

1-1 By: Zaffirini S.B. No. 41
 1-2 (In the Senate - Filed November 14, 2016; January 24, 2017,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 March 6, 2017, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; March 6, 2017,
 1-6 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 S.B. No. 41 By: Zaffirini

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

1-21 relating to the demand for an accounting from an attorney in fact or
 1-22 agent of a principal by certain persons.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 751.104, Estates Code, is amended to
 1-25 read as follows:

1-26 Sec. 751.104. ACCOUNTING. (a) The following persons
 1-27 [~~principal~~] may demand an accounting by the attorney in fact or
 1-28 agent:

1-29 (1) the principal;

1-30 (2) a guardian, spouse, parent, sibling, or adult
 1-31 child of the principal;

1-32 (3) a person named as a successor attorney in fact or
 1-33 agent in the durable power of attorney;

1-34 (4) an agent of the principal authorized to make
 1-35 health care decisions on the principal's behalf by a medical power
 1-36 of attorney; or

1-37 (5) an attorney who represents the principal.

1-38 (b) Unless otherwise directed by the principal or other
 1-39 person demanding an accounting, an accounting under Subsection (a)
 1-40 must include:

1-41 (1) the property belonging to the principal that has
 1-42 come to the attorney in fact's or agent's knowledge or into the
 1-43 attorney in fact's or agent's possession;

1-44 (2) each action taken or decision made by the attorney
 1-45 in fact or agent;

1-46 (3) a complete account of receipts, disbursements, and
 1-47 other actions of the attorney in fact or agent that includes the
 1-48 source and nature of each receipt, disbursement, or action, with
 1-49 receipts of principal and income shown separately;

1-50 (4) a listing of all property over which the attorney
 1-51 in fact or agent has exercised control that includes:

1-52 (A) an adequate description of each asset; and

1-53 (B) the asset's current value, if the value is
 1-54 known to the attorney in fact or agent;

1-55 (5) the cash balance on hand and the name and location
 1-56 of the depository at which the cash balance is kept;

1-57 (6) each known liability; and

1-58 (7) any other information and facts known to the
 1-59 attorney in fact or agent as necessary for a full and definite
 1-60 understanding of the exact condition of the property belonging to

2-1 the principal.

2-2 (c) Unless directed otherwise by the person demanding an
2-3 accounting under this section [principal], the attorney in fact or
2-4 agent shall also provide to the person [principal] all
2-5 documentation regarding the principal's property.

2-6 SECTION 2. Section 751.105, Estates Code, is amended to
2-7 read as follows:

2-8 Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the
2-9 attorney in fact or agent fails or refuses to inform the principal,
2-10 provide documentation, or deliver an accounting to the principal or
2-11 other person under Section 751.104 within 60 days of a demand under
2-12 that section, or a longer or shorter period as demanded by the
2-13 person [principal] or ordered by a court:

2-14 (1) ~~[7]~~ the principal or other person may file suit
2-15 to[+]

2-16 ~~[(1)]~~ compel the attorney in fact or agent to deliver
2-17 the accounting or the assets; or

2-18 (2) the principal may file suit to terminate the power
2-19 of attorney.

2-20 SECTION 3. Section 752.051, Estates Code, is amended to
2-21 read as follows:

2-22 Sec. 752.051. FORM. The following form is known as a
2-23 "statutory durable power of attorney":

2-24 STATUTORY DURABLE POWER OF ATTORNEY
2-25 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND
2-26 SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT,
2-27 SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT
2-28 THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES
2-29 NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE
2-30 DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU
2-31 LATER WISH TO DO SO.

2-32 You should select someone you trust to serve as your agent
2-33 (attorney in fact). Unless you specify otherwise, generally the
2-34 agent's (attorney in fact's) authority will continue until:

2-35 (1) you die or revoke the power of attorney;

2-36 (2) your agent (attorney in fact) resigns or is unable
2-37 to act for you; or

2-38 (3) a guardian is appointed for your estate.

2-39 I, _____ (insert your name and address), appoint
2-40 _____ (insert the name and address of the person appointed) as
2-41 my agent (attorney in fact) to act for me in any lawful way with
2-42 respect to all of the following powers that I have initialed below.

2-43 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
2-44 FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
2-45 LISTED IN (A) THROUGH (M).

2-46 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
2-47 POWER YOU ARE GRANTING.

