involving the power of attorney does not
19 have actual knowledge of the fact.

20 (c) For purposes of this chapter, a person is considered to
21 have actual knowledge of a fact relating to a durable power of
22 attorney, principal, or agent if the employee conducting the
23 transaction or activity involving the power of attorney has actual
24 knowledge of the fact.

25 Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE
26 POWER OF ATTORNEY. (a) The principal or an agent acting on the
27 principal's behalf may bring an action against a person who refuses

1 to accept a durable power of attorney in violation of this
2 subchapter.

3 (b) An action under Subsection (a) may not be commenced
4 against a person until after the date the person is required to
5 accept the durable power of attorney under Section 751.201.

6 (c) If the court finds that the person refused to accept the
7 durable power of attorney in violation of this subchapter, the
8 court, as the exclusive remedy under this chapter:

9 (1) shall order the person to accept the power of
10 attorney; and

11 (2) may award the plaintiff court costs and reasonable
12 and necessary attorney's fees.

13 (d) The court shall dismiss an action under this section
14 that was commenced after the date a written statement described by
15 Section 751.207(b) was provided to the agent.

16 (e) Notwithstanding Subsection (c), if the agent receives a
17 written statement described by Section 751.207(b) after the date a
18 timely action is commenced under this section, the court may not
19 order the person to accept the durable power of attorney, but
20 instead may award the plaintiff court costs and reasonable and
21 necessary attorney's fees as the exclusive remedy under this
22 chapter.

23 Sec. 751.213. LIABILITY OF PRINCIPAL. (a) Subsection (b)
24 applies to an action brought under Section 751.212 if:

25 (1) the court finds that the action was commenced
26 after the date the written statement described by Section
27 751.207(b) was timely provided to the agent;

1 (2) the court expressly finds that the refusal of the
2 person against whom the action was brought to accept the durable
3 power of attorney was permitted under this chapter; or

4 (3) Section 751.212(e) does not apply and the court
5 does not issue an order ordering the person to accept the power of
6 attorney.

7 (b) Under any of the circumstances described by Subsection
8 (a), the principal may be liable to the person who refused to accept
9 the durable power of attorney for court costs and reasonable and
10 necessary attorney's fees incurred in defending the action as the
11 exclusive remedy under this chapter.

12 SUBCHAPTER F. CIVIL REMEDIES

13 Sec. 751.251. JUDICIAL RELIEF. (a) The following may bring
14 an action requesting a court to construe, or determine the validity
15 or enforceability of, a durable power of attorney, or to review an
16 agent's conduct under a durable power of attorney and grant
17 appropriate relief:

18 (1) the principal or the agent;

19 (2) a guardian, conservator, or other fiduciary acting
20 for the principal;

21 (3) a person named as a beneficiary to receive
22 property, a benefit, or a contractual right on the principal's
23 death;

24 (4) a governmental agency with regulatory authority to
25 protect the principal's welfare; and

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

1 **(b) A person who is asked to accept a durable power of**
2 **attorney may bring an action requesting a court to construe, or**
3 **determine the validity or enforceability of, the power of attorney.**

4 **(c) On the principal's motion, the court shall dismiss an**
5 **action under Subsection (a) unless the court finds that the**
6 **principal lacks capacity to revoke the agent's authority or the**
7 **durable power of attorney.**

8 SECTION 9. Section 752.051, Estates Code, is amended to
9 read as follows:

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

12 STATUTORY DURABLE POWER OF ATTORNEY

13 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
14 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
15 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE
16 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
17 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS
18 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO
19 DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME
20 EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE
21 SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A
22 TITLE COMPANY.

23 You should select someone you trust to serve as your agent
24 [~~attorney in fact~~]. Unless you specify otherwise, generally the
25 agent's [~~attorney in fact's~~] authority will continue until:

- 26 (1) you die or revoke the power of attorney;
27 (2) your agent [~~attorney in fact~~] resigns or is

1 unable to act for you; or

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

3 I, _____ (insert your name and address), appoint
4 _____ (insert the name and address of the person appointed) as
5 my agent [~~(attorney in fact)~~] to act for me in any lawful way with
6 respect to all of the following powers that I have initialed below.

