

1-1 By: Wray (Senate Sponsor - Rodríguez) H.B. No. 1974  
 1-2 (In the Senate - Received from the House May 12, 2017;  
 1-3 May 12, 2017, read first time and referred to Committee on State  
 1-4 Affairs; May 19, 2017, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-6 May 19, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1974 By: Zaffirini

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to durable powers of attorney.  
 1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-23 SECTION 1. Subchapter A, Chapter 751, Estates Code, is  
 1-24 amended by adding Section 751.0015 to read as follows:  
 1-25 Sec. 751.0015. APPLICABILITY OF SUBTITLE. This subtitle  
 1-26 applies to all durable powers of attorney except:  
 1-27 (1) a power of attorney to the extent it is coupled  
 1-28 with an interest in the subject of the power, including a power of  
 1-29 attorney given to or for the benefit of a creditor in connection  
 1-30 with a credit transaction;  
 1-31 (2) a medical power of attorney, as defined by Section  
 1-32 166.002, Health and Safety Code;  
 1-33 (3) a proxy or other delegation to exercise voting  
 1-34 rights or management rights with respect to an entity; or  
 1-35 (4) a power of attorney created on a form prescribed by  
 1-36 a government or governmental subdivision, agency, or  
 1-37 instrumentality for a governmental purpose.  
 1-38 SECTION 2. Subchapter A, Chapter 751, Estates Code, is  
 1-39 amended by amending Sections 751.002, 751.003, and 751.006 and  
 1-40 adding Sections 751.00201, 751.0021, 751.0022, 751.0023, 751.0024,  
 1-41 and 751.007 to read as follows:  
 1-42 Sec. 751.002. DEFINITIONS [DEFINITION OF DURABLE POWER OF  
 1-43 ATTORNEY]. In this subtitle:  
 1-44 (1) "Actual knowledge" means the knowledge of a person  
 1-45 without that person making any due inquiry, and without any imputed  
 1-46 knowledge, except as expressly set forth in Section 751.211(c).  
 1-47 (2) "Affiliate" means a business entity that directly  
 1-48 or indirectly controls, is controlled by, or is under common  
 1-49 control with another business entity.  
 1-50 (3) "Agent" includes:  
 1-51 (A) an attorney in fact; and  
 1-52 (B) a co-agent, successor agent, or successor  
 1-53 co-agent.  
 1-54 (4) "Durable power of attorney" means a writing or  
 1-55 other record that complies with the requirements of Section  
 1-56 751.0021(a) or is described by Section 751.0021(b).  
 1-57 (5) "Principal" means an adult person who signs or  
 1-58 directs the signing of the person's name on a power of attorney that  
 1-59 designates an agent to act on the person's behalf.  
 1-60 (6) "Record" means information that is inscribed on a

2-1 tangible medium or that is stored in an electronic or other medium  
 2-2 and is retrievable in perceivable form.

2-3 Sec. 751.00201. MEANING OF DISABLED OR INCAPACITATED FOR  
 2-4 PURPOSES OF DURABLE POWER OF ATTORNEY. Unless otherwise defined by  
 2-5 a durable power of attorney, a person is considered disabled or  
 2-6 incapacitated for purposes of the durable power of attorney if a  
 2-7 physician certifies in writing at a date later than the date the  
 2-8 durable power of attorney is executed that, based on the  
 2-9 physician's medical examination of the person, the person is  
 2-10 determined to be mentally incapable of managing the person's  
 2-11 financial affairs.

2-12 Sec. 751.0021. REQUIREMENTS OF DURABLE POWER OF ATTORNEY.  
 2-13 (a) An instrument is a durable power of attorney for purposes of  
 2-14 this subtitle if the [A "durable power of attorney" means a written]  
 2-15 instrument [that]:

2-16 (1) is a writing or other record that designates  
 2-17 another person as [attorney in fact or] agent and grants authority  
 2-18 to that agent to act in the place of the principal, regardless of  
 2-19 whether the term "power of attorney" is used;

2-20 (2) is signed by an adult principal or in the adult  
 2-21 principal's conscious presence by another adult directed by the  
 2-22 principal to sign the principal's name on the instrument;

2-23 (3) contains:

2-24 (A) the words:

2-25 (i) "This power of attorney is not affected  
 2-26 by subsequent disability or incapacity of the principal"; or

2-27 (ii) "This power of attorney becomes  
 2-28 effective on the disability or incapacity of the principal"; or

2-29 (B) words similar to those of Paragraph (A) that  
 2-30 clearly indicate [show the principal's intent] that the authority  
 2-31 conferred on the [attorney in fact or] agent shall be exercised  
 2-32 notwithstanding the principal's subsequent disability or  
 2-33 incapacity; and

2-34 (4) is acknowledged by the principal or another adult  
 2-35 directed by the principal as authorized by Subdivision (2) before  
 2-36 an officer authorized under the laws of this state or another state  
 2-37 to:

2-38 (A) take acknowledgments to deeds of conveyance;

2-39 and

2-40 (B) administer oaths.

2-41 (b) If the law of a jurisdiction other than this state  
 2-42 determines the meaning and effect of a writing or other record that  
 2-43 grants authority to an agent to act in the place of the principal,  
 2-44 regardless of whether the term "power of attorney" is used, and that  
 2-45 law provides that the authority conferred on the agent is  
 2-46 exercisable notwithstanding the principal's subsequent disability  
 2-47 or incapacity, the writing or other record is considered a durable  
 2-48 power of attorney under this subtitle.

2-49 Sec. 751.0022. PRESUMPTION OF GENUINE SIGNATURE. A  
 2-50 signature on a durable power of attorney that purports to be the  
 2-51 signature of the principal or of another adult directed by the  
 2-52 principal as authorized by Section 751.0021(a)(2) is presumed to be  
 2-53 genuine, and the durable power of attorney is presumed to have been  
 2-54 executed under Section 751.0021(a) if the officer taking the  
 2-55 acknowledgment has complied with the requirements of Section  
 2-56 121.004(b), Civil Practice and Remedies Code.

2-57 Sec. 751.0023. VALIDITY OF POWER OF ATTORNEY. (a) A  
 2-58 durable power of attorney executed in this state is valid if the  
 2-59 execution of the instrument complies with Section 751.0021(a).

2-60 (b) A durable power of attorney executed in a jurisdiction  
 2-61 other than this state is valid in this state if, when executed, the  
 2-62 execution of the durable power of attorney complied with:

2-63 (1) the law of the jurisdiction that determines the  
 2-64 meaning and effect of the durable power of attorney as provided by  
 2-65 Section 751.0024; or

2-66 (2) the requirements for a military power of attorney  
 2-67 as provided by 10 U.S.C. Section 1044b.

2-68 (c) Except as otherwise provided by statute other than this  
 2-69 subtitle or by the durable power of attorney, a photocopy or

3-1 electronically transmitted copy of an original durable power of  
3-2 attorney has the same effect as the original instrument and may be  
3-3 relied on, without liability, by a person who is asked to accept the  
3-4 durable power of attorney to the same extent as the original.

3-5 Sec. 751.0024. MEANING AND EFFECT OF DURABLE POWER OF  
3-6 ATTORNEY. The meaning and effect of a durable power of attorney is  
3-7 determined by the law of the jurisdiction indicated in the durable  
3-8 power of attorney and, in the absence of an indication of  
3-9 jurisdiction, by:

3-10 (1) the law of the jurisdiction of the principal's  
3-11 domicile, if the principal's domicile is indicated in the power of  
3-12 attorney; or

3-13 (2) the law of the jurisdiction in which the durable  
3-14 power of attorney was executed, if the principal's domicile is not  
3-15 indicated in the power of attorney.

3-16 Sec. 751.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
3-17 This subtitle shall be applied and construed to effect the general  
3-18 purpose of this subtitle, which is to make uniform to the fullest  
3-19 extent possible the law with respect to the subject of this subtitle  
3-20 among states enacting these provisions.

3-21 Sec. 751.006. REMEDIES UNDER OTHER LAW [~~RIGHTS CUMULATIVE~~].  
3-22 The remedies [~~rights set out~~] under this chapter [~~subtitle~~] are not  
3-23 exclusive and do not abrogate any right or remedy under any law of  
3-24 this state other than this chapter [~~cumulative of any other rights~~  
3-25 or remedies the principal may have at common law or other applicable  
3-26 statutes and are not in derogation of those rights].

3-27 Sec. 751.007. CONFLICT WITH OR EFFECT ON OTHER LAW. This  
3-28 subtitle does not:

3-29 (1) supersede any other law applicable to financial  
3-30 institutions or other entities, and to the extent of any conflict  
3-31 between this subtitle and another law applicable to an entity, the  
3-32 other law controls; or

3-33 (2) have the effect of validating a conveyance of an  
3-34 interest in real property executed by an agent under a durable power  
3-35 of attorney if the conveyance is determined under a statute or  
3-36 common law to be void but not voidable.

3-37 SECTION 3. Chapter 751, Estates Code, is amended by adding  
3-38 Subchapters A-1 and A-2 to read as follows:

3-39 SUBCHAPTER A-1. APPOINTMENT OF AGENTS

3-40 Sec. 751.021. CO-AGENTS. A principal may designate in a  
3-41 durable power of attorney two or more persons to act as co-agents.  
3-42 Unless the durable power of attorney otherwise provides, each  
3-43 co-agent may exercise authority independently of the other  
3-44 co-agent.

3-45 Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT. Except  
3-46 as otherwise provided in the durable power of attorney, a person  
3-47 accepts appointment as an agent under a durable power of attorney by  
3-48 exercising authority or performing duties as an agent or by any  
3-49 other assertion or conduct indicating acceptance of the  
3-50 appointment.

