

By: Wray

H.B. No. 1974

Substitute the following for H.B. No. 1974:

By: Smithee

C.S.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 OTHER LAW. This subtitle does  
6 not supersede any other law applicable to financial institutions or  
7 other entities. To the extent of any conflict between this subtitle  
8 and another law applicable to an entity, the other law controls.

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

11 SUBCHAPTER A-1. APPOINTMENT OF AGENTS

12 Sec. 751.021. CO-AGENTS. A principal may designate in a  
13 durable power of attorney two or more persons to act as co-agents.  
14 Unless the durable power of attorney otherwise provides, each  
15 co-agent may exercise authority independently of the other  
16 co-agent.

17 Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT. Except  
18 as otherwise provided in the durable power of attorney, a person  
19 accepts appointment as an agent under a durable power of attorney by  
20 exercising authority or performing duties as an agent or by any  
21 other assertion or conduct indicating acceptance of the  
22 appointment.

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

27 (b) A principal may grant authority to designate one or more

1 successor agents to an agent or other person designated by name,  
2 office, or function.

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

5 (1) has the same authority as the authority granted to  
6 the predecessor agent; and

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

11 Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT.  
12 Unless the durable power of attorney otherwise provides, an agent  
13 is entitled to:

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

16 (2) compensation that is reasonable under the  
17 circumstances.

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

19 Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN  
20 LIMITATIONS. (a) Subject to Subsections (b), (c), and (d) and  
21 Section 751.032, if a durable power of attorney grants to an agent  
22 the authority to perform all acts that the principal could perform,  
23 the agent has the general authority conferred by Subchapter C,  
24 Chapter 752.

25 (b) An agent may take the following actions on the  
26 principal's behalf or with respect to the principal's property only  
27 if the durable power of attorney designating the agent expressly

1 grants the agent the authority and the exercise of the authority is  
2 not otherwise prohibited by another agreement or instrument to  
3 which the authority or property is subject:

4 (1) create, amend, revoke, or terminate an inter vivos  
5 trust;

6 (2) make a gift;

7 (3) create or change rights of survivorship;

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

9 (5) delegate authority granted under the power of  
10 attorney.

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

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

23 (e) Authority granted in a durable power of attorney is  
24 exercisable with respect to property that the principal has when  
25 the power of attorney is executed or acquires later, regardless of  
26 whether:

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



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

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

5                 (1) a trust;

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

9                 (3) a qualified tuition program of any state that  
10 meets the requirements of Section 529, Internal Revenue Code of  
11 1986.

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

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

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

21                         (A) the annual dollar limits of the federal gift  
22 tax exclusion under Section 2503(b), Internal Revenue Code of 1986,  
23 regardless of whether the federal gift tax exclusion applies to the  
24 gift; or

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

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

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

13           Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN  
14 BENEFICIARY DESIGNATIONS. (a) Unless the durable power of  
15 attorney otherwise provides, and except as provided by Section  
16 751.031(c), authority granted to an agent under Section  
17 751.031(b)(4) empowers the agent to:

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

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

27           (3) create or change a nontestamentary payment or

1 transfer under Chapter 111.

2 (b) If an agent is granted authority under Section  
3 751.031(b)(4) and the durable power of attorney grants the  
4 authority to the agent described in Section 752.108 or 752.113,  
5 then, unless the power of attorney otherwise provides, the  
6 authority of the agent to designate the agent as a beneficiary is  
7 not subject to the limitations prescribed by Sections 752.108(b)  
8 and 752.113(c).

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

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

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

26 (c) A principal may modify authority incorporated by  
27 reference.

1 SECTION 4. Sections 751.051, 751.057, 751.101, 751.102,  
2 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended  
3 to read as follows:

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

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

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

22 Sec. 751.101. FIDUCIARY DUTIES. A person who accepts  
23 appointment as an agent under a durable power of attorney as  
24 provided by Section 751.022 [~~An attorney in fact or agent~~] is a  
25 fiduciary as to the principal only when acting as an agent under the  
26 power of attorney and has a duty to inform and to account for  
27 actions taken under the power of attorney.

