

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 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 Section 751.002 and adding Sections 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) "Actual knowledge" means the knowledge of a person

1 without that person making any due inquiry.

2 (2) "Agent" includes:

3 (A) an attorney in fact; and

4 (B) a co-agent, successor agent, or successor
5 co-agent.

6 (3) "Durable power of attorney" means a power of
7 attorney that complies with the requirements of Section 751.0021(a)
8 or is described by Section 751.0021(b).

9 (4) "Power of attorney" means a writing or other
10 record that grants authority to an agent to act in the place of the
11 principal, regardless of whether the term "power of attorney" is
12 used.

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

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

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

20 (a) An instrument is a durable power of attorney if the [A "~~durable~~
21 ~~power of attorney~~" means a written] instrument [that]:

22 (1) is a writing or other record;

23 (1-a) designates another person as [attorney in fact
24 or] agent;

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

1 (3) contains:

2 (A) the words:

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

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

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

11 (4) is acknowledged by the principal or another adult
12 directed by the principal as authorized by Subdivision (2) before
13 an officer authorized under the laws of this state or another state
14 to:

15 (A) take acknowledgments to deeds of conveyance;
16 and

17 (B) administer oaths.

18 (b) If the law of the jurisdiction that determines the
19 meaning and effect of a power of attorney under Section 751.0024
20 provides that the authority conferred on the agent is exercisable
21 notwithstanding the principal's subsequent disability or
22 incapacity, the power of attorney is considered a durable power of
23 attorney under this subtitle.

24 Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE. A
25 signature on a durable power of attorney that purports to be the
26 signature of the principal or of another adult directed by the
27 principal as authorized by Section 751.0021(a)(2) is presumed to be

1 genuine, and the durable power of attorney is presumed to have been
2 executed under Section 751.0021(a) if the officer taking the
3 acknowledgment has complied with the requirements of Section
4 121.004(b), Civil Practice and Remedies Code.

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

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

11 (1) the law of the jurisdiction that determines the
12 meaning and effect of the durable power of attorney as provided by
13 Section 751.0024; or

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

16 (c) Except as otherwise provided by statute other than this
17 subtitle or by the durable power of attorney, a photocopy or
18 electronically transmitted copy of an original durable power of
19 attorney has the same effect as the original instrument and may be
20 relied on, without liability, by a person who is asked to accept the
21 durable power of attorney to the same extent as the original.

22 Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF
23 ATTORNEY. The meaning and effect of a durable power of attorney is
24 determined by the law of the jurisdiction indicated in the durable
25 power of attorney and, in the absence of an indication of
26 jurisdiction, by:

27 (1) the law of the jurisdiction of the principal's

1 domicile, if the principal's domicile is indicated in the power of
2 attorney; or

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

6 Sec. 751.007. CONFLICT WITH OTHER LAW. This subtitle does
7 not supersede any other law applicable to financial institutions or
8 other entities. To the extent of any conflict between this subtitle
9 and another law applicable to an entity, the other law controls.

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

12 SUBCHAPTER A-1. APPOINTMENT OF AGENTS

13 Sec. 751.021. CO-AGENTS. A principal may designate in a
14 durable power of attorney two or more persons to act as co-agents.
15 Unless the power of attorney otherwise provides, each co-agent may
16 exercise authority independently of the other 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 or is in
13 conflict with another applicable agreement or instrument to which
14 the principal is a party, an agent is entitled to:

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

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

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

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

26 (b) An agent may take the following actions on the
27 principal's behalf or with respect to the principal's property only

1 if the durable power of attorney designating the agent expressly
2 grants the agent the authority and the exercise of the authority is
3 not otherwise prohibited by another agreement or instrument to
4 which the authority or property is subject:

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

7 (2) make a gift;

8 (3) create or change rights of survivorship;

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

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

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

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

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

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

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

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

6 (1) a trust;

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

10 (3) a qualified tuition program of any state that
11 meets the requirements of Section 529, Internal Revenue Code of
12 1986.

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

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

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

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

26 (B) if the principal's spouse agrees to consent
27 to a split gift as provided by Section 2513, Internal Revenue Code

1 of 1986, twice the annual federal gift tax exclusion limit; and

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

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

14 Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN
15 BENEFICIARY DESIGNATIONS. (a) Unless the durable power of
16 attorney otherwise provides, and except as provided by Section
17 751.031(c), authority granted to an agent under Section
18 751.031(b)(4) empowers the agent to:

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

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

1 (3) create or change a nontestamentary payment or
2 transfer under Chapter 111.

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

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

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

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

27 (c) A principal may modify authority incorporated by

1 reference.

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

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

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

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

23 Sec. 751.101. FIDUCIARY DUTIES. A person who accepts
24 appointment as an agent under a durable power of attorney as
25 provided by Section 751.022 [~~An attorney in fact or agent~~] is a
26 fiduciary and has a duty to inform and to account for actions taken
27 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 ward's estate that are in the possession of the [~~attorney in~~
6 ~~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 seventh 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 a certification or an opinion of counsel must accept the
27 durable power of attorney not later than the fifth business day

1 after the date the person receives the requested certification or
2 opinion.