3-51 Sec. 751.023. SUCCESSOR AGENTS. (a) A principal may  
3-52 designate in a durable power of attorney one or more successor  
3-53 agents to act if an agent resigns, dies, or becomes incapacitated,  
3-54 is not qualified to serve, or declines to serve.

3-55 (b) A principal may grant authority to designate one or more  
3-56 successor agents to an agent or other person designated by name,  
3-57 office, or function.

3-58 (c) Unless the durable power of attorney otherwise  
3-59 provides, a successor agent:

3-60 (1) has the same authority as the authority granted to  
3-61 the predecessor agent; and

3-62 (2) is not considered an agent under this subtitle and  
3-63 may not act until all predecessor agents, including co-agents, to  
3-64 the successor agent have resigned, died, or become incapacitated,  
3-65 are not qualified to serve, or have declined to serve.

3-66 Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT.  
3-67 Unless the durable power of attorney otherwise provides, an agent  
3-68 is entitled to:

3-69 (1) reimbursement of reasonable expenses incurred on

4-1 the principal's behalf; and  
 4-2 (2) compensation that is reasonable under the  
 4-3 circumstances.

4-4 SUBCHAPTER A-2. AUTHORITY OF AGENT UNDER DURABLE POWER OF ATTORNEY

4-5 Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN  
 4-6 LIMITATIONS. (a) Subject to Subsections (b), (c), and (d) and  
 4-7 Section 751.032, if a durable power of attorney grants to an agent  
 4-8 the authority to perform all acts that the principal could perform,  
 4-9 the agent has the general authority conferred by Subchapter C,  
 4-10 Chapter 752.

4-11 (b) An agent may take the following actions on the  
 4-12 principal's behalf or with respect to the principal's property only  
 4-13 if the durable power of attorney designating the agent expressly  
 4-14 grants the agent the authority and the exercise of the authority is  
 4-15 not otherwise prohibited by another agreement or instrument to  
 4-16 which the authority or property is subject:

4-17 (1) create, amend, revoke, or terminate an inter vivos  
 4-18 trust;

4-19 (2) make a gift;

4-20 (3) create or change rights of survivorship;

4-21 (4) create or change a beneficiary designation; or

4-22 (5) delegate authority granted under the power of  
 4-23 attorney.

4-24 (c) Notwithstanding a grant of authority to perform an act  
 4-25 described by Subsection (b), unless the durable power of attorney  
 4-26 otherwise provides, an agent who is not an ancestor, spouse, or  
 4-27 descendant of the principal may not exercise authority under the  
 4-28 power of attorney to create in the agent, or in an individual to  
 4-29 whom the agent owes a legal obligation of support, an interest in  
 4-30 the principal's property, whether by gift, right of survivorship,  
 4-31 beneficiary designation, disclaimer, or otherwise.

4-32 (d) Subject to Subsections (b) and (c) and Section 751.032,  
 4-33 if the subjects over which authority is granted in a durable power  
 4-34 of attorney are similar or overlap, the broadest authority  
 4-35 controls.

4-36 (e) Authority granted in a durable power of attorney is  
 4-37 exercisable with respect to property that the principal has when  
 4-38 the power of attorney is executed or acquires later, regardless of  
 4-39 whether:

4-40 (1) the property is located in this state; and

4-41 (2) the authority is exercised in this state or the  
 4-42 power of attorney is executed in this state.

4-43 Sec. 751.032. GIFT AUTHORITY. (a) In this section, a gift  
 4-44 for the benefit of a person includes a gift to:

4-45 (1) a trust;

4-46 (2) an account under the Texas Uniform Transfers to  
 4-47 Minors Act (Chapter 141, Property Code) or a similar law of another  
 4-48 state; and

4-49 (3) a qualified tuition program of any state that  
 4-50 meets the requirements of Section 529, Internal Revenue Code of  
 4-51 1986.

4-52 (b) Unless the durable power of attorney otherwise  
 4-53 provides, a grant of authority to make a gift is subject to the  
 4-54 limitations prescribed by this section.

4-55 (c) Language in a durable power of attorney granting general  
 4-56 authority with respect to gifts authorizes the agent to only:

4-57 (1) make outright to, or for the benefit of, a person a  
 4-58 gift of any of the principal's property, including by the exercise  
 4-59 of a presently exercisable general power of appointment held by the  
 4-60 principal, in an amount per donee not to exceed:

4-61 (A) the annual dollar limits of the federal gift  
 4-62 tax exclusion under Section 2503(b), Internal Revenue Code of 1986,  
 4-63 regardless of whether the federal gift tax exclusion applies to the  
 4-64 gift; or

4-65 (B) if the principal's spouse agrees to consent  
 4-66 to a split gift as provided by Section 2513, Internal Revenue Code  
 4-67 of 1986, twice the annual federal gift tax exclusion limit; and

4-68 (2) consent, as provided by Section 2513, Internal  
 4-69 Revenue Code of 1986, to the splitting of a gift made by the

5-1 principal's spouse in an amount per donee not to exceed the  
 5-2 aggregate annual federal gift tax exclusions for both spouses.

5-3 (d) An agent may make a gift of the principal's property  
 5-4 only as the agent determines is consistent with the principal's  
 5-5 objectives if the agent actually knows those objectives. If the  
 5-6 agent does not know the principal's objectives, the agent may make a  
 5-7 gift of the principal's property only as the agent determines is  
 5-8 consistent with the principal's best interest based on all relevant  
 5-9 factors, including the factors listed in Section 751.122 and the  
 5-10 principal's personal history of making or joining in making gifts.

5-11 Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN  
 5-12 BENEFICIARY DESIGNATIONS. (a) Unless the durable power of  
 5-13 attorney otherwise provides, and except as provided by Section  
 5-14 751.031(c), authority granted to an agent under Section  
 5-15 751.031(b)(4) empowers the agent to:

5-16 (1) create or change a beneficiary designation under  
 5-17 an account, contract, or another arrangement that authorizes the  
 5-18 principal to designate a beneficiary, including an insurance or  
 5-19 annuity contract, a qualified or nonqualified retirement plan,  
 5-20 including a retirement plan as defined by Section 752.113, an  
 5-21 employment agreement, including a deferred compensation agreement,  
 5-22 and a residency agreement;

5-23 (2) enter into or change a P.O.D. account or trust  
 5-24 account under Chapter 113; or

5-25 (3) create or change a nontestamentary payment or  
 5-26 transfer under Chapter 111.

5-27 (b) If an agent is granted authority under Section  
 5-28 751.031(b)(4) and the durable power of attorney grants the  
 5-29 authority to the agent described in Section 752.108 or 752.113,  
 5-30 then, unless the power of attorney otherwise provides, the  
 5-31 authority of the agent to designate the agent as a beneficiary is  
 5-32 not subject to the limitations prescribed by Sections 752.108(b)  
 5-33 and 752.113(c).

5-34 (c) If an agent is not granted authority under Section  
 5-35 751.031(b)(4) but the durable power of attorney grants the  
 5-36 authority to the agent described in Section 752.108 or 752.113,  
 5-37 then, unless the power of attorney otherwise provides and  
 5-38 notwithstanding Section 751.031, the agent's authority to  
 5-39 designate the agent as a beneficiary is subject to the limitations  
 5-40 prescribed by Sections 752.108(b) and 752.113(c).

5-41 Sec. 751.034. INCORPORATION OF AUTHORITY. (a) An agent has  
 5-42 authority described in this chapter if the durable power of  
 5-43 attorney refers to general authority with respect to the  
 5-44 descriptive term for the subjects stated in Chapter 752 or cites the  
 5-45 section in which the authority is described.

5-46 (b) A reference in a durable power of attorney to general  
 5-47 authority with respect to the descriptive term for a subject in  
 5-48 Chapter 752 or a citation to one of those sections incorporates the  
 5-49 entire section as if the section were set out in its entirety in the  
 5-50 power of attorney.

5-51 (c) A principal may modify authority incorporated by  
 5-52 reference.

5-53 SECTION 4. Sections 751.051, 751.057, 751.101, 751.102,  
 5-54 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended  
 5-55 to read as follows:

5-56 Sec. 751.051. EFFECT OF ACTS PERFORMED BY [ATTORNEY IN FACT  
 5-57 OR] AGENT [DURING PRINCIPAL'S DISABILITY OR INCAPACITY]. An [Each]  
 5-58 act performed by an [attorney in fact or] agent under a durable  
 5-59 power of attorney [during a period of the principal's disability or  
 5-60 incapacity] has the same effect[7] and inures to the benefit of and  
 5-61 binds the principal and the principal's successors in interest[7]  
 5-62 as if the principal had performed the act [were not disabled or  
 5-63 incapacitated].

5-64 Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING. (a) The  
 5-65 filing of a voluntary or involuntary petition in bankruptcy in  
 5-66 connection with the debts of a principal who has executed a durable  
 5-67 power of attorney does not revoke or terminate the agency as to the  
 5-68 principal's [attorney in fact or] agent.

5-69 (b) Any act the [attorney in fact or] agent may undertake

6-1 with respect to the principal's property is subject to the  
6-2 limitations and requirements of the United States Bankruptcy Code  
6-3 (11 U.S.C. Section 101 et seq.) until a final determination is made  
6-4 in the bankruptcy proceeding.

6-5 Sec. 751.101. FIDUCIARY DUTIES. A person who accepts  
6-6 appointment as an agent under a durable power of attorney as  
6-7 provided by Section 751.022 [An attorney in fact or agent] is a  
6-8 fiduciary as to the principal only when acting as an agent under the  
6-9 power of attorney and has a duty to inform and to account for  
6-10 actions taken under the power of attorney.

6-11 Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) The  
6-12 [~~attorney in fact or~~] agent shall timely inform the principal of  
6-13 each action taken under a durable [~~the~~] power of attorney.

6-14 (b) Failure of an [~~attorney in fact or~~] agent to timely  
6-15 inform, as to third parties, does not invalidate any action of the  
6-16 [~~attorney in fact or~~] agent.