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

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

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

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

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

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

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

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

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

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

- 1 (A) an adequate description of each asset; and  
2 (B) the asset's current value, if the value is  
3 known to the [~~attorney in fact or~~] agent;  
4 (5) the cash balance on hand and the name and location  
5 of the depository at which the cash balance is kept;  
6 (6) each known liability; and  
7 (7) any other information and facts known to the  
8 [~~attorney in fact or~~] agent as necessary for a full and definite  
9 understanding of the exact condition of the property belonging to  
10 the principal.

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

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

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

22 (2) terminate the durable power of attorney.

23 Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S  
24 RIGHTS. This subchapter does not limit the right of the principal  
25 to terminate the durable power of attorney or to make additional  
26 requirements of or to give additional instructions to the [~~attorney~~  
27 ~~in fact or~~] agent.

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

3 SUBCHAPTER C-1. OTHER DUTIES OF AGENT

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

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

18 Sec. 751.122. DUTY TO PRESERVE PRINCIPAL'S ESTATE PLAN. An  
19 agent shall preserve to the extent reasonably possible the  
20 principal's estate plan to the extent the agent has actual  
21 knowledge of the plan if preserving the plan is consistent with the  
22 principal's best interest based on all relevant factors, including:

- 23 (1) the value and nature of the principal's property;  
24 (2) the principal's foreseeable obligations and need  
25 for maintenance;  
26 (3) minimization of taxes, including income, estate,  
27 inheritance, generation-skipping transfer, and gift taxes; and

1           (4) eligibility for a benefit, a program, or  
2 assistance under a statute or regulation.

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

4                           AUTHORITY

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

- 7                   (1) the principal dies;  
8                   (2) the principal revokes the power of attorney;  
9                   (3) the power of attorney provides that it terminates;  
10                  (4) the purpose of the power of attorney is

11 accomplished;

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

16                  (6) a permanent guardian of the estate of the  
17 principal has qualified to serve in that capacity as provided by  
18 Section 751.133.

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

- 22                   (1) the principal revokes the authority;  
23                   (2) the agent dies, becomes incapacitated, is no  
24 longer qualified, or resigns;

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



1           (4) the power of attorney terminates.

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

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

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

20           SECTION 6. Section 751.052, Estates Code, is transferred to  
21 Subchapter C-2, Chapter 751, Estates Code, as added by this Act,  
22 redesignated as Section 751.133, Estates Code, and amended to read  
23 as follows:

24           Sec. 751.133 [751.052]. RELATION OF [ATTORNEY IN FACT OR]  
25 AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after  
26 execution of a durable power of attorney, a court of the principal's  
27 domicile appoints a permanent guardian of the estate of the

1 principal, the powers of the [~~attorney in fact or~~] agent terminate  
2 on the qualification of the guardian of the estate. The [~~attorney~~  
3 ~~in fact or~~] agent shall:

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

7 (2) account to the guardian of the estate as the  
8 [~~attorney in fact or~~] agent would account to the principal if the  
9 principal had terminated the powers of the [~~attorney in fact or~~]  
10 agent.

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

19 SECTION 7. Section [751.151](#), Estates Code, is amended to  
20 read as follows:

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

1 lease, lien, including a home equity lien, or other claim or right  
2 to real property, must be recorded in the office of the county clerk  
3 of the county in which the property is located not later than the  
4 30th day after the date the instrument is filed for recording.

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

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

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

14 (1) accept the power of attorney; or

15 (2) before accepting the power of attorney:

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

20 (B) if applicable, request an English  
21 translation under Section 751.205 not later than the fifth business  
22 day after the date the power of attorney is presented, except as  
23 provided by Subsection (c).

24 (b) Unless one or more grounds for refusal under Section  
25 751.206 exist and except as provided by Subsection (c), a person who  
26 requests:

27 (1) an agent's certification must accept the durable

1 power of attorney not later than the seventh business day after the  
2 date the person receives the requested certification; and

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

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

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

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

20 Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF  
21 ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED. A person who is  
22 asked to accept a durable power of attorney under Section 751.201  
23 may not require that:

24 (1) an additional or different form of the power of  
25 attorney be presented for authority that is granted in the power of  
26 attorney presented to the person; or

27 (2) the power of attorney be recorded in the office of

1 a county clerk unless the recording of the instrument is required by  
2 Section 751.151 or another law of this state.