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

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

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

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

21 (1) an additional or different form of the power of
22 attorney be presented for authority that is granted in the power of
23 attorney presented to the person; or

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

27 Sec. 751.203. AGENT'S CERTIFICATION. (a) Before accepting

1 a durable power of attorney under Section 751.201, the person to
2 whom the power of attorney is presented may request that the agent
3 presenting the power of attorney provide to the person an agent's
4 certification, under penalty of perjury, of any factual matter
5 concerning the principal, agent, or power of attorney.

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

8 CERTIFICATION OF POWER OF ATTORNEY BY AGENT

9 I, _____ (agent), certify under penalty of perjury
10 that:

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

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

16 3. To the best of my knowledge after diligent search and
17 inquiry:

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

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

23 c. My powers under the power of attorney have not been
24 suspended by a court in a temporary guardianship or other
25 proceeding;

26 d. If I am (or was) the principal's spouse, my marriage
27 to the principal has not been dissolved by court decree of divorce

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

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

9 f. The exercise of my authority is not prohibited by
10 another agreement or instrument.

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

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

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

25 7. I agree not to:

26 a. Exercise any powers granted by the power of
27 attorney if I attain knowledge that the power of attorney has been

1 revoked, suspended, or terminated; or

2 b. Exercise any specific powers that have been
3 revoked, suspended, or terminated.

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

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

10 Date: _____, 20__.

11 _____ (signature of agent)

12 (c) A certification made in compliance with this section is
13 conclusive proof of the factual matter that is the subject of the
14 certification.

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

22 (b) Except as otherwise provided in an agreement to extend
23 the request period under Section 751.201(c), an opinion of counsel
24 requested under this section must be provided by the principal or
25 agent, at the principal's expense. If, without an extension, the
26 requestor requests the opinion later than the seventh business day
27 after the date the durable power of attorney is presented to the

1 requestor, the principal or agent may, but is not required to,
2 provide the opinion, at the requestor's expense.

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

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

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

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

24 (A) establish a customer relationship with the
25 person under the power of attorney when the principal is not already
26 a customer of the person; or

27 (B) acquire a product or service under the power

1 of attorney that the person does not offer;

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

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

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

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

12 (3) the person would not engage in a similar
13 transaction with the agent because the person:

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

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

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

21 (i) substantial loss to the person;

22 (ii) financial mismanagement by the agent;

23 (iii) litigation between the person and the
24 agent alleging substantial damages; or

25 (iv) multiple nuisance lawsuits filed by
26 the agent;

27 (4) the person has actual knowledge of the termination

1 of the agent's authority or of the power of attorney before an
2 agent's exercise of authority under the power of attorney;

3 (5) the agent refuses to comply with a request for a
4 certification, opinion of counsel, or translation under Section
5 751.201 or, if the agent complies with one or more of those
6 requests, the requestor in good faith is unable to determine the
7 validity of the power of attorney or the agent's authority to act
8 under the power of attorney because the certification, opinion, or
9 translation is unclear, limited, or qualified in a manner that
10 makes the certification, opinion, or translation ineffective for
11 its intended purpose;

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

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

17 (B) the agent does not have the authority to act
18 as attempted; or

19 (C) the performance of the requested act would
20 violate the terms of:

21 (i) a business entity's governing
22 documents; or

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

25 (7) the person commenced, or has actual knowledge that
26 another person commenced, a judicial proceeding to construe the
27 power of attorney or review the agent's conduct and that proceeding

1 is pending;

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

5 (A) the power of attorney invalid with respect to
6 a purpose for which the power of attorney is being presented for
7 acceptance; or

8 (B) the agent lacked the authority to act in the
9 same manner in which the agent is attempting to act under the power
10 of attorney;

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

18 (10) the person receives conflicting instructions or
19 communications with regard to a matter from co-agents acting under
20 the same power of attorney or from agents acting under different
21 powers of attorney signed by the same principal or another adult
22 acting for the principal as authorized by Section 751.0021,
23 provided that the person may refuse to accept the power of attorney
24 only with respect to that matter.

25 Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE
26 REQUIRED. (a) Except as provided by Subsection (b), a person who
27 refuses to accept a durable power of attorney under this subchapter

1 shall provide to the agent presenting the power of attorney for
2 acceptance a written statement advising the agent of the reason or
3 reasons the person is refusing to accept the power of attorney.

4 (b) If the reason a person is refusing to accept a durable
5 power of attorney is a reason described by Section 751.206(2) or
6 (3), the person shall provide to the agent presenting the power of
7 attorney for acceptance a written statement signed by the person
8 under penalty of perjury stating that the reason for the refusal is
9 a reason described by Section 751.206(2) or (3).