6-17 Sec. 751.103. MAINTENANCE OF RECORDS. (a) The [~~attorney~~  
6-18 ~~in fact or~~] agent shall maintain records of each action taken or  
6-19 decision made by the [~~attorney in fact or~~] agent.

6-20 (b) The [~~attorney in fact or~~] agent shall maintain all  
6-21 records until delivered to the principal, released by the  
6-22 principal, or discharged by a court.

6-23 Sec. 751.104. ACCOUNTING. (a) The principal may demand an  
6-24 accounting by the [~~attorney in fact or~~] agent.

6-25 (b) Unless otherwise directed by the principal, an  
6-26 accounting under Subsection (a) must include:

6-27 (1) the property belonging to the principal that has  
6-28 come to the [~~attorney in fact's or~~] agent's knowledge or into the  
6-29 [~~attorney in fact's or~~] agent's possession;

6-30 (2) each action taken or decision made by the  
6-31 [~~attorney in fact or~~] agent;

6-32 (3) a complete account of receipts, disbursements, and  
6-33 other actions of the [~~attorney in fact or~~] agent that includes  
6-34 the source and nature of each receipt, disbursement, or action,  
6-35 with receipts of principal and income shown separately;

6-36 (4) a listing of all property over which the [~~attorney~~  
6-37 ~~in fact or~~] agent has exercised control that includes:

6-38 (A) an adequate description of each asset; and

6-39 (B) the asset's current value, if the value is  
6-40 known to the [~~attorney in fact or~~] agent;

6-41 (5) the cash balance on hand and the name and location  
6-42 of the depository at which the cash balance is kept;

6-43 (6) each known liability; and

6-44 (7) any other information and facts known to the  
6-45 [~~attorney in fact or~~] agent as necessary for a full and definite  
6-46 understanding of the exact condition of the property belonging to  
6-47 the principal.

6-48 (c) Unless directed otherwise by the principal, the  
6-49 [~~attorney in fact or~~] agent shall also provide to the principal all  
6-50 documentation regarding the principal's property.

6-51 Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the  
6-52 [~~attorney in fact or~~] agent fails or refuses to inform the  
6-53 principal, provide documentation, or deliver an accounting under  
6-54 Section 751.104 within 60 days of a demand under that section, or a  
6-55 longer or shorter period as demanded by the principal or ordered by  
6-56 a court, the principal may file suit to:

6-57 (1) compel the [~~attorney in fact or~~] agent to deliver  
6-58 the accounting or the assets; or

6-59 (2) terminate the durable power of attorney.

6-60 Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S  
6-61 RIGHTS. This subchapter does not limit the right of the principal  
6-62 to terminate the durable power of attorney or to make additional  
6-63 requirements of or to give additional instructions to the [~~attorney~~  
6-64 ~~in fact or~~] agent.

6-65 SECTION 5. Chapter 751, Estates Code, is amended by adding  
6-66 Subchapters C-1 and C-2 to read as follows:

6-67 SUBCHAPTER C-1. OTHER DUTIES OF AGENT

6-68 Sec. 751.121. DUTY TO NOTIFY OF BREACH OF FIDUCIARY DUTY BY  
6-69 OTHER AGENT. (a) An agent who has actual knowledge of a breach or

7-1 imminent breach of fiduciary duty by another agent shall notify the  
7-2 principal and, if the principal is incapacitated, take any action  
7-3 reasonably appropriate under the circumstances to safeguard the  
7-4 principal's best interest. An agent who fails to notify the  
7-5 principal or take action as required by this subsection is liable  
7-6 for the reasonably foreseeable damages that could have been avoided  
7-7 if the agent had notified the principal or taken the action.

7-8 (b) Except as otherwise provided by Subsection (a) or the  
7-9 durable power of attorney, an agent who does not participate in or  
7-10 conceal a breach of fiduciary duty committed by another agent,  
7-11 including a predecessor agent, is not liable for the actions of the  
7-12 other agent.

7-13 Sec. 751.122. DUTY TO PRESERVE PRINCIPAL'S ESTATE PLAN. An  
7-14 agent shall preserve to the extent reasonably possible the  
7-15 principal's estate plan to the extent the agent has actual  
7-16 knowledge of the plan if preserving the plan is consistent with the  
7-17 principal's best interest based on all relevant factors, including:

7-18 (1) the value and nature of the principal's property;

7-19 (2) the principal's foreseeable obligations and need  
7-20 for maintenance;

7-21 (3) minimization of taxes, including income, estate,  
7-22 inheritance, generation-skipping transfer, and gift taxes; and

7-23 (4) eligibility for a benefit, a program, or  
7-24 assistance under a statute or regulation.

7-25 SUBCHAPTER C-2. DURATION OF DURABLE POWER OF ATTORNEY AND AGENT'S  
7-26 AUTHORITY

7-27 Sec. 751.131. TERMINATION OF DURABLE POWER OF ATTORNEY. A  
7-28 durable power of attorney terminates when:

7-29 (1) the principal dies;

7-30 (2) the principal revokes the power of attorney;

7-31 (3) the power of attorney provides that it terminates;

7-32 (4) the purpose of the power of attorney is  
7-33 accomplished;

7-34 (5) one of the circumstances with respect to an agent  
7-35 described by Section 751.132(a)(1), (2), or (3) arises and the  
7-36 power of attorney does not provide for another agent to act under  
7-37 the power of attorney; or

7-38 (6) a permanent guardian of the estate of the  
7-39 principal has qualified to serve in that capacity as provided by  
7-40 Section 751.133.

7-41 Sec. 751.132. TERMINATION OF AGENT'S AUTHORITY. (a) An  
7-42 agent's authority under a durable power of attorney terminates  
7-43 when:

7-44 (1) the principal revokes the authority;

7-45 (2) the agent dies, becomes incapacitated, is no  
7-46 longer qualified, or resigns;

7-47 (3) the agent's marriage to the principal is dissolved  
7-48 by court decree of divorce or annulment or is declared void by a  
7-49 court, unless the power of attorney otherwise provides; or

7-50 (4) the power of attorney terminates.

7-51 (b) Unless the durable power of attorney otherwise  
7-52 provides, an agent's authority may be exercised until the agent's  
7-53 authority terminates under Subsection (a), notwithstanding a lapse  
7-54 of time since the execution of the power of attorney.

7-55 Sec. 751.134. EFFECT ON CERTAIN PERSONS OF TERMINATION OF  
7-56 DURABLE POWER OF ATTORNEY OR AGENT'S AUTHORITY. Termination of an  
7-57 agent's authority or of a durable power of attorney is not effective  
7-58 as to the agent or another person who, without actual knowledge of  
7-59 the termination, acts in good faith under or in reliance on the  
7-60 power of attorney. An act performed as described by this section,  
7-61 unless otherwise invalid or unenforceable, binds the principal and  
7-62 the principal's successors in interest.

7-63 Sec. 751.135. PREVIOUS DURABLE POWER OF ATTORNEY CONTINUES  
7-64 IN EFFECT UNTIL REVOKED. The execution of a durable power of  
7-65 attorney does not revoke a durable power of attorney previously  
7-66 executed by the principal unless the subsequent power of attorney  
7-67 provides that the previous power of attorney is revoked or that all  
7-68 other durable powers of attorney are revoked.

7-69 SECTION 6. Section 751.052, Estates Code, is transferred to

8-1 Subchapter C-2, Chapter 751, Estates Code, as added by this Act,  
8-2 redesignated as Section 751.133, Estates Code, and amended to read  
8-3 as follows:

8-4 Sec. 751.133 [~~751.052~~]. ~~RELATION OF [ATTORNEY IN FACT OR]~~  
8-5 ~~AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE.~~ (a) If, after  
8-6 execution of a durable power of attorney, a court of the principal's  
8-7 domicile appoints a permanent guardian of the estate of the  
8-8 principal, the powers of the [~~attorney in fact or~~] agent terminate  
8-9 on the qualification of the guardian of the estate. The [~~attorney~~  
8-10 ~~in fact or~~] agent shall:

8-11 (1) deliver to the guardian of the estate all assets of  
8-12 the incapacitated person's [ward's] estate that are in the  
8-13 possession of the [~~attorney in fact or~~] agent; and

8-14 (2) account to the guardian of the estate as the  
8-15 [~~attorney in fact or~~] agent would account to the principal if the  
8-16 principal had terminated the powers of the [~~attorney in fact or~~]  
8-17 agent.

8-18 (b) If, after execution of a durable power of attorney, a  
8-19 court of the principal's domicile appoints a temporary guardian of  
8-20 the estate of the principal, the court may suspend the powers of the  
8-21 [~~attorney in fact or~~] agent on the qualification of the temporary  
8-22 guardian of the estate until the date the term of the temporary  
8-23 guardian expires. This subsection may not be construed to prohibit  
8-24 the application for or issuance of a temporary restraining order  
8-25 under applicable law.

8-26 SECTION 7. Section 751.151, Estates Code, is amended to  
8-27 read as follows:

8-28 Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS  
8-29 REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power  
8-30 of attorney for a real property transaction requiring the execution  
8-31 and delivery of an instrument that is to be recorded, including a  
8-32 release, assignment, satisfaction, mortgage, including a reverse  
8-33 mortgage, security agreement, deed of trust, encumbrance, deed of  
8-34 conveyance, oil, gas, or other mineral lease, memorandum of a  
8-35 lease, lien, including a home equity lien, or other claim or right  
8-36 to real property, must be recorded in the office of the county clerk  
8-37 of the county in which the property is located not later than the  
8-38 30th day after the date the instrument is filed for recording.