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

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

11 CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

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

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

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

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

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

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

26 c. My powers under the power of attorney have not been  
27 suspended by a court in a temporary guardianship or other

1 proceeding;

2 d. If I am (or was) the principal's spouse, my marriage  
3 to the principal has not been dissolved by court decree of divorce  
4 or annulment or declared void by a court, or the power of attorney  
5 provides specifically that my appointment as the agent for the  
6 principal does not terminate if my marriage to the principal has  
7 been dissolved by court decree of divorce or annulment or declared  
8 void by a court;

9 e. No proceeding has been commenced for a temporary or  
10 permanent guardianship of the person or estate, or both, of the  
11 principal; and

12 f. The exercise of my authority is not prohibited by  
13 another agreement or instrument.

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

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

22 6. If applicable, I am the successor to \_\_\_\_\_  
23 (predecessor agent), who has resigned, died, or become  
24 incapacitated, is not qualified to serve or has declined to serve as  
25 agent, or is otherwise unable to act. There are no unsatisfied  
26 conditions remaining under the power of attorney that preclude my  
27 acting as successor agent.

1           7. I agree not to:

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

5                   b. Exercise any specific powers that have been  
6 revoked, suspended, or terminated.

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

9           9. If used in connection with an extension of credit under  
10 Section 50(a)(6), Article XVI, Texas Constitution, the power of  
11 attorney was executed in the office of the lender, the office of a  
12 title company, or the law office of \_\_\_\_\_.

13 Date: \_\_\_\_\_, 20\_\_.

14           \_\_\_\_\_ (signature of agent)

15           (c) A certification made in compliance with this section is  
16 conclusive proof of the factual matter that is the subject of the  
17 certification.

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

25           (b) Except as otherwise provided in an agreement to extend  
26 the request period under Section 751.201(c), an opinion of counsel  
27 requested under this section must be provided by the principal or

1 agent, at the principal's expense. If, without an extension, the  
2 requestor requests the opinion later than the 10th business day  
3 after the date the durable power of attorney is presented to the  
4 requestor, the principal or agent may, but is not required to,  
5 provide the opinion, at the requestor's expense.

6 Sec. 751.205. ENGLISH TRANSLATION. (a) Before accepting a  
7 durable power of attorney under Section 751.201 that contains,  
8 wholly or partly, language other than English, the person to whom  
9 the power of attorney is presented may request from the agent  
10 presenting the power of attorney an English translation of the  
11 power of attorney.

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

20 Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. A person is  
21 not required to accept a durable power of attorney under this  
22 subchapter if:

23 (1) the person would not otherwise be required to  
24 engage in a transaction with the principal under the same  
25 circumstances, including a circumstance in which the agent seeks  
26 to:

27 (A) establish a customer relationship with the



1 person under the power of attorney when the principal is not already  
2 a customer of the person or expand an existing customer  
3 relationship with the person under the power of attorney; or

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

6 (2) the person's engaging in the transaction with the  
7 agent or with the principal under the same circumstances would be  
8 inconsistent with:

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

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

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

16 (3) the person would not engage in a similar  
17 transaction with the agent because the person or an affiliate of the  
18 person:

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

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

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

26 (i) material loss to the person;

27 (ii) financial mismanagement by the agent;

1                   (iii) litigation between the person and the  
2 agent alleging substantial damages; or

3                   (iv) multiple nuisance lawsuits filed by  
4 the agent;

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

8                   (5) the agent refuses to comply with a request for a  
9 certification, opinion of counsel, or translation under Section  
10 751.201 or, if the agent complies with one or more of those  
11 requests, the requestor in good faith is unable to determine the  
12 validity of the power of attorney or the agent's authority to act  
13 under the power of attorney because the certification, opinion, or  
14 translation is incorrect, incomplete, unclear, limited, qualified,  
15 or otherwise deficient in a manner that makes the certification,  
16 opinion, or translation ineffective for its intended purpose, as  
17 determined in good faith by the requestor;