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

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

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

25 (b) A person who in good faith accepts a durable power of
26 attorney without actual knowledge that the power of attorney is
27 void, invalid, or terminated, that the purported agent's authority

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

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

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

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

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

15 Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS
16 CONDUCTED THROUGH EMPLOYEES. (a) This section applies to a person
17 who conducts a transaction or activity through an employee of the
18 person.

19 (b) For purposes of this subchapter, a person is not
20 considered to have actual knowledge of a fact relating to a durable
21 power of attorney, principal, or agent if the employee conducting
22 the transaction or activity involving the power of attorney does
23 not have actual knowledge of the fact.

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

1 subchapter.

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

5 (c) If the court finds that the person refused to accept the
6 durable power of attorney in violation of this subchapter, the
7 court shall:

8 (1) order the person to accept the power of attorney;

9 and

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

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

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

21 Sec. 751.213. LIABILITY OF PRINCIPAL. In an action under
22 Section 751.212, the principal may be liable to the person who
23 refused to accept the durable power of attorney for court costs and
24 reasonable and necessary attorney's fees incurred in defending the
25 action if the court:

26 (1) finds that the action was commenced after the date
27 the written statement described by Section 751.207(b) was timely

1 provided to the agent;

2 (2) expressly finds that the person's refusal to
3 accept the power of attorney was permitted under Section 751.206;

4 or

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

7 SUBCHAPTER F. CIVIL REMEDIES

8 Sec. 751.251. JUDICIAL RELIEF. (a) The following may bring
9 an action requesting a court to construe a durable power of
10 attorney, or to review an agent's conduct under a durable power of
11 attorney and grant 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 the
24 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 unable
22 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.

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

27 Signed this _____ day of _____, _____

1 _____
2 (your signature)

3 State of _____

4 County of _____

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

7 (name of principal)

8 _____
9 (signature of notarial officer)

10 (Seal, if any, of notary) _____
11 (printed name)

12 My commission expires: _____

13 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

14 Agent's Duties

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

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

1 fact when you act for the principal by writing or printing the name
2 of the principal and signing your own name as "agent" or "attorney
3 in fact" in the following manner:

4 (Principal's Name) by (Your Signature) as Agent (or as
5 Attorney in Fact)

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

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

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

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

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

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

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

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

27 (E) the cash balance on hand and the name and

1 location of the depository at which the cash balance is kept;

2 (F) each known liability;

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

6 (H) all documentation regarding the principal's
7 property.

8 Termination of Agent's Authority

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

14 (1) the principal's death;

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

17 (3) the occurrence of a termination event stated in
18 this power of attorney;

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

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

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

1 Liability of Agent

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

9 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
10 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
11 RESPONSIBILITIES OF AN AGENT.

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

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

19 "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

25 INITIAL ONLY the specific authority you WANT to give your agent. If
26 you DO NOT want to grant your agent one or more of the following
27 powers, you may also CROSS OUT a power you DO NOT want to grant.)

1 _____ Create, amend, revoke, or terminate an inter vivos
2 trust

3 _____ Make a gift, subject to the limitations of Section
4 751.032 of the Durable Power of Attorney Act (Section 751.032,
5 Estates Code) and any special instructions in this power of
6 attorney

7 _____ Create or change rights of survivorship

8 _____ Create or change a beneficiary designation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (5) use, develop, alter, replace, remove, erect, or
27 install structures or other improvements on real property in which

1 the principal has or claims to have an estate, interest, or right;

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

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

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

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

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

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

18 (9) enter into mineral transactions, including:

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

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

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

5 (D) conducting or contracting for the conducting
6 of seismic evaluation operations;

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

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

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

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

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

24 (J) negotiating the transfer of and transferring
25 oil, gas, or other mineral leases or interests for any
26 consideration, such as retained overriding royalty interests of any
27 nature, drilling or reworking commitments, or production

1 interests;

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

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

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

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

27 SECTION 12. Section 752.108(b), Estates Code, is amended to

1 read as follows:

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

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

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

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

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

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

1 judicial proceeding to:

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (6) continue:

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

21 (B) contributions to those organizations;

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

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

27 (B) forwarding the principal's mail to any

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

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

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

14 (1) apply for service or disability retirement
15 benefits;

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

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

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

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

26 (6) make rollovers of plan benefits into other
27 retirement plans;

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

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

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

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

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

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

20 SECTION 15. The following sections of the Estates Code are
21 repealed:

- 22 (1) Section 751.004;
23 (2) Section 751.053;
24 (3) Section 751.054;
25 (4) Section 751.055;
26 (5) Section 751.056; and
27 (6) Section 751.058.

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

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

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

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

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

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

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

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

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

25 (d) If the court finds that application of a provision of
26 this Act would substantially interfere with the effective conduct
27 of a judicial proceeding concerning a durable power of attorney

1 commenced before the effective date of this Act or would prejudice
2 the rights of a party to the proceeding, the provision of this Act
3 does not apply and the former law continues in effect for that
4 purpose and applies in those circumstances.

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

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