8-39 SECTION 8. Chapter 751, Estates Code, is amended by adding  
8-40 Subchapters E and F to read as follows:

8-41 SUBCHAPTER E. ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF  
8-42 ATTORNEY

8-43 Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY  
8-44 REQUIRED; EXCEPTIONS. (a) Unless one or more grounds for refusal  
8-45 under Section 751.206 exist, a person who is presented with and  
8-46 asked to accept a durable power of attorney by an agent with  
8-47 authority to act under the power of attorney shall:

8-48 (1) accept the power of attorney; or

8-49 (2) before accepting the power of attorney:

8-50 (A) request an agent's certification under  
8-51 Section 751.203 or an opinion of counsel under Section 751.204 not  
8-52 later than the 10th business day after the date the power of  
8-53 attorney is presented, except as provided by Subsection (c); or

8-54 (B) if applicable, request an English  
8-55 translation under Section 751.205 not later than the fifth business  
8-56 day after the date the power of attorney is presented, except as  
8-57 provided by Subsection (c).

8-58 (b) Unless one or more grounds for refusal under Section  
8-59 751.206 exist and except as provided by Subsection (c), a person who  
8-60 requests:

8-61 (1) an agent's certification must accept the durable  
8-62 power of attorney not later than the seventh business day after the  
8-63 date the person receives the requested certification; and

8-64 (2) an opinion of counsel must accept the durable  
8-65 power of attorney not later than the seventh business day after the  
8-66 date the person receives the requested opinion.

8-67 (c) An agent presenting a durable power of attorney for  
8-68 acceptance and the person to whom the power of attorney is presented  
8-69 may agree to extend a period prescribed by Subsection (a) or (b).



9-1 (d) If an English translation of a durable power of attorney  
9-2 is requested as authorized by Subsection (a)(2)(B), the power of  
9-3 attorney is not considered presented for acceptance under  
9-4 Subsection (a) until the date the requestor receives the  
9-5 translation. On and after that date, the power of attorney shall be  
9-6 treated as a power of attorney originally prepared in English for  
9-7 all the purposes of this subchapter.

9-8 (e) A person is not required to accept a durable power of  
9-9 attorney under this section if the agent refuses to or does not  
9-10 provide a requested certification, opinion of counsel, or English  
9-11 translation under this subchapter.

9-12 Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF  
9-13 ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED. A person who is  
9-14 asked to accept a durable power of attorney under Section 751.201  
9-15 may not require that:

9-16 (1) an additional or different form of the power of  
9-17 attorney be presented for authority that is granted in the power of  
9-18 attorney presented to the person; or

9-19 (2) the power of attorney be recorded in the office of  
9-20 a county clerk unless the recording of the instrument is required by  
9-21 Section 751.151 or another law of this state.

9-22 Sec. 751.203. AGENT'S CERTIFICATION. (a) Before accepting  
9-23 a durable power of attorney under Section 751.201, the person to  
9-24 whom the power of attorney is presented may request that the agent  
9-25 presenting the power of attorney provide to the person an agent's  
9-26 certification, under penalty of perjury, of any factual matter  
9-27 concerning the principal, agent, or power of attorney. If under its  
9-28 terms the power of attorney becomes effective on the disability or  
9-29 incapacity of the principal, the person to whom the power of  
9-30 attorney is presented may request that the certification include a  
9-31 written statement from a physician attending the principal that  
9-32 states that the principal is presently disabled or incapacitated.

9-33 (b) A certification described by Subsection (a) may be in  
9-34 the following form:

9-35 CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

9-36 I, \_\_\_\_\_ (agent), certify under penalty of perjury  
9-37 that:

9-38 1. I am the agent named in the power of attorney validly  
9-39 executed by \_\_\_\_\_ (principal) ("principal") on \_\_\_\_\_  
9-40 (date), and the power of attorney is now in full force and effect.

9-41 2. The principal is not deceased and is presently domiciled  
9-42 in \_\_\_\_\_ (city and state/territory or foreign country).

9-43 3. To the best of my knowledge after diligent search and  
9-44 inquiry:

9-45 a. The power of attorney has not been revoked by the  
9-46 principal or suspended or terminated by the occurrence of any  
9-47 event, whether or not referenced in the power of attorney;

9-48 b. At the time the power of attorney was executed, the  
9-49 principal was mentally competent to transact legal matters and was  
9-50 not acting under the undue influence of any other person;

9-51 c. A permanent guardian of the estate of the principal  
9-52 has not qualified to serve in that capacity;

9-53 d. My powers under the power of attorney have not been  
9-54 suspended by a court in a temporary guardianship or other  
9-55 proceeding;

9-56 e. If I am (or was) the principal's spouse, my marriage  
9-57 to the principal has not been dissolved by court decree of divorce  
9-58 or annulment or declared void by a court, or the power of attorney  
9-59 provides specifically that my appointment as the agent for the  
9-60 principal does not terminate if my marriage to the principal has  
9-61 been dissolved by court decree of divorce or annulment or declared  
9-62 void by a court;

9-63 f. No proceeding has been commenced for a temporary or  
9-64 permanent guardianship of the person or estate, or both, of the  
9-65 principal; and

9-66 g. The exercise of my authority is not prohibited by  
9-67 another agreement or instrument.

9-68 4. If under its terms the power of attorney becomes  
9-69 effective on the disability or incapacity of the principal or at a

10-1 future time or on the occurrence of a contingency, the principal now  
10-2 has a disability or is incapacitated or the specified future time or  
10-3 contingency has occurred.

10-4 5. I am acting within the scope of my authority under the  
10-5 power of attorney, and my authority has not been altered or  
10-6 terminated.

10-7 6. If applicable, I am the successor to \_\_\_\_\_  
10-8 (predecessor agent), who has resigned, died, or become  
10-9 incapacitated, is not qualified to serve or has declined to serve as  
10-10 agent, or is otherwise unable to act. There are no unsatisfied  
10-11 conditions remaining under the power of attorney that preclude my  
10-12 acting as successor agent.

10-13 7. I agree not to:

10-14 a. Exercise any powers granted by the power of  
10-15 attorney if I attain knowledge that the power of attorney has been  
10-16 revoked, suspended, or terminated; or

10-17 b. Exercise any specific powers that have been  
10-18 revoked, suspended, or terminated.

10-19 8. A true and correct copy of the power of attorney is  
10-20 attached to this document.

10-21 9. If used in connection with an extension of credit under  
10-22 Section 50(a)(6), Article XVI, Texas Constitution, the power of  
10-23 attorney was executed in the office of the lender, the office of a  
10-24 title company, or the law office of \_\_\_\_\_.

10-25 Date: \_\_\_\_\_, 20\_\_.

10-26 \_\_\_\_\_ (signature of agent)

10-27 (c) A certification made in compliance with this section is  
10-28 conclusive proof of the factual matter that is the subject of the  
10-29 certification.

10-30 Sec. 751.204. OPINION OF COUNSEL. (a) Before accepting a  
10-31 durable power of attorney under Section 751.201, the person to whom  
10-32 the power of attorney is presented may request from the agent  
10-33 presenting the power of attorney an opinion of counsel regarding  
10-34 any matter of law concerning the power of attorney so long as the  
10-35 person provides to the agent the reason for the request in a writing  
10-36 or other record.

10-37 (b) Except as otherwise provided in an agreement to extend  
10-38 the request period under Section 751.201(c), an opinion of counsel  
10-39 requested under this section must be provided by the principal or  
10-40 agent, at the principal's expense. If, without an extension, the  
10-41 requestor requests the opinion later than the 10th business day  
10-42 after the date the durable power of attorney is presented to the  
10-43 requestor, the principal or agent may, but is not required to,  
10-44 provide the opinion, at the requestor's expense.

10-45 Sec. 751.205. ENGLISH TRANSLATION. (a) Before accepting a  
10-46 durable power of attorney under Section 751.201 that contains,  
10-47 wholly or partly, language other than English, the person to whom  
10-48 the power of attorney is presented may request from the agent  
10-49 presenting the power of attorney an English translation of the  
10-50 power of attorney.

10-51 (b) Except as otherwise provided in an agreement to extend  
10-52 the request period under Section 751.201(c), an English translation  
10-53 requested under this section must be provided by the principal or  
10-54 agent, at the principal's expense. If, without an extension, the  
10-55 requestor requests the translation later than the fifth business  
10-56 day after the date the durable power of attorney is presented to the  
10-57 requestor, the principal or agent may, but is not required to,  
10-58 provide the translation, at the requestor's expense.

10-59 Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. A person is  
10-60 not required to accept a durable power of attorney under this  
10-61 subchapter if:

10-62 (1) the person would not otherwise be required to  
10-63 engage in a transaction with the principal under the same  
10-64 circumstances, including a circumstance in which the agent seeks  
10-65 to:

10-66 (A) establish a customer relationship with the  
10-67 person under the power of attorney when the principal is not already  
10-68 a customer of the person or expand an existing customer  
10-69 relationship with the person under the power of attorney; or