7 (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE,
8 CO-AGENTS MAY ACT INDEPENDENTLY.)

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

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

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

- 16 ____ (A) Real property transactions;
- 17 ____ (B) Tangible personal property transactions;
- 18 ____ (C) Stock and bond transactions;
- 19 ____ (D) Commodity and option transactions;
- 20 ____ (E) Banking and other financial institution
21 transactions;
- 22 ____ (F) Business operating transactions;
- 23 ____ (G) Insurance and annuity transactions;
- 24 ____ (H) Estate, trust, and other beneficiary transactions;
- 25 ____ (I) Claims and litigation;
- 26 ____ (J) Personal and family maintenance;
- 27 ____ (K) Benefits from social security, Medicare, Medicaid,

1 or other governmental programs or civil or military service;

2 (L) Retirement plan transactions;

3 (M) Tax matters;

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

7 SPECIAL INSTRUCTIONS:

8 Special instructions applicable to agent compensation
9 (initial in front of one of the following sentences to have it
10 apply; if no selection is made, each agent will be entitled to
11 compensation that is reasonable under the circumstances):

12 My agent is entitled to reimbursement of reasonable
13 expenses incurred on my behalf and to compensation that is
14 reasonable under the circumstances.

15 My agent is entitled to reimbursement of reasonable
16 expenses incurred on my behalf but shall receive no compensation
17 for serving as my agent.

18 Special instructions applicable to co-agents (if you have
19 appointed co-agents to act, initial in front of one of the following
20 sentences to have it apply; if no selection is made, each agent will
21 be entitled to act independently):

22 Each of my co-agents may act independently for me.

23 My co-agents may act for me only if the co-agents act
24 jointly.

25 My co-agents may act for me only if a majority of the
26 co-agents act jointly.

27 Special instructions applicable to gifts (initial in front of

1 the following sentence to have it apply):

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

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

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

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

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

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

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

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

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

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

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

26 If any agent named by me dies, becomes incapacitated [~~legally~~
27 ~~disabled~~], resigns, or refuses to act, or if my marriage to an agent

1 named by me is dissolved by a court decree of divorce or annulment
2 or is declared void by a court (unless I provided in this document
3 that the dissolution or declaration does not terminate the agent's
4 authority to act under this power of attorney), I name the following
5 (each to act alone and successively, in the order named) as
6 successor(s) to that agent: _____.

7 Signed this _____ day of _____, _____
8 _____
9 (your signature)

10 State of _____
11 County of _____

12 This document was acknowledged before me on _____ (date) by
13 _____
14 (name of principal)

15 _____
16 (signature of notarial officer)
17 (Seal, if any, of notary) _____
18 (printed name)

19 My commission expires: _____

20 IMPORTANT INFORMATION FOR AGENT [~~(ATTORNEY IN FACT)~~]

21 Agent's Duties

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

- 1 (1) act in good faith;
- 2 (2) do nothing beyond the authority granted in this
3 power of attorney;
- 4 (3) act loyally for the principal's benefit;
- 5 (4) avoid conflicts that would impair your ability to
6 act in the principal's best interest; and
- 7 (5) disclose your identity as an agent [~~or attorney in~~
8 ~~fact~~] when you act for the principal by writing or printing the name
9 of the principal and signing your own name as "agent" [~~or "attorney~~
10 ~~in fact"~~] in the following manner:

11 (Principal's Name) by (Your Signature) as Agent [~~(or as~~
12 ~~Attorney in Fact)~~]

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

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

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

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

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

25 (B) each action taken or decision made by you as
26 agent [~~or attorney in fact~~];

27 (C) a complete account of receipts,

1 disbursements, and other actions of you as agent [~~or attorney in~~
2 ~~fact~~] that includes the source and nature of each receipt,
3 disbursement, or action, with receipts of principal and income
4 shown separately;

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

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

10 (F) each known liability;

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

14 (H) all documentation regarding the principal's
15 property.

