

1-1 By: Rodríguez S.B. No. 926
1-2 (In the Senate - Filed February 16, 2017; March 1, 2017,
1-3 read first time and referred to Committee on State Affairs;
1-4 April 26, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 26, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Hughes	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Lucio	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 926 By: Hughes

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 OTHER LAW. This subtitle does
 3-28 not supersede any other law applicable to financial institutions or
 3-29 other entities. To the extent of any conflict between this subtitle
 3-30 and another law applicable to an entity, the other law controls.

3-31 SECTION 3. Chapter 751, Estates Code, is amended by adding
 3-32 Subchapters A-1 and A-2 to read as follows:

3-33 SUBCHAPTER A-1. APPOINTMENT OF AGENTS

3-34 Sec. 751.021. CO-AGENTS. A principal may designate in a
 3-35 durable power of attorney two or more persons to act as co-agents.
 3-36 Unless the durable power of attorney otherwise provides, each
 3-37 co-agent may exercise authority independently of the other
 3-38 co-agent.

3-39 Sec. 751.022. ACCEPTANCE OF APPOINTMENT AS AGENT. Except
 3-40 as otherwise provided in the durable power of attorney, a person
 3-41 accepts appointment as an agent under a durable power of attorney by
 3-42 exercising authority or performing duties as an agent or by any
 3-43 other assertion or conduct indicating acceptance of the
 3-44 appointment.

3-45 Sec. 751.023. SUCCESSOR AGENTS. (a) A principal may
 3-46 designate in a durable power of attorney one or more successor
 3-47 agents to act if an agent resigns, dies, or becomes incapacitated,
 3-48 is not qualified to serve, or declines to serve.

3-49 (b) A principal may grant authority to designate one or more
 3-50 successor agents to an agent or other person designated by name,
 3-51 office, or function.

3-52 (c) Unless the durable power of attorney otherwise
 3-53 provides, a successor agent:

3-54 (1) has the same authority as the authority granted to
 3-55 the predecessor agent; and

3-56 (2) is not considered an agent under this subtitle and
 3-57 may not act until all predecessor agents, including co-agents, to
 3-58 the successor agent have resigned, died, or become incapacitated,
 3-59 are not qualified to serve, or have declined to serve.

3-60 Sec. 751.024. REIMBURSEMENT AND COMPENSATION OF AGENT.
 3-61 Unless the durable power of attorney otherwise provides, an agent
 3-62 is entitled to:

3-63 (1) reimbursement of reasonable expenses incurred on
 3-64 the principal's behalf; and

3-65 (2) compensation that is reasonable under the
 3-66 circumstances.

3-67 SUBCHAPTER A-2. AUTHORITY OF AGENT UNDER DURABLE POWER OF ATTORNEY

3-68 Sec. 751.031. GRANTS OF AUTHORITY IN GENERAL AND CERTAIN
 3-69 LIMITATIONS. (a) Subject to Subsections (b), (c), and (d) and

4-1 Section 751.032, if a durable power of attorney grants to an agent
 4-2 the authority to perform all acts that the principal could perform,
 4-3 the agent has the general authority conferred by Subchapter C,
 4-4 Chapter 752.

4-5 (b) An agent may take the following actions on the
 4-6 principal's behalf or with respect to the principal's property only
 4-7 if the durable power of attorney designating the agent expressly
 4-8 grants the agent the authority and the exercise of the authority is
 4-9 not otherwise prohibited by another agreement or instrument to
 4-10 which the authority or property is subject:

4-11 (1) create, amend, revoke, or terminate an inter vivos
 4-12 trust;

4-13 (2) make a gift;

4-14 (3) create or change rights of survivorship;

4-15 (4) create or change a beneficiary designation; or

4-16 (5) delegate authority granted under the power of
 4-17 attorney.

4-18 (c) Notwithstanding a grant of authority to perform an act
 4-19 described by Subsection (b), unless the durable power of attorney
 4-20 otherwise provides, an agent who is not an ancestor, spouse, or
 4-21 descendant of the principal may not exercise authority under the
 4-22 power of attorney to create in the agent, or in an individual to
 4-23 whom the agent owes a legal obligation of support, an interest in
 4-24 the principal's property, whether by gift, right of survivorship,
 4-25 beneficiary designation, disclaimer, or otherwise.