11-1 (B) acquire a product or service under the power  
11-2 of attorney that the person does not offer;  
11-3 (2) the person's engaging in the transaction with the  
11-4 agent or with the principal under the same circumstances would be  
11-5 inconsistent with:  
11-6 (A) another law of this state or a federal  
11-7 statute, rule, or regulation;  
11-8 (B) a request from a law enforcement agency; or  
11-9 (C) a policy adopted by the person in good faith  
11-10 that is necessary to comply with another law of this state or a  
11-11 federal statute, rule, regulation, regulatory directive, guidance,  
11-12 or executive order applicable to the person;  
11-13 (3) the person would not engage in a similar  
11-14 transaction with the agent because the person or an affiliate of the  
11-15 person:  
11-16 (A) has filed a suspicious activity report as  
11-17 described by 31 U.S.C. Section 5318(g) with respect to the  
11-18 principal or agent;  
11-19 (B) believes in good faith that the principal or  
11-20 agent has a prior criminal history involving financial crimes; or  
11-21 (C) has had a previous, unsatisfactory business  
11-22 relationship with the agent due to or resulting in:  
11-23 (i) material loss to the person;  
11-24 (ii) financial mismanagement by the agent;  
11-25 (iii) litigation between the person and the  
11-26 agent alleging substantial damages; or  
11-27 (iv) multiple nuisance lawsuits filed by  
11-28 the agent;  
11-29 (4) the person has actual knowledge of the termination  
11-30 of the agent's authority or of the power of attorney before an  
11-31 agent's exercise of authority under the power of attorney;  
11-32 (5) the agent refuses to comply with a request for a  
11-33 certification, opinion of counsel, or translation under Section  
11-34 751.201 or, if the agent complies with one or more of those  
11-35 requests, the requestor in good faith is unable to determine the  
11-36 validity of the power of attorney or the agent's authority to act  
11-37 under the power of attorney because the certification, opinion, or  
11-38 translation is incorrect, incomplete, unclear, limited, qualified,  
11-39 or otherwise deficient in a manner that makes the certification,  
11-40 opinion, or translation ineffective for its intended purpose, as  
11-41 determined in good faith by the requestor;  
11-42 (6) regardless of whether an agent's certification,  
11-43 opinion of counsel, or translation has been requested or received  
11-44 by the person under this subchapter, the person believes in good  
11-45 faith that:  
11-46 (A) the power of attorney is not valid;  
11-47 (B) the agent does not have the authority to act  
11-48 as attempted; or  
11-49 (C) the performance of the requested act would  
11-50 violate the terms of:  
11-51 (i) a business entity's governing  
11-52 documents; or  
11-53 (ii) an agreement affecting a business  
11-54 entity, including how the entity's business is conducted;  
11-55 (7) the person commenced, or has actual knowledge that  
11-56 another person commenced, a judicial proceeding to construe the  
11-57 power of attorney or review the agent's conduct and that proceeding  
11-58 is pending;  
11-59 (8) the person commenced, or has actual knowledge that  
11-60 another person commenced, a judicial proceeding for which a final  
11-61 determination was made that found:  
11-62 (A) the power of attorney invalid with respect to  
11-63 a purpose for which the power of attorney is being presented for  
11-64 acceptance; or  
11-65 (B) the agent lacked the authority to act in the  
11-66 same manner in which the agent is attempting to act under the power  
11-67 of attorney;  
11-68 (9) the person makes, has made, or has actual  
11-69 knowledge that another person has made a report to a law enforcement

12-1 agency or other federal or state agency, including the Department  
 12-2 of Family and Protective Services, stating a good faith belief that  
 12-3 the principal may be subject to physical or financial abuse,  
 12-4 neglect, exploitation, or abandonment by the agent or a person  
 12-5 acting with or on behalf of the agent;

12-6 (10) the person receives conflicting instructions or  
 12-7 communications with regard to a matter from co-agents acting under  
 12-8 the same power of attorney or from agents acting under different  
 12-9 powers of attorney signed by the same principal or another adult  
 12-10 acting for the principal as authorized by Section 751.0021,  
 12-11 provided that the person may refuse to accept the power of attorney  
 12-12 only with respect to that matter; or

12-13 (11) the person is not required to accept the durable  
 12-14 power of attorney by the law of the jurisdiction that applies in  
 12-15 determining the power of attorney's meaning and effect, or the  
 12-16 powers conferred under the durable power of attorney that the agent  
 12-17 is attempting to exercise are not included within the scope of  
 12-18 activities to which the law of that jurisdiction applies.

12-19 Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE  
 12-20 REQUIRED. (a) Except as provided by Subsection (b), a person who  
 12-21 refuses to accept a durable power of attorney under this subchapter  
 12-22 shall provide to the agent presenting the power of attorney for  
 12-23 acceptance a written statement advising the agent of the reason or  
 12-24 reasons the person is refusing to accept the power of attorney.

12-25 (b) If the reason a person is refusing to accept a durable  
 12-26 power of attorney is a reason described by Section 751.206(2) or  
 12-27 (3):

12-28 (1) the person shall provide to the agent presenting  
 12-29 the power of attorney for acceptance a written statement signed by  
 12-30 the person under penalty of perjury stating that the reason for the  
 12-31 refusal is a reason described by Section 751.206(2) or (3); and

12-32 (2) the person refusing to accept the power of  
 12-33 attorney is not required to provide any additional explanation for  
 12-34 refusing to accept the power of attorney.

12-35 (c) The person must provide to the agent the written  
 12-36 statement required under Subsection (a) or (b) on or before the date  
 12-37 the person would otherwise be required to accept the durable power  
 12-38 of attorney under Section 751.201.

12-39 Sec. 751.208. DATE OF ACCEPTANCE. A durable power of  
 12-40 attorney is considered accepted by a person under Section 751.201  
 12-41 on the first day the person agrees to act at the agent's direction  
 12-42 under the power of attorney.

12-43 Sec. 751.209. GOOD FAITH RELIANCE ON DURABLE POWER OF  
 12-44 ATTORNEY. (a) A person who in good faith accepts a durable power of  
 12-45 attorney without actual knowledge that the signature of the  
 12-46 principal or of another adult directed by the principal to sign the  
 12-47 principal's name as authorized by Section 751.0021 is not genuine  
 12-48 may rely on the presumption under Section 751.0022 that the  
 12-49 signature is genuine and that the power of attorney was properly  
 12-50 executed.

12-51 (b) A person who in good faith accepts a durable power of  
 12-52 attorney without actual knowledge that the power of attorney is  
 12-53 void, invalid, or terminated, that the purported agent's authority  
 12-54 is void, invalid, or terminated, or that the agent is exceeding or  
 12-55 improperly exercising the agent's authority may rely on the power  
 12-56 of attorney as if:

12-57 (1) the power of attorney were genuine, valid, and  
 12-58 still in effect;

12-59 (2) the agent's authority were genuine, valid, and  
 12-60 still in effect; and

12-61 (3) the agent had not exceeded and had properly  
 12-62 exercised the authority.

12-63 Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION. A  
 12-64 person may rely on, without further investigation or liability to  
 12-65 another person, an agent's certification, opinion of counsel, or  
 12-66 English translation that is provided to the person under this  
 12-67 subchapter.

12-68 Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS  
 12-69 CONDUCTED THROUGH EMPLOYEES. (a) This section applies to a person

13-1 who conducts a transaction or activity through an employee of the  
 13-2 person.

13-3 (b) For purposes of this chapter, a person is not considered  
 13-4 to have actual knowledge of a fact relating to a durable power of  
 13-5 attorney, principal, or agent if the employee conducting the  
 13-6 transaction or activity involving the power of attorney does not  
 13-7 have actual knowledge of the fact.

13-8 (c) For purposes of this chapter, a person is considered to  
 13-9 have actual knowledge of a fact relating to a durable power of  
 13-10 attorney, principal, or agent if the employee conducting the  
 13-11 transaction or activity involving the power of attorney has actual  
 13-12 knowledge of the fact.

13-13 Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE  
 13-14 POWER OF ATTORNEY. (a) The principal or an agent acting on the  
 13-15 principal's behalf may bring an action against a person who refuses  
 13-16 to accept a durable power of attorney in violation of this  
 13-17 subchapter.

13-18 (b) An action under Subsection (a) may not be commenced  
 13-19 against a person until after the date the person is required to  
 13-20 accept the durable power of attorney under Section 751.201.

13-21 (c) If the court finds that the person refused to accept the  
 13-22 durable power of attorney in violation of this subchapter, the  
 13-23 court, as the exclusive remedy under this chapter:

13-24 (1) shall order the person to accept the power of  
 13-25 attorney; and

13-26 (2) may award the plaintiff court costs and reasonable  
 13-27 and necessary attorney's fees.

13-28 (d) The court shall dismiss an action under this section  
 13-29 that was commenced after the date a written statement described by  
 13-30 Section 751.207(b) was provided to the agent.

13-31 (e) Notwithstanding Subsection (c), if the agent receives a  
 13-32 written statement described by Section 751.207(b) after the date a  
 13-33 timely action is commenced under this section, the court may not  
 13-34 order the person to accept the durable power of attorney, but  
 13-35 instead may award the plaintiff court costs and reasonable and  
 13-36 necessary attorney's fees as the exclusive remedy under this  
 13-37 chapter.

13-38 Sec. 751.213. LIABILITY OF PRINCIPAL. (a) Subsection (b)  
 13-39 applies to an action brought under Section 751.212 if:

13-40 (1) the court finds that the action was commenced  
 13-41 after the date the written statement described by Section  
 13-42 751.207(b) was timely provided to the agent;

13-43 (2) the court expressly finds that the refusal of the  
 13-44 person against whom the action was brought to accept the durable  
 13-45 power of attorney was permitted under this chapter; or

13-46 (3) Section 751.212(e) does not apply and the court  
 13-47 does not issue an order ordering the person to accept the power of  
 13-48 attorney.

13-49 (b) Under any of the circumstances described by Subsection  
 13-50 (a), the principal may be liable to the person who refused to accept  
 13-51 the durable power of attorney for court costs and reasonable and  
 13-52 necessary attorney's fees incurred in defending the action as the  
 13-53 exclusive remedy under this chapter.

#### 13-54 SUBCHAPTER F. CIVIL REMEDIES

13-55 Sec. 751.251. JUDICIAL RELIEF. (a) The following may bring  
 13-56 an action requesting a court to construe, or determine the validity  
 13-57 or enforceability of, a durable power of attorney, or to review an  
 13-58 agent's conduct under a durable power of attorney and grant  
 13-59 appropriate relief:

13-60 (1) the principal or the agent;

13-61 (2) a guardian, conservator, or other fiduciary acting  
 13-62 for the principal;

13-63 (3) a person named as a beneficiary to receive  
 13-64 property, a benefit, or a contractual right on the principal's  
 13-65 death;

13-66 (4) a governmental agency with regulatory authority to  
 13-67 protect the principal's welfare; and

13-68 (5) a person who demonstrates to the court sufficient  
 13-69 interest in the principal's welfare or estate.