16 Termination of Agent's Authority

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

22 (1) the principal's death;

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

25 (3) the occurrence of a termination event stated in
26 this power of attorney;

27 (4) if you are married to the principal, the

1 dissolution of your marriage by a court decree of divorce or
2 annulment or declaration that your marriage is void, unless
3 otherwise provided in this power of attorney;

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

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

9 Liability of Agent

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

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

20 SECTION 10. Subchapter B, Chapter 752, Estates Code, is
21 amended by adding Section 752.052 to read as follows:

22 Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC
23 AUTHORITY. The statutory durable power of attorney may be modified
24 to allow the principal to grant the agent the specific authority
25 described by Section 751.031(b) by including the following
26 language:

27 "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

1 My agent MAY NOT do any of the following specific acts for me
2 UNLESS I have INITIALED the specific authority listed below:
3 (CAUTION: Granting any of the following will give your agent the
4 authority to take actions that could significantly reduce your
5 property or change how your property is distributed at your death.
6 INITIAL ONLY the specific authority you WANT to give your agent. If
7 you DO NOT want to grant your agent one or more of the following
8 powers, you may also CROSS OUT a power you DO NOT want to grant.)

9 _____ Create, amend, revoke, or terminate an inter vivos
10 trust

11 _____ Make a gift, subject to the limitations of Section
12 751.032 of the Durable Power of Attorney Act (Section 751.032,
13 Estates Code) and any special instructions in this power of
14 attorney

15 _____ Create or change rights of survivorship

16 _____ Create or change a beneficiary designation

17 _____ Authorize another person to exercise the authority
18 granted under this power of attorney".

19 SECTION 11. Section 752.102, Estates Code, is amended to
20 read as follows:

21 Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The
22 language conferring authority with respect to real property
23 transactions in a statutory durable power of attorney empowers the
24 [~~attorney in fact or~~] agent, without further reference to a
25 specific description of the real property, to:

26 (1) accept as a gift or as security for a loan or
27 reject, demand, buy, lease, receive, or otherwise acquire an

1 interest in real property or a right incident to real property;

2 (2) sell, exchange, convey with or without covenants,
3 quitclaim, release, surrender, mortgage, encumber, partition or
4 consent to partitioning, subdivide, apply for zoning, rezoning, or
5 other governmental permits, plat or consent to platting, develop,
6 grant options concerning, lease or sublet, or otherwise dispose of
7 an estate or interest in real property or a right incident to real
8 property;

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

13 (4) perform any act of management or of conservation
14 with respect to an interest in real property, or a right incident to
15 real property, owned or claimed to be owned by the principal,
16 including the authority to:

17 (A) insure against a casualty, liability, or
18 loss;

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

21 (C) pay, compromise, or contest taxes or
22 assessments or apply for and receive refunds in connection with the
23 taxes or assessments;

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

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

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

3 ~~[(ii) making contracts for development of~~
4 ~~the mineral estate, or~~

5 ~~[(iii) making pooling and unitization~~
6 ~~agreements];~~

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

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

15 (A) selling or otherwise disposing of the shares
16 or obligations;

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

19 (C) voting the shares or obligations in person or
20 by proxy;

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

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

26 (9) enter into mineral transactions, including:

27 (A) negotiating and making oil, gas, and other

1 mineral leases covering any land, mineral, or royalty interest in
2 which the principal has or claims to have an interest;

3 (B) pooling and unitizing all or part of the
4 principal's land, mineral leasehold, mineral, royalty, or other
5 interest with land, mineral leasehold, mineral, royalty, or other
6 interest of one or more persons for the purpose of developing and
7 producing oil, gas, or other minerals, and making leases or
8 assignments granting the right to pool and unitize;