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

22                           (A) the power of attorney is not valid;

23                           (B) the agent does not have the authority to act  
24 as attempted; or

25                           (C) the performance of the requested act would  
26 violate the terms of:

27                                   (i) a business entity's governing

1 documents; or

2 (ii) an agreement affecting a business  
3 entity, including how the entity's business is conducted;

4 (7) the person commenced, or has actual knowledge that  
5 another person commenced, a judicial proceeding to construe the  
6 power of attorney or review the agent's conduct and that proceeding  
7 is pending;

8 (8) the person commenced, or has actual knowledge that  
9 another person commenced, a judicial proceeding for which a final  
10 determination was made that found:

11 (A) the power of attorney invalid with respect to  
12 a purpose for which the power of attorney is being presented for  
13 acceptance; or

14 (B) the agent lacked the authority to act in the  
15 same manner in which the agent is attempting to act under the power  
16 of attorney;

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

24 (10) the person receives conflicting instructions or  
25 communications with regard to a matter from co-agents acting under  
26 the same power of attorney or from agents acting under different  
27 powers of attorney signed by the same principal or another adult

1 acting for the principal as authorized by Section 751.0021,  
2 provided that the person may refuse to accept the power of attorney  
3 only with respect to that matter; or

4 (11) the person is not required to accept the durable  
5 power of attorney by the law of the jurisdiction that applies in  
6 determining the power of attorney's meaning and effect, or the  
7 powers conferred under the durable power of attorney that the agent  
8 is attempting to exercise are not included within the scope of  
9 activities to which the law of that jurisdiction applies.

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

16 (b) If the reason a person is refusing to accept a durable  
17 power of attorney is a reason described by Section 751.206(2) or  
18 (3):

19 (1) the person shall provide to the agent presenting  
20 the power of attorney for acceptance a written statement signed by  
21 the person under penalty of perjury stating that the reason for the  
22 refusal is a reason described by Section 751.206(2) or (3); and

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

26 (c) The person must provide to the agent the written  
27 statement required under Subsection (a) or (b) on or before the date

1 the person would otherwise be required to accept the durable power  
2 of attorney under Section 751.201.

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

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

15 (b) A person who in good faith accepts a durable power of  
16 attorney without actual knowledge that the power of attorney is  
17 void, invalid, or terminated, that the purported agent's authority  
18 is void, invalid, or terminated, or that the agent is exceeding or  
19 improperly exercising the agent's authority may rely on the power  
20 of attorney as if:

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

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

25 (3) the agent had not exceeded and had properly  
26 exercised the authority.

27 Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION. A

1 person may rely on, without further investigation or liability to  
2 another person, an agent's certification, opinion of counsel, or  
3 English translation that is provided to the person under this  
4 subchapter.

5 Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS  
6 CONDUCTED THROUGH EMPLOYEES. (a) This section applies to a person  
7 who conducts a transaction or activity through an employee of the  
8 person.

9 (b) For purposes of this chapter, a person is not considered  
10 to have actual knowledge of a fact relating to a durable power of  
11 attorney, principal, or agent if the employee conducting the  
12 transaction or activity involving the power of attorney does not  
13 have actual knowledge of the fact.

14 (c) For purposes of this chapter, a person is considered to  
15 have actual knowledge of a fact relating to a durable power of  
16 attorney, principal, or agent if the employee conducting the  
17 transaction or activity involving the power of attorney has actual  
18 knowledge of the fact.

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

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

27 (c) If the court finds that the person refused to accept the

1 durable power of attorney in violation of this subchapter, the  
2 court, as the exclusive remedy under this chapter:

3 (1) shall order the person to accept the power of  
4 attorney; and

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

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

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

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

19 (1) the court finds that the action was commenced  
20 after the date the written statement described by Section  
21 751.207(b) was timely provided to the agent;

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

25 (3) Section 751.212(e) does not apply and the court  
26 does not issue an order ordering the person to accept the power of  
27 attorney.