14-1 (b) A person who is asked to accept a durable power of  
14-2 attorney may bring an action requesting a court to construe, or  
14-3 determine the validity or enforceability of, the power of attorney.

14-4 (c) On the principal's motion, the court shall dismiss an  
14-5 action under Subsection (a) unless the court finds that the  
14-6 principal lacks capacity to revoke the agent's authority or the  
14-7 durable power of attorney.

14-8 SECTION 9. Section 752.051, Estates Code, is amended to  
14-9 read as follows:

14-10 Sec. 752.051. FORM. The following form is known as a  
14-11 "statutory durable power of attorney":

14-12 STATUTORY DURABLE POWER OF ATTORNEY

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

14-23 You should select someone you trust to serve as your agent  
14-24 [~~attorney in fact~~]. Unless you specify otherwise, generally the  
14-25 agent's [~~attorney in fact's~~] authority will continue until:

- 14-26 (1) you die or revoke the power of attorney;
- 14-27 (2) your agent [~~attorney in fact~~] resigns or is  
14-28 unable to act for you; or
- 14-29 (3) a guardian is appointed for your estate.

14-30 I, \_\_\_\_\_ (insert your name and address), appoint  
14-31 \_\_\_\_\_ (insert the name and address of the person appointed) as  
14-32 my agent [~~attorney in fact~~] to act for me in any lawful way with  
14-33 respect to all of the following powers that I have initialed below.  
14-34 (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE,  
14-35 CO-AGENTS MAY ACT INDEPENDENTLY.)

14-36 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN  
14-37 FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS  
14-38 LISTED IN (A) THROUGH (M).

14-39 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE  
14-40 POWER YOU ARE GRANTING.

14-41 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE  
14-42 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- 14-43 \_\_\_\_\_ (A) Real property transactions;
- 14-44 \_\_\_\_\_ (B) Tangible personal property transactions;
- 14-45 \_\_\_\_\_ (C) Stock and bond transactions;
- 14-46 \_\_\_\_\_ (D) Commodity and option transactions;
- 14-47 \_\_\_\_\_ (E) Banking and other financial institution  
14-48 transactions;
- 14-49 \_\_\_\_\_ (F) Business operating transactions;
- 14-50 \_\_\_\_\_ (G) Insurance and annuity transactions;
- 14-51 \_\_\_\_\_ (H) Estate, trust, and other beneficiary transactions;
- 14-52 \_\_\_\_\_ (I) Claims and litigation;
- 14-53 \_\_\_\_\_ (J) Personal and family maintenance;
- 14-54 \_\_\_\_\_ (K) Benefits from social security, Medicare, Medicaid,  
14-55 or other governmental programs or civil or military service;
- 14-56 \_\_\_\_\_ (L) Retirement plan transactions;
- 14-57 \_\_\_\_\_ (M) Tax matters;
- 14-58 \_\_\_\_\_ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO  
14-59 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU  
14-60 INITIAL LINE (N).

14-61 SPECIAL INSTRUCTIONS:

14-62 Special instructions applicable to agent compensation  
14-63 (initial in front of one of the following sentences to have it  
14-64 apply; if no selection is made, each agent will be entitled to  
14-65 compensation that is reasonable under the circumstances):

14-66 \_\_\_\_\_ My agent is entitled to reimbursement of reasonable  
14-67 expenses incurred on my behalf and to compensation that is  
14-68 reasonable under the circumstances.

14-69 \_\_\_\_\_ My agent is entitled to reimbursement of reasonable

15-1 expenses incurred on my behalf but shall receive no compensation  
15-2 for serving as my agent.

15-3 Special instructions applicable to co-agents (if you have  
15-4 appointed co-agents to act, initial in front of one of the following  
15-5 sentences to have it apply; if no selection is made, each agent will  
15-6 be entitled to act independently):

15-7 \_\_\_\_\_ Each of my co-agents may act independently for me.

15-8 \_\_\_\_\_ My co-agents may act for me only if the co-agents act  
15-9 jointly.

15-10 \_\_\_\_\_ My co-agents may act for me only if a majority of the  
15-11 co-agents act jointly.

15-12 Special instructions applicable to gifts (initial in front of  
15-13 the following sentence to have it apply):

15-14 \_\_\_\_\_ I grant my agent [~~(attorney in fact)~~] the power to apply my  
15-15 property to make gifts outright to or for the benefit of a person,  
15-16 including by the exercise of a presently exercisable general power  
15-17 of appointment held by me, except that the amount of a gift to an  
15-18 individual may not exceed the amount of annual exclusions allowed  
15-19 from the federal gift tax for the calendar year of the gift.

15-20 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS  
15-21 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

15-22 \_\_\_\_\_  
15-23 \_\_\_\_\_  
15-24 \_\_\_\_\_  
15-25 \_\_\_\_\_  
15-26 \_\_\_\_\_  
15-27 \_\_\_\_\_  
15-28 \_\_\_\_\_  
15-29 \_\_\_\_\_  
15-30 \_\_\_\_\_

15-31 UNLESS YOU DIRECT OTHERWISE BELOW [~~ABOVE~~], THIS POWER OF  
15-32 ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT  
15-33 TERMINATES [~~IS REVOKED~~].

15-34 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE  
15-35 ALTERNATIVE NOT CHOSEN:

15-36 (A) This power of attorney is not affected by my subsequent  
15-37 disability or incapacity.

15-38 (B) This power of attorney becomes effective upon my  
15-39 disability or incapacity.

15-40 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY  
15-41 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

15-42 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT  
15-43 YOU CHOSE ALTERNATIVE (A).

15-44 If Alternative (B) is chosen and a definition of my  
15-45 disability or incapacity is not contained in this power of  
15-46 attorney, I shall be considered disabled or incapacitated for  
15-47 purposes of this power of attorney if a physician certifies in  
15-48 writing at a date later than the date this power of attorney is  
15-49 executed that, based on the physician's medical examination of me,  
15-50 I am mentally incapable of managing my financial affairs. I  
15-51 authorize the physician who examines me for this purpose to  
15-52 disclose my physical or mental condition to another person for  
15-53 purposes of this power of attorney. A third party who accepts this  
15-54 power of attorney is fully protected from any action taken under  
15-55 this power of attorney that is based on the determination made by a  
15-56 physician of my disability or incapacity.

15-57 I agree that any third party who receives a copy of this  
15-58 document may act under it. Termination [~~Revocation~~] of this [~~the~~]  
15-59 durable power of attorney is not effective as to a third party until  
15-60 the third party has actual knowledge [~~receives actual notice~~] of  
15-61 the termination [~~revocation~~]. I agree to indemnify the third party  
15-62 for any claims that arise against the third party because of  
15-63 reliance on this power of attorney. The meaning and effect of this  
15-64 durable power of attorney is determined by Texas law.

15-65 If any agent named by me dies, becomes incapacitated [~~legally~~  
15-66 disabled], resigns, or refuses to act, or if my marriage to an agent  
15-67 named by me is dissolved by a court decree of divorce or annulment  
15-68 or is declared void by a court (unless I provided in this document  
15-69 that the dissolution or declaration does not terminate the agent's

16-1 authority to act under this power of attorney), I name the following  
16-2 (each to act alone and successively, in the order named) as  
16-3 successor(s) to that agent: \_\_\_\_\_.

16-4 Signed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
16-5 \_\_\_\_\_

16-6 (your signature)

16-7 State of \_\_\_\_\_

16-8 County of \_\_\_\_\_

16-9 This document was acknowledged before me on \_\_\_\_\_ (date) by

16-10 \_\_\_\_\_  
16-11 (name of principal)

16-12 \_\_\_\_\_  
16-13 (signature of notarial officer)

16-14 (Seal, if any, of notary) \_\_\_\_\_  
16-15 (printed name)

16-16 My commission expires: \_\_\_\_\_

16-17 IMPORTANT INFORMATION FOR AGENT [~~(ATTORNEY IN FACT)~~]

16-18 Agent's Duties

16-19 When you accept the authority granted under this power of  
16-20 attorney, you establish a "fiduciary" relationship with the  
16-21 principal. This is a special legal relationship that imposes on  
16-22 you legal duties that continue until you resign or the power of  
16-23 attorney is terminated or revoked by the principal or by operation  
16-24 of law. A fiduciary duty generally includes the duty to:

- 16-25 (1) act in good faith;
- 16-26 (2) do nothing beyond the authority granted in this  
16-27 power of attorney;

- 16-28 (3) act loyally for the principal's benefit;

- 16-29 (4) avoid conflicts that would impair your ability to  
16-30 act in the principal's best interest; and

- 16-31 (5) disclose your identity as an agent [~~or attorney in  
16-32 fact~~] when you act for the principal by writing or printing the name  
16-33 of the principal and signing your own name as "agent" [~~or "attorney  
16-34 in fact"~~] in the following manner:

16-35 (Principal's Name) by (Your Signature) as Agent [~~(or as  
16-36 Attorney in Fact)~~]

16-37 In addition, the Durable Power of Attorney Act (Subtitle P,  
16-38 Title 2, Estates Code) requires you to:

- 16-39 (1) maintain records of each action taken or decision  
16-40 made on behalf of the principal;

- 16-41 (2) maintain all records until delivered to the  
16-42 principal, released by the principal, or discharged by a court; and

- 16-43 (3) if requested by the principal, provide an  
16-44 accounting to the principal that, unless otherwise directed by the  
16-45 principal or otherwise provided in the Special Instructions, must  
16-46 include:

- 16-47 (A) the property belonging to the principal that  
16-48 has come to your knowledge or into your possession;

- 16-49 (B) each action taken or decision made by you as  
16-50 agent [~~or attorney in fact~~];

- 16-51 (C) a complete account of receipts,  
16-52 disbursements, and other actions of you as agent [~~or attorney in  
16-53 fact~~] that includes the source and nature of each receipt,  
16-54 disbursement, or action, with receipts of principal and income  
16-55 shown separately;

- 16-56 (D) a listing of all property over which you have  
16-57 exercised control that includes an adequate description of each  
16-58 asset and the asset's current value, if known to you;

- 16-59 (E) the cash balance on hand and the name and  
16-60 location of the depository at which the cash balance is kept;

- 16-61 (F) each known liability;

- 16-62 (G) any other information and facts known to you  
16-63 as necessary for a full and definite understanding of the exact  
16-64 condition of the property belonging to the principal; and

- 16-65 (H) all documentation regarding the principal's  
16-66 property.