4-26 (d) Subject to Subsections (b) and (c) and Section 751.032,
 4-27 if the subjects over which authority is granted in a durable power
 4-28 of attorney are similar or overlap, the broadest authority
 4-29 controls.

4-30 (e) Authority granted in a durable power of attorney is
 4-31 exercisable with respect to property that the principal has when
 4-32 the power of attorney is executed or acquires later, regardless of
 4-33 whether:

4-34 (1) the property is located in this state; and

4-35 (2) the authority is exercised in this state or the
 4-36 power of attorney is executed in this state.

4-37 Sec. 751.032. GIFT AUTHORITY. (a) In this section, a gift
 4-38 for the benefit of a person includes a gift to:

4-39 (1) a trust;

4-40 (2) an account under the Texas Uniform Transfers to
 4-41 Minors Act (Chapter 141, Property Code) or a similar law of another
 4-42 state; and

4-43 (3) a qualified tuition program of any state that
 4-44 meets the requirements of Section 529, Internal Revenue Code of
 4-45 1986.

4-46 (b) Unless the durable power of attorney otherwise
 4-47 provides, a grant of authority to make a gift is subject to the
 4-48 limitations prescribed by this section.

4-49 (c) Language in a durable power of attorney granting general
 4-50 authority with respect to gifts authorizes the agent to only:

4-51 (1) make outright to, or for the benefit of, a person a
 4-52 gift of any of the principal's property, including by the exercise
 4-53 of a presently exercisable general power of appointment held by the
 4-54 principal, in an amount per donee not to exceed:

4-55 (A) the annual dollar limits of the federal gift
 4-56 tax exclusion under Section 2503(b), Internal Revenue Code of 1986,
 4-57 regardless of whether the federal gift tax exclusion applies to the
 4-58 gift; or

4-59 (B) if the principal's spouse agrees to consent
 4-60 to a split gift as provided by Section 2513, Internal Revenue Code
 4-61 of 1986, twice the annual federal gift tax exclusion limit; and

4-62 (2) consent, as provided by Section 2513, Internal
 4-63 Revenue Code of 1986, to the splitting of a gift made by the
 4-64 principal's spouse in an amount per donee not to exceed the
 4-65 aggregate annual federal gift tax exclusions for both spouses.

4-66 (d) An agent may make a gift of the principal's property
 4-67 only as the agent determines is consistent with the principal's
 4-68 objectives if the agent actually knows those objectives. If the
 4-69 agent does not know the principal's objectives, the agent may make a

5-1 gift of the principal's property only as the agent determines is
 5-2 consistent with the principal's best interest based on all relevant
 5-3 factors, including the factors listed in Section 751.122 and the
 5-4 principal's personal history of making or joining in making gifts.

5-5 Sec. 751.033. AUTHORITY TO CREATE OR CHANGE CERTAIN
 5-6 BENEFICIARY DESIGNATIONS. (a) Unless the durable power of
 5-7 attorney otherwise provides, and except as provided by Section
 5-8 751.031(c), authority granted to an agent under Section
 5-9 751.031(b)(4) empowers the agent to:

5-10 (1) create or change a beneficiary designation under
 5-11 an account, contract, or another arrangement that authorizes the
 5-12 principal to designate a beneficiary, including an insurance or
 5-13 annuity contract, a qualified or nonqualified retirement plan,
 5-14 including a retirement plan as defined by Section 752.113, an
 5-15 employment agreement, including a deferred compensation agreement,
 5-16 and a residency agreement;

5-17 (2) enter into or change a P.O.D. account or trust
 5-18 account under Chapter 113; or

5-19 (3) create or change a nontestamentary payment or
 5-20 transfer under Chapter 111.

5-21 (b) If an agent is granted authority under Section
 5-22 751.031(b)(4) and the durable power of attorney grants the
 5-23 authority to the agent described in Section 752.108 or 752.113,
 5-24 then, unless the power of attorney otherwise provides, the
 5-25 authority of the agent to designate the agent as a beneficiary is
 5-26 not subject to the limitations prescribed by Sections 752.108(b)
 5-27 and 752.113(c).