9 (C) entering into contracts and agreements
10 concerning the installation and operation of plants or other
11 facilities for the cycling, repressuring, processing, or other
12 treating or handling of oil, gas, or other minerals;

13 (D) conducting or contracting for the conducting
14 of seismic evaluation operations;

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

17 (F) contracting for and making "dry hole" and
18 "bottom hole" contributions of cash, leasehold interests, or other
19 interests toward the drilling of wells;

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

23 (H) purchasing oil, gas, or other mineral leases,
24 leasehold interests, or other interests for any type of
25 consideration, including farmout agreements requiring the drilling
26 or reworking of wells or participation in the drilling or reworking
27 of wells;

1 (I) entering into farmout agreements committing
2 the principal to assign oil, gas, or other mineral leases or
3 interests in consideration for the drilling of wells or other oil,
4 gas, or mineral operations;

5 (J) negotiating the transfer of and transferring
6 oil, gas, or other mineral leases or interests for any
7 consideration, such as retained overriding royalty interests of any
8 nature, drilling or reworking commitments, or production
9 interests;

10 (K) executing and entering into contracts,
11 conveyances, and other agreements or transfers considered
12 necessary or desirable to carry out the powers granted in this
13 section, including entering into and executing division orders,
14 oil, gas, or other mineral sales contracts, exploration agreements,
15 processing agreements, and other contracts relating to the
16 processing, handling, treating, transporting, and marketing of
17 oil, gas, or other mineral production from or accruing to the
18 principal and receiving and receipting for the proceeds of those
19 contracts, conveyances, and other agreements and transfers on
20 behalf of the principal; and

21 (L) taking an action described by Paragraph (K)
22 regardless of whether the action is, at the time the action is taken
23 or subsequently, recognized or considered as a common or proper
24 practice by those engaged in the business of prospecting for,
25 developing, producing, processing, transporting, or marketing
26 minerals; and

27 (10) designate the property that constitutes the

1 principal's homestead.

2 (b) The power to mortgage and encumber real property
3 provided by this section includes the power to execute documents
4 necessary to create a lien against the principal's homestead as
5 provided by Section 50, Article XVI, Texas Constitution, and to
6 consent to the creation of a lien against property owned by the
7 principal's spouse in which the principal has a homestead interest.

8 SECTION 12. Section 752.108(b), Estates Code, is amended to
9 read as follows:

10 (b) Unless the principal has granted the authority to create
11 or change a beneficiary designation expressly as required by
12 Section 751.031(b)(4), an [~~An attorney in fact or~~] agent may be
13 named a beneficiary of an insurance contract or an extension,
14 renewal, or substitute for the contract only to the extent the
15 [~~attorney in fact or~~] agent was named as a beneficiary [~~under a~~
16 ~~contract procured~~] by the principal [~~before executing the power of~~
17 ~~attorney~~].

18 SECTION 13. Sections 752.109 and 752.111, Estates Code, are
19 amended to read as follows:

20 Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY
21 TRANSACTIONS. The language conferring authority with respect to
22 estate, trust, and other beneficiary transactions in a statutory
23 durable power of attorney empowers the [~~attorney in fact or~~] agent
24 to act for the principal in all matters that affect a trust, probate
25 estate, guardianship, conservatorship, life estate, escrow,
26 custodianship, or other fund from which the principal is, may
27 become, or claims to be entitled, as a beneficiary, to a share or

1 payment, including to:

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

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

8 (3) initiate, participate in, or oppose a legal or
9 judicial proceeding to:

10 (A) ascertain the meaning, validity, or effect of
11 a deed, will, declaration of trust, or other instrument or
12 transaction affecting the interest of the principal; or

13 (B) remove, substitute, or surcharge a
14 fiduciary;

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

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

21 Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The
22 language conferring authority with respect to personal and family
23 maintenance in a statutory durable power of attorney empowers the
24 [~~attorney in fact or~~] agent to:

25 (1) perform the acts necessary to maintain the
26 customary standard of living of the principal, the principal's
27 spouse and children, and other individuals customarily or legally

1 entitled to be supported by the principal, including:

2 (A) providing living quarters by purchase,
3 lease, or other contract; or

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

7 (2) provide for the individuals described by
8 Subdivision (1):

9 (A) normal domestic help;

10 (B) usual vacations and travel expenses; and

11 (C) money for shelter, clothing, food,
12 appropriate education, and other living costs;

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

16 (4) continue any provision made by the principal for
17 the individuals described by Subdivision (1) for automobiles or
18 other means of transportation, including registering, licensing,
19 insuring, and replacing the automobiles or other means of
20 transportation;

21 (5) maintain or open charge accounts for the
22 convenience of the individuals described by Subdivision (1) and
23 open new accounts the [~~attorney in fact or~~] agent considers
24 desirable to accomplish a lawful purpose; [~~and~~]

25 (6) continue:

26 (A) payments incidental to the membership or
27 affiliation of the principal in a church, club, society, order, or

1 other organization; or

2 (B) contributions to those organizations;

3 (7) perform all acts necessary in relation to the
4 principal's mail, including:

5 (A) receiving, signing for, opening, reading,
6 and responding to any mail addressed to the principal, whether
7 through the United States Postal Service or a private mail service;

8 (B) forwarding the principal's mail to any
9 address; and

10 (C) representing the principal before the United
11 States Postal Service in all matters relating to mail service; and

12 (8) subject to the needs of the individuals described
13 by Subdivision (1), provide for the reasonable care of the
14 principal's pets.

15 SECTION 14. Sections 752.113(b) and (c), Estates Code, are
16 amended to read as follows:

17 (b) The language conferring authority with respect to
18 retirement plan transactions in a statutory durable power of
19 attorney empowers the [~~attorney in fact or~~] agent to perform any
20 lawful act the principal may perform with respect to a transaction
21 relating to a retirement plan, including to:

22 (1) apply for service or disability retirement
23 benefits;

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

27 (3) designate or change the designation of a

1 beneficiary or benefits payable by a retirement plan, except as
2 provided by Subsection (c);

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

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

7 (6) make rollovers of plan benefits into other
8 retirement plans;

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

11 (8) waive the principal's right to be a beneficiary of
12 a joint or survivor annuity if the principal is not the participant
13 in the retirement plan [~~a spouse who is not employed~~];

14 (9) receive, endorse, and cash payments from a
15 retirement plan;

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

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

20 (c) Unless the principal has granted the authority to create
21 or change a beneficiary designation expressly as required by
22 Section 751.031(b)(4), an [~~An attorney in fact or~~] agent may be
23 named a beneficiary under a retirement plan only to the extent the
24 [~~attorney in fact or~~] agent was a named a beneficiary by the
25 principal under the retirement plan, or in the case of a rollover or
26 trustee-to-trustee transfer, the predecessor retirement plan
27 [~~before the durable power of attorney was executed~~].

1 SECTION 15. The following sections of the Estates Code are
2 repealed:

- 3 (1) Section 751.004;
- 4 (2) Section 751.053;
- 5 (3) Section 751.054;
- 6 (4) Section 751.055;
- 7 (5) Section 751.056; and
- 8 (6) Section 751.058.

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

11 (1) a durable power of attorney, including a statutory
12 durable power of attorney, created before, on, or after the
13 effective date of this Act; and

14 (2) a judicial proceeding concerning a durable power
15 of attorney pending on, or commenced on or after, the effective date
16 of this Act.

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

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

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

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

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

27 (c) A durable power of attorney, including a statutory

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

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

13 (e) An act performed by a principal or agent with respect to
14 a durable power of attorney before the effective date of this Act is
15 not affected by this Act.

16 SECTION 17. This Act takes effect September 1, 2017.