16-67 Termination of Agent's Authority

16-68 You must stop acting on behalf of the principal if you learn  
16-69 of any event that terminates this power of attorney or your



17-1 authority under this power of attorney. An event that terminates  
17-2 this power of attorney or your authority to act under this power of  
17-3 attorney includes:

- 17-4 (1) the principal's death;
- 17-5 (2) the principal's revocation of this power of  
17-6 attorney or your authority;
- 17-7 (3) the occurrence of a termination event stated in  
17-8 this power of attorney;
- 17-9 (4) if you are married to the principal, the  
17-10 dissolution of your marriage by a court decree of divorce or  
17-11 annulment or declaration that your marriage is void, unless  
17-12 otherwise provided in this power of attorney;
- 17-13 (5) the appointment and qualification of a permanent  
17-14 guardian of the principal's estate; or
- 17-15 (6) if ordered by a court, the suspension of this power  
17-16 of attorney on the appointment and qualification of a temporary  
17-17 guardian until the date the term of the temporary guardian expires.

17-18 Liability of Agent

17-19 The authority granted to you under this power of attorney is  
17-20 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,  
17-21 Estates Code). If you violate the Durable Power of Attorney Act or  
17-22 act beyond the authority granted, you may be liable for any damages  
17-23 caused by the violation or subject to prosecution for  
17-24 misapplication of property by a fiduciary under Chapter 32 of the  
17-25 Texas Penal Code.

17-26 THE ~~[ATTORNEY IN FACT OR]~~ AGENT, BY ACCEPTING OR ACTING UNDER  
17-27 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL  
17-28 RESPONSIBILITIES OF AN AGENT.

17-29 SECTION 10. Subchapter B, Chapter 752, Estates Code, is  
17-30 amended by adding Section 752.052 to read as follows:

17-31 Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC  
17-32 AUTHORITY. The statutory durable power of attorney may be modified  
17-33 to allow the principal to grant the agent the specific authority  
17-34 described by Section 751.031(b) by including the following  
17-35 language:

17-36 "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

17-37 My agent MAY NOT do any of the following specific acts for me  
17-38 UNLESS I have INITIALED the specific authority listed below:

17-39 (CAUTION: Granting any of the following will give your agent the  
17-40 authority to take actions that could significantly reduce your  
17-41 property or change how your property is distributed at your death.  
17-42 INITIAL ONLY the specific authority you WANT to give your agent. If  
17-43 you DO NOT want to grant your agent one or more of the following  
17-44 powers, you may also CROSS OUT a power you DO NOT want to grant.)

17-45 \_\_\_\_\_ Create, amend, revoke, or terminate an inter vivos  
17-46 trust

17-47 \_\_\_\_\_ Make a gift, subject to the limitations of Section  
17-48 751.032 of the Durable Power of Attorney Act (Section 751.032,  
17-49 Estates Code) and any special instructions in this power of  
17-50 attorney

17-51 \_\_\_\_\_ Create or change rights of survivorship

17-52 \_\_\_\_\_ Create or change a beneficiary designation

17-53 \_\_\_\_\_ Authorize another person to exercise the authority  
17-54 granted under this power of attorney".

17-55 SECTION 11. Section 752.102, Estates Code, is amended to  
17-56 read as follows:

17-57 Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The  
17-58 language conferring authority with respect to real property  
17-59 transactions in a statutory durable power of attorney empowers the  
17-60 ~~[attorney in fact or]~~ agent, without further reference to a  
17-61 specific description of the real property, to:

17-62 (1) accept as a gift or as security for a loan or  
17-63 reject, demand, buy, lease, receive, or otherwise acquire an  
17-64 interest in real property or a right incident to real property;

17-65 (2) sell, exchange, convey with or without covenants,  
17-66 quitclaim, release, surrender, mortgage, encumber, partition or  
17-67 consent to partitioning, subdivide, apply for zoning, rezoning, or  
17-68 other governmental permits, plat or consent to platting, develop,  
17-69 grant options concerning, lease or sublet, or otherwise dispose of

18-1 an estate or interest in real property or a right incident to real  
 18-2 property;

18-3 (3) release, assign, satisfy, and enforce by  
 18-4 litigation, action, or otherwise a mortgage, deed of trust,  
 18-5 encumbrance, lien, or other claim to real property that exists or is  
 18-6 claimed to exist;

18-7 (4) perform any act of management or of conservation  
 18-8 with respect to an interest in real property, or a right incident to  
 18-9 real property, owned or claimed to be owned by the principal,  
 18-10 including the authority to:

18-11 (A) insure against a casualty, liability, or  
 18-12 loss;

18-13 (B) obtain or regain possession or protect the  
 18-14 interest or right by litigation, action, or otherwise;

18-15 (C) pay, compromise, or contest taxes or  
 18-16 assessments or apply for and receive refunds in connection with the  
 18-17 taxes or assessments;

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

18-20 (E) manage and supervise an interest in real  
 18-21 property, including the mineral estate~~[, by, for example,~~  
 18-22 ~~[(i) entering into a lease for oil, gas, and~~  
 18-23 ~~mineral purposes,~~  
 18-24 ~~[(ii) making contracts for development of~~  
 18-25 ~~the mineral estate, or~~  
 18-26 ~~[(iii) making pooling and unitization~~  
 18-27 ~~agreements]~~;

18-28 (5) use, develop, alter, replace, remove, erect, or  
 18-29 install structures or other improvements on real property in which  
 18-30 the principal has or claims to have an estate, interest, or right;

18-31 (6) participate in a reorganization with respect to  
 18-32 real property or a legal entity that owns an interest in or right  
 18-33 incident to real property, receive and hold shares of stock or  
 18-34 obligations received in a plan or reorganization, and act with  
 18-35 respect to the shares or obligations, including:

18-36 (A) selling or otherwise disposing of the shares  
 18-37 or obligations;

18-38 (B) exercising or selling an option, conversion,  
 18-39 or similar right with respect to the shares or obligations; and

18-40 (C) voting the shares or obligations in person or  
 18-41 by proxy;

18-42 (7) change the form of title of an interest in or right  
 18-43 incident to real property; ~~and]~~

18-44 (8) dedicate easements or other real property in which  
 18-45 the principal has or claims to have an interest to public use, with  
 18-46 or without consideration;

18-47 (9) enter into mineral transactions, including:

18-48 (A) negotiating and making oil, gas, and other  
 18-49 mineral leases covering any land, mineral, or royalty interest in  
 18-50 which the principal has or claims to have an interest;

18-51 (B) pooling and unitizing all or part of the  
 18-52 principal's land, mineral leasehold, mineral, royalty, or other  
 18-53 interest with land, mineral leasehold, mineral, royalty, or other  
 18-54 interest of one or more persons for the purpose of developing and  
 18-55 producing oil, gas, or other minerals, and making leases or  
 18-56 assignments granting the right to pool and unitize;

18-57 (C) entering into contracts and agreements  
 18-58 concerning the installation and operation of plants or other  
 18-59 facilities for the cyclining, repressuring, processing, or other  
 18-60 treating or handling of oil, gas, or other minerals;

18-61 (D) conducting or contracting for the conducting  
 18-62 of seismic evaluation operations;

18-63 (E) drilling or contracting for the drilling of  
 18-64 wells for oil, gas, or other minerals;

18-65 (F) contracting for and making "dry hole" and  
 18-66 "bottom hole" contributions of cash, leasehold interests, or other  
 18-67 interests toward the drilling of wells;

18-68 (G) using or contracting for the use of any  
 18-69 method of secondary or tertiary recovery of any mineral, including

19-1 the injection of water, gas, air, or other substances;  
 19-2 (H) purchasing oil, gas, or other mineral leases,  
 19-3 leasehold interests, or other interests for any type of  
 19-4 consideration, including farmout agreements requiring the drilling  
 19-5 or reworking of wells or participation in the drilling or reworking  
 19-6 of wells;

19-7 (I) entering into farmout agreements committing  
 19-8 the principal to assign oil, gas, or other mineral leases or  
 19-9 interests in consideration for the drilling of wells or other oil,  
 19-10 gas, or mineral operations;

19-11 (J) negotiating the transfer of and transferring  
 19-12 oil, gas, or other mineral leases or interests for any  
 19-13 consideration, such as retained overriding royalty interests of any  
 19-14 nature, drilling or reworking commitments, or production  
 19-15 interests;

19-16 (K) executing and entering into contracts,  
 19-17 conveyances, and other agreements or transfers considered  
 19-18 necessary or desirable to carry out the powers granted in this  
 19-19 section, including entering into and executing division orders,  
 19-20 oil, gas, or other mineral sales contracts, exploration agreements,  
 19-21 processing agreements, and other contracts relating to the  
 19-22 processing, handling, treating, transporting, and marketing of  
 19-23 oil, gas, or other mineral production from or accruing to the  
 19-24 principal and receiving and receipting for the proceeds of those  
 19-25 contracts, conveyances, and other agreements and transfers on  
 19-26 behalf of the principal; and

19-27 (L) taking an action described by Paragraph (K)  
 19-28 regardless of whether the action is, at the time the action is taken  
 19-29 or subsequently, recognized or considered as a common or proper  
 19-30 practice by those engaged in the business of prospecting for,  
 19-31 developing, producing, processing, transporting, or marketing  
 19-32 minerals; and

19-33 (10) designate the property that constitutes the  
 19-34 principal's homestead.