2-48 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
2-49 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

2-50 _____ (A) Real property transactions;

2-51 _____ (B) Tangible personal property transactions;

2-52 _____ (C) Stock and bond transactions;

2-53 _____ (D) Commodity and option transactions;

2-54 _____ (E) Banking and other financial institution
2-55 transactions;

2-56 _____ (F) Business operating transactions;

2-57 _____ (G) Insurance and annuity transactions;

2-58 _____ (H) Estate, trust, and other beneficiary transactions;

2-59 _____ (I) Claims and litigation;

2-60 _____ (J) Personal and family maintenance;

2-61 _____ (K) Benefits from social security, Medicare, Medicaid,
2-62 or other governmental programs or civil or military service;

2-63 _____ (L) Retirement plan transactions;

2-64 _____ (M) Tax matters;

2-65 _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO
2-66 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
2-67 INITIAL LINE (N).

2-68 SPECIAL INSTRUCTIONS:
2-69 Special instructions applicable to gifts (initial in front of

3-1 the following sentence to have it apply):
3-2 ____ I grant my agent (attorney in fact) the power to apply my
3-3 property to make gifts outright to or for the benefit of a person,
3-4 including by the exercise of a presently exercisable general power
3-5 of appointment held by me, except that the amount of a gift to an
3-6 individual may not exceed the amount of annual exclusions allowed
3-7 from the federal gift tax for the calendar year of the gift.

3-8 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS
3-9 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

3-10 _____
3-11 _____
3-12 _____
3-13 _____
3-14 _____
3-15 _____
3-16 _____
3-17 _____
3-18 _____

3-19 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS
3-20 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

3-21 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
3-22 ALTERNATIVE NOT CHOSEN:

3-23 (A) This power of attorney is not affected by my subsequent
3-24 disability or incapacity.

3-25 (B) This power of attorney becomes effective upon my
3-26 disability or incapacity.

3-27 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
3-28 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

3-29 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT
3-30 YOU CHOSE ALTERNATIVE (A).

3-31 If Alternative (B) is chosen and a definition of my
3-32 disability or incapacity is not contained in this power of
3-33 attorney, I shall be considered disabled or incapacitated for
3-34 purposes of this power of attorney if a physician certifies in
3-35 writing at a date later than the date this power of attorney is
3-36 executed that, based on the physician's medical examination of me,
3-37 I am mentally incapable of managing my financial affairs. I
3-38 authorize the physician who examines me for this purpose to
3-39 disclose my physical or mental condition to another person for
3-40 purposes of this power of attorney. A third party who accepts this
3-41 power of attorney is fully protected from any action taken under
3-42 this power of attorney that is based on the determination made by a
3-43 physician of my disability or incapacity.

3-44 I agree that any third party who receives a copy of this
3-45 document may act under it. Revocation of the durable power of
3-46 attorney is not effective as to a third party until the third party
3-47 receives actual notice of the revocation. I agree to indemnify the
3-48 third party for any claims that arise against the third party
3-49 because of reliance on this power of attorney.

3-50 If any agent named by me dies, becomes legally disabled,
3-51 resigns, or refuses to act, I name the following (each to act alone
3-52 and successively, in the order named) as successor(s) to that
3-53 agent: _____.

3-54 Signed this _____ day of _____,
3-55 _____
3-56 (your signature)

3-57 State of _____
3-58 County of _____

3-59 This document was acknowledged before me on _____ (date) by
3-60 _____
3-61 (name of principal)

3-62 _____
3-63 (signature of notarial officer)
3-64 (Seal, if any, of notary) _____
3-65 (printed name)

3-66 My commission expires: _____

3-67 IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

3-68 Agent's Duties
3-69 When you accept the authority granted under this power of

4-1 attorney, you establish a "fiduciary" relationship with the
 4-2 principal. This is a special legal relationship that imposes on
 4-3 you legal duties that continue until you resign or the power of
 4-4 attorney is terminated or revoked by the principal or by operation
 4-5 of law. A fiduciary duty generally includes the duty to:

- 4-6 (1) act in good faith;
- 4-7 (2) do nothing beyond the authority granted in this
 4-8 power of attorney;
- 4-9 (3) act loyally for the principal's benefit;
- 4-10 (4) avoid conflicts that would impair your ability to
 4-11 act in the principal's best interest; and
- 4-12 (5) disclose your identity as an agent or attorney in
 4-13 fact when you act for the principal by writing or printing the name
 4-14 of the principal and signing your own name as "agent" or "attorney
 4-15 in fact" in the following manner:

4-16 (Principal's Name) by (Your Signature) as Agent (or as
 4-17 Attorney in Fact)

4-18 In addition, the Durable Power of Attorney Act (Subtitle P,
 4-19 Title 2, Estates Code) requires you to:

- 4-20 (1) maintain records of each action taken or decision
 4-21 made on behalf of the principal;
- 4-22 (2) maintain all records until delivered to the
 4-23 principal, released by the principal, or discharged by a court; and
- 4-24 (3) if requested by the principal or a family member of
 4-25 the principal, the principal's agent under a medical power of
 4-26 attorney, or other legal representative of the principal, provide
 4-27 an accounting to the principal or other person that, unless
 4-28 otherwise directed by the principal or other person or otherwise
 4-29 provided in the Special Instructions, must include:

4-30 (A) the property belonging to the principal that
 4-31 has come to your knowledge or into your possession;

4-32 (B) each action taken or decision made by you as
 4-33 agent or attorney in fact;

4-34 (C) a complete account of receipts,
 4-35 disbursements, and other actions of you as agent or attorney in fact
 4-36 that includes the source and nature of each receipt, disbursement,
 4-37 or action, with receipts of principal and income shown separately;

4-38 (D) a listing of all property over which you have
 4-39 exercised control that includes an adequate description of each
 4-40 asset and the asset's current value, if known to you;

4-41 (E) the cash balance on hand and the name and
 4-42 location of the depository at which the cash balance is kept;

4-43 (F) each known liability;

4-44 (G) any other information and facts known to you
 4-45 as necessary for a full and definite understanding of the exact
 4-46 condition of the property belonging to the principal; and

4-47 (H) all documentation regarding the principal's
 4-48 property.

4-49 Termination of Agent's Authority

4-50 You must stop acting on behalf of the principal if you learn
 4-51 of any event that terminates this power of attorney or your
 4-52 authority under this power of attorney. An event that terminates
 4-53 this power of attorney or your authority to act under this power of
 4-54 attorney includes:

4-55 (1) the principal's death;

4-56 (2) the principal's revocation of this power of
 4-57 attorney or your authority;

4-58 (3) the occurrence of a termination event stated in
 4-59 this power of attorney;

4-60 (4) if you are married to the principal, the
 4-61 dissolution of your marriage by court decree of divorce or
 4-62 annulment;

4-63 (5) the appointment and qualification of a permanent
 4-64 guardian of the principal's estate; or

4-65 (6) if ordered by a court, the suspension of this power
 4-66 of attorney on the appointment and qualification of a temporary
 4-67 guardian until the date the term of the temporary guardian expires.

4-68 Liability of Agent

4-69 The authority granted to you under this power of attorney is

5-1 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
5-2 Estates Code). If you violate the Durable Power of Attorney Act or
5-3 act beyond the authority granted, you may be liable for any damages
5-4 caused by the violation or subject to prosecution for
5-5 misapplication of property by a fiduciary under Chapter 32 of the
5-6 Texas Penal Code.

5-7 THE ATTORNEY IN FACT OR AGENT, BY ACCEPTING OR ACTING UNDER
5-8 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
5-9 RESPONSIBILITIES OF AN AGENT.

5-10 SECTION 4. (a) Sections 751.104 and 751.105, Estates Code,
5-11 as amended by this Act, apply to a durable power of attorney,
5-12 including a statutory durable power of attorney, executed before,
5-13 on, or after the effective date of this Act.

5-14 (b) Section 752.051, Estates Code, as amended by this Act,
5-15 applies to a statutory durable power of attorney executed on or
5-16 after the effective date of this Act. A statutory durable power of
5-17 attorney executed before the effective date of this Act is governed
5-18 by the law as it existed on the date the statutory durable power of
5-19 attorney was executed, and the former law is continued in effect for
5-20 that purpose.

5-21 SECTION 5. This Act takes effect immediately if it receives
5-22 a vote of two-thirds of all the members elected to each house, as
5-23 provided by Section 39, Article III, Texas Constitution. If this
5-24 Act does not receive the vote necessary for immediate effect, this
5-25 Act takes effect September 1, 2017.

5-26

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