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

6                                SUBCHAPTER F. CIVIL REMEDIES

7        Sec. 751.251. JUDICIAL RELIEF. (a) The following may bring  
8 an action requesting a court to construe, or determine the validity  
9 or enforceability of, a durable power of attorney, or to review an  
10 agent's conduct under a durable power of attorney and grant  
11 appropriate relief:

12                                (1) the principal or the agent;

13                                (2) a guardian, conservator, or other fiduciary acting  
14 for the principal;

15                                (3) a person named as a beneficiary to receive  
16 property, a benefit, or a contractual right on the principal's  
17 death;

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

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

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

25        (c) On the principal's motion, the court shall dismiss an  
26 action under Subsection (a) unless the court finds that the  
27 principal lacks capacity to revoke the agent's authority or the



1 durable power of attorney.

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

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

6 STATUTORY DURABLE POWER OF ATTORNEY

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

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

- 20 (1) you die or revoke the power of attorney;  
21 (2) your agent [~~(attorney in fact)~~] resigns or is  
22 unable to act for you; or  
23 (3) a guardian is appointed for your estate.

24 I, \_\_\_\_\_ (insert your name and address), appoint  
25 \_\_\_\_\_ (insert the name and address of the person appointed) as  
26 my agent [~~(attorney in fact)~~] to act for me in any lawful way with  
27 respect to all of the following powers that I have initialed below.

1 (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE,  
2 CO-AGENTS MAY ACT INDEPENDENTLY.)

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

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

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

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

SPECIAL INSTRUCTIONS:

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

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

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

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

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

\_\_\_\_\_ My co-agents may act for me only if the co-agents act jointly.

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

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

\_\_\_\_ I grant my agent [~~(attorney in fact)~~] the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed

1 from the federal gift tax for the calendar year of the gift.

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

4 \_\_\_\_\_

5 \_\_\_\_\_

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

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

16 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE  
17 ALTERNATIVE NOT CHOSEN:

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

20 (B) This power of attorney becomes effective upon my  
21 disability or incapacity.

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

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

26 If Alternative (B) is chosen and a definition of my  
27 disability or incapacity is not contained in this power of

1 attorney, I shall be considered disabled or incapacitated for  
2 purposes of this power of attorney if a physician certifies in  
3 writing at a date later than the date this power of attorney is  
4 executed that, based on the physician's medical examination of me,  
5 I am mentally incapable of managing my financial affairs. I  
6 authorize the physician who examines me for this purpose to  
7 disclose my physical or mental condition to another person for  
8 purposes of this power of attorney. A third party who accepts this  
9 power of attorney is fully protected from any action taken under  
10 this power of attorney that is based on the determination made by a  
11 physician of my disability or incapacity.

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

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

1 Signed this \_\_\_\_\_ day of \_\_\_\_\_,  
2 \_\_\_\_\_  
3 (your signature)

4 State of \_\_\_\_\_  
5 County of \_\_\_\_\_

6 This document was acknowledged before me on \_\_\_\_\_ (date) by  
7 \_\_\_\_\_  
8 (name of principal)

9 \_\_\_\_\_  
10 (signature of notarial officer)

11 (Seal, if any, of notary) \_\_\_\_\_  
12 (printed name)

13 My commission expires: \_\_\_\_\_

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

15 Agent's Duties

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

- 22 (1) act in good faith;
- 23 (2) do nothing beyond the authority granted in this  
24 power of attorney;
- 25 (3) act loyally for the principal's benefit;
- 26 (4) avoid conflicts that would impair your ability to  
27 act in the principal's best interest; and

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

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

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

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

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

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

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

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

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

26                   (D) a listing of all property over which you have  
27 exercised control that includes an adequate description of each

1 asset and the asset's current value, if known to you;

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

4 (F) each known liability;

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

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

#### 10 Termination of Agent's Authority

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

16 (1) the principal's death;

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

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

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

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

27 (6) if ordered by a court, the suspension of this power



1 of attorney on the appointment and qualification of a temporary  
2 guardian until the date the term of the temporary guardian expires.