19-35 (b) The power to mortgage and encumber real property  
 19-36 provided by this section includes the power to execute documents  
 19-37 necessary to create a lien against the principal's homestead as  
 19-38 provided by Section 50, Article XVI, Texas Constitution, and to  
 19-39 consent to the creation of a lien against property owned by the  
 19-40 principal's spouse in which the principal has a homestead interest.

19-41 SECTION 12. Section 752.108(b), Estates Code, is amended to  
 19-42 read as follows:

19-43 (b) Unless the principal has granted the authority to create  
 19-44 or change a beneficiary designation expressly as required by  
 19-45 Section 751.031(b)(4), an ~~[An attorney in fact or]~~ agent may be  
 19-46 named a beneficiary of an insurance contract or an extension,  
 19-47 renewal, or substitute for the contract only to the extent the  
 19-48 ~~[attorney in fact or]~~ agent was named as a beneficiary ~~[under a~~  
 19-49 ~~contract procured]~~ by the principal ~~[before executing the power of~~  
 19-50 ~~attorney].~~

19-51 SECTION 13. Sections 752.109 and 752.111, Estates Code, are  
 19-52 amended to read as follows:

19-53 Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY  
 19-54 TRANSACTIONS. The language conferring authority with respect to  
 19-55 estate, trust, and other beneficiary transactions in a statutory  
 19-56 durable power of attorney empowers the ~~[attorney in fact or]~~ agent  
 19-57 to act for the principal in all matters that affect a trust, probate  
 19-58 estate, guardianship, conservatorship, life estate, escrow,  
 19-59 custodianship, or other fund from which the principal is, may  
 19-60 become, or claims to be entitled, as a beneficiary, to a share or  
 19-61 payment, including to:

19-62 (1) accept, reject, disclaim, receive, receipt for,  
 19-63 sell, assign, release, pledge, exchange, or consent to a reduction  
 19-64 in or modification of a share in or payment from the fund;

19-65 (2) demand or obtain by litigation, action, or  
 19-66 otherwise money or any other thing of value to which the principal  
 19-67 is, may become, or claims to be entitled because of the fund;

19-68 (3) initiate, participate in, or oppose a legal or  
 19-69 judicial proceeding to:

20-1 (A) ascertain the meaning, validity, or effect of  
20-2 a deed, will, declaration of trust, or other instrument or  
20-3 transaction affecting the interest of the principal; or

20-4 (B) remove, substitute, or surcharge a  
20-5 fiduciary;

20-6 (4) conserve, invest, disburse, or use anything  
20-7 received for an authorized purpose; and

20-8 (5) transfer all or part of the principal's interest in  
20-9 real property, stocks, bonds, accounts with financial  
20-10 institutions, insurance, and other property to the trustee of a  
20-11 revocable trust created by the principal as settlor.

20-12 Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The  
20-13 language conferring authority with respect to personal and family  
20-14 maintenance in a statutory durable power of attorney empowers the  
20-15 ~~[attorney in fact or]~~ agent to:

20-16 (1) perform the acts necessary to maintain the  
20-17 customary standard of living of the principal, the principal's  
20-18 spouse and children, and other individuals customarily or legally  
20-19 entitled to be supported by the principal, including:

20-20 (A) providing living quarters by purchase,  
20-21 lease, or other contract; or

20-22 (B) paying the operating costs, including  
20-23 interest, amortization payments, repairs, and taxes on premises  
20-24 owned by the principal and occupied by those individuals;

20-25 (2) provide for the individuals described by  
20-26 Subdivision (1):

20-27 (A) normal domestic help;

20-28 (B) usual vacations and travel expenses; and

20-29 (C) money for shelter, clothing, food,  
20-30 appropriate education, and other living costs;

20-31 (3) pay necessary medical, dental, and surgical care,  
20-32 hospitalization, and custodial care for the individuals described  
20-33 by Subdivision (1);

20-34 (4) continue any provision made by the principal for  
20-35 the individuals described by Subdivision (1) for automobiles or  
20-36 other means of transportation, including registering, licensing,  
20-37 insuring, and replacing the automobiles or other means of  
20-38 transportation;

20-39 (5) maintain or open charge accounts for the  
20-40 convenience of the individuals described by Subdivision (1) and  
20-41 open new accounts the ~~[attorney in fact or]~~ agent considers  
20-42 desirable to accomplish a lawful purpose; ~~and]~~

20-43 (6) continue:

20-44 (A) payments incidental to the membership or  
20-45 affiliation of the principal in a church, club, society, order, or  
20-46 other organization; or

20-47 (B) contributions to those organizations;

20-48 (7) perform all acts necessary in relation to the  
20-49 principal's mail, including:

20-50 (A) receiving, signing for, opening, reading,  
20-51 and responding to any mail addressed to the principal, whether  
20-52 through the United States Postal Service or a private mail service;

20-53 (B) forwarding the principal's mail to any  
20-54 address; and

20-55 (C) representing the principal before the United  
20-56 States Postal Service in all matters relating to mail service; and

20-57 (8) subject to the needs of the individuals described  
20-58 by Subdivision (1), provide for the reasonable care of the  
20-59 principal's pets.

20-60 SECTION 14. Sections 752.113(b) and (c), Estates Code, are  
20-61 amended to read as follows:

20-62 (b) The language conferring authority with respect to  
20-63 retirement plan transactions in a statutory durable power of  
20-64 attorney empowers the ~~[attorney in fact or]~~ agent to perform any  
20-65 lawful act the principal may perform with respect to a transaction  
20-66 relating to a retirement plan, including to:

20-67 (1) apply for service or disability retirement  
20-68 benefits;

20-69 (2) select payment options under any retirement plan

21-1 in which the principal participates, including plans for  
 21-2 self-employed individuals;

21-3 (3) designate or change the designation of a  
 21-4 beneficiary or benefits payable by a retirement plan, except as  
 21-5 provided by Subsection (c);

21-6 (4) make voluntary contributions to retirement plans  
 21-7 if authorized by the plan;

21-8 (5) exercise the investment powers available under any  
 21-9 self-directed retirement plan;

21-10 (6) make rollovers of plan benefits into other  
 21-11 retirement plans;

21-12 (7) borrow from, sell assets to, and purchase assets  
 21-13 from retirement plans if authorized by the plan;

21-14 (8) waive the principal's right to be a beneficiary of  
 21-15 a joint or survivor annuity if the principal is not the participant  
 21-16 in the retirement plan [a spouse who is not employed];

21-17 (9) receive, endorse, and cash payments from a  
 21-18 retirement plan;

21-19 (10) waive the principal's right to receive all or a  
 21-20 portion of benefits payable by a retirement plan; and

21-21 (11) request and receive information relating to the  
 21-22 principal from retirement plan records.

21-23 (c) Unless the principal has granted the authority to create  
 21-24 or change a beneficiary designation expressly as required by  
 21-25 Section 751.031(b)(4), an [An attorney in fact or] agent may be  
 21-26 named a beneficiary under a retirement plan only to the extent the  
 21-27 [attorney in fact or] agent was a named a beneficiary by the  
 21-28 principal under the retirement plan, or in the case of a rollover or  
 21-29 trustee-to-trustee transfer, the predecessor retirement plan  
 21-30 [before the durable power of attorney was executed].

21-31 SECTION 15. The following sections of the Estates Code are  
 21-32 repealed:

21-33 (1) Section 751.004;

21-34 (2) Section 751.053;

21-35 (3) Section 751.054;

21-36 (4) Section 751.055;

21-37 (5) Section 751.056; and

21-38 (6) Section 751.058.

21-39 SECTION 16. (a) Except as otherwise provided by this Act,  
 21-40 this Act applies to:

21-41 (1) a durable power of attorney, including a statutory  
 21-42 durable power of attorney, created before, on, or after the  
 21-43 effective date of this Act; and

21-44 (2) a judicial proceeding concerning a durable power  
 21-45 of attorney pending on, or commenced on or after, the effective date  
 21-46 of this Act.

21-47 (b) The following provisions apply only to a durable power  
 21-48 of attorney, including a statutory durable power of attorney,  
 21-49 executed on or after the effective date of this Act:

21-50 (1) Section 751.024, Estates Code, as added by this  
 21-51 Act;

21-52 (2) Subchapter A-2, Chapter 751, Estates Code, as  
 21-53 added by this Act;

21-54 (3) Subchapters B, C, and D, Chapter 751, Estates  
 21-55 Code, as amended by this Act; and

21-56 (4) Chapter 752, Estates Code, as amended by this Act.

21-57 (c) A durable power of attorney, including a statutory  
 21-58 durable power of attorney, executed before the effective date of  
 21-59 this Act is governed by the provisions specified in Subsections  
 21-60 (b)(3) and (4) of this section as those provisions existed on the  
 21-61 date the durable power of attorney was executed, and the former law  
 21-62 is continued in effect for that purpose.

21-63 (d) If the court finds that application of a provision of  
 21-64 this Act would substantially interfere with the effective conduct  
 21-65 of a judicial proceeding concerning a durable power of attorney  
 21-66 commenced before the effective date of this Act or would prejudice  
 21-67 the rights of a party to the proceeding, the provision of this Act  
 21-68 does not apply and the former law continues in effect for that  
 21-69 purpose and applies in those circumstances.

22-1 (e) An act performed by a principal or agent with respect to  
22-2 a durable power of attorney before the effective date of this Act is  
22-3 not affected by this Act.

22-4 SECTION 17. This Act takes effect September 1, 2017.

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