3 Liability of Agent

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

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

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

16 Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC  
17 AUTHORITY. The statutory durable power of attorney may be modified  
18 to allow the principal to grant the agent the specific authority  
19 described by Section 751.031(b) by including the following  
20 language:

21 "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

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

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

3 \_\_\_\_\_ Create, amend, revoke, or terminate an inter vivos  
4 trust

5 \_\_\_\_\_ Make a gift, subject to the limitations of Section  
6 751.032 of the Durable Power of Attorney Act (Section 751.032,  
7 Estates Code) and any special instructions in this power of  
8 attorney

9 \_\_\_\_\_ Create or change rights of survivorship

10 \_\_\_\_\_ Create or change a beneficiary designation

11 \_\_\_\_\_ Authorize another person to exercise the authority  
12 granted under this power of attorney".

13 SECTION 11. Section 752.102, Estates Code, is amended to  
14 read as follows:

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

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

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

1 an estate or interest in real property or a right incident to real  
2 property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20           (9) enter into mineral transactions, including:

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

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

1 producing oil, gas, or other minerals, and making leases or  
2 assignments granting the right to pool and unitize;

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

7 (D) conducting or contracting for the conducting  
8 of seismic evaluation operations;

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

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

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

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

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

26 (J) negotiating the transfer of and transferring  
27 oil, gas, or other mineral leases or interests for any

1 consideration, such as retained overriding royalty interests of any  
2 nature, drilling or reworking commitments, or production  
3 interests;

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

15 (L) taking an action described by Paragraph (K)  
16 regardless of whether the action is, at the time the action is taken  
17 or subsequently, recognized or considered as a common or proper  
18 practice by those engaged in the business of prospecting for,  
19 developing, producing, processing, transporting, or marketing  
20 minerals; and

21 (10) designate the property that constitutes the  
22 principal's homestead.

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

1 principal's spouse in which the principal has a homestead interest.

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

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

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

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

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

26 (2) demand or obtain by litigation, action, or  
27 otherwise money or any other thing of value to which the principal

1 is, may become, or claims to be entitled because of the fund;

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

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

7 (B) remove, substitute, or surcharge a  
8 fiduciary;

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

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

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

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

23 (A) providing living quarters by purchase,  
24 lease, or other contract; or

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



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

3           (A) normal domestic help;

4           (B) usual vacations and travel expenses; and

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

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

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

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

19           (6) continue:

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

23           (B) contributions to those organizations;

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

26           (A) receiving, signing for, opening, reading,  
27 and responding to any mail addressed to the principal, whether

1 through the United States Postal Service or a private mail service;  
2 (B) forwarding the principal's mail to any  
3 address; and  
4 (C) representing the principal before the United  
5 States Postal Service in all matters relating to mail service; and  
6 (8) subject to the needs of the individuals described  
7 by Subdivision (1), provide for the reasonable care of the  
8 principal's pets.

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

11 (b) The language conferring authority with respect to  
12 retirement plan transactions in a statutory durable power of  
13 attorney empowers the [~~attorney in fact or~~] agent to perform any  
14 lawful act the principal may perform with respect to a transaction  
15 relating to a retirement plan, including to:

16 (1) apply for service or disability retirement  
17 benefits;

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

21 (3) designate or change the designation of a  
22 beneficiary or benefits payable by a retirement plan, except as  
23 provided by Subsection (c);

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

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

1           (6) make rollovers of plan benefits into other  
2 retirement plans;

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

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

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

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

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

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

22          SECTION 15. The following sections of the Estates Code are  
23 repealed:

24           (1) Section 751.004;

25           (2) Section 751.053;

26           (3) Section 751.054;

27           (4) Section 751.055;

1           (5) Section 751.056; and

2           (6) Section 751.058.

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

5           (1) a durable power of attorney, including a statutory  
6 durable power of attorney, created before, on, or after the  
7 effective date of this Act; and

8           (2) a judicial proceeding concerning a durable power  
9 of attorney pending on, or commenced on or after, the effective date  
10 of this Act.

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

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

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

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

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

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

27          (d) If the court finds that application of a provision of

1 this Act would substantially interfere with the effective conduct  
2 of a judicial proceeding concerning a durable power of attorney  
3 commenced before the effective date of this Act or would prejudice  
4 the rights of a party to the proceeding, the provision of this Act  
5 does not apply and the former law continues in effect for that  
6 purpose and applies in those circumstances.

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

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