5-28 (c) If an agent is not granted authority under Section
 5-29 751.031(b)(4) but the durable power of attorney grants the
 5-30 authority to the agent described in Section 752.108 or 752.113,
 5-31 then, unless the power of attorney otherwise provides and
 5-32 notwithstanding Section 751.031, the agent's authority to
 5-33 designate the agent as a beneficiary is subject to the limitations
 5-34 prescribed by Sections 752.108(b) and 752.113(c).

5-35 Sec. 751.034. INCORPORATION OF AUTHORITY. (a) An agent has
 5-36 authority described in this chapter if the durable power of
 5-37 attorney refers to general authority with respect to the
 5-38 descriptive term for the subjects stated in Chapter 752 or cites the
 5-39 section in which the authority is described.

5-40 (b) A reference in a durable power of attorney to general
 5-41 authority with respect to the descriptive term for a subject in
 5-42 Chapter 752 or a citation to one of those sections incorporates the
 5-43 entire section as if the section were set out in its entirety in the
 5-44 power of attorney.

5-45 (c) A principal may modify authority incorporated by
 5-46 reference.

5-47 SECTION 4. Sections 751.051, 751.057, 751.101, 751.102,
 5-48 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended
 5-49 to read as follows:

5-50 Sec. 751.051. EFFECT OF ACTS PERFORMED BY [ATTORNEY IN FACT
 5-51 OR] AGENT [DURING PRINCIPAL'S DISABILITY OR INCAPACITY]. An [Each]
 5-52 act performed by an [attorney in fact or] agent under a durable
 5-53 power of attorney [during a period of the principal's disability or
 5-54 incapacity] has the same effect[7] and inures to the benefit of and
 5-55 binds the principal and the principal's successors in interest[7]
 5-56 as if the principal had performed the act [were not disabled or
 5-57 incapacitated].

5-58 Sec. 751.057. EFFECT OF BANKRUPTCY PROCEEDING. (a) The
 5-59 filing of a voluntary or involuntary petition in bankruptcy in
 5-60 connection with the debts of a principal who has executed a durable
 5-61 power of attorney does not revoke or terminate the agency as to the
 5-62 principal's [attorney in fact or] agent.

5-63 (b) Any act the [attorney in fact or] agent may undertake
 5-64 with respect to the principal's property is subject to the
 5-65 limitations and requirements of the United States Bankruptcy Code
 5-66 (11 U.S.C. Section 101 et seq.) until a final determination is made
 5-67 in the bankruptcy proceeding.

5-68 Sec. 751.101. FIDUCIARY DUTIES. A person who accepts
 5-69 appointment as an agent under a durable power of attorney as

6-1 provided by Section 751.022 [An attorney in fact or agent] is a
 6-2 fiduciary as to the principal only when acting as an agent under the
 6-3 power of attorney and has a duty to inform and to account for
 6-4 actions taken under the power of attorney.

6-5 Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL. (a) The
 6-6 ~~[attorney in fact or]~~ agent shall timely inform the principal of
 6-7 each action taken under a durable ~~[the]~~ power of attorney.

6-8 (b) Failure of an ~~[attorney in fact or]~~ agent to timely
 6-9 inform, as to third parties, does not invalidate any action of the
 6-10 ~~[attorney in fact or]~~ agent.

6-11 Sec. 751.103. MAINTENANCE OF RECORDS. (a) The ~~[attorney~~
 6-12 ~~in fact or]~~ agent shall maintain records of each action taken or
 6-13 decision made by the ~~[attorney in fact or]~~ agent.

6-14 (b) The ~~[attorney in fact or]~~ agent shall maintain all
 6-15 records until delivered to the principal, released by the
 6-16 principal, or discharged by a court.

6-17 Sec. 751.104. ACCOUNTING. (a) The principal may demand an
 6-18 accounting by the ~~[attorney in fact or]~~ agent.

6-19 (b) Unless otherwise directed by the principal, an
 6-20 accounting under Subsection (a) must include:

6-21 (1) the property belonging to the principal that has
 6-22 come to the ~~[attorney in fact's or]~~ agent's knowledge or into the
 6-23 ~~[attorney in fact's or]~~ agent's possession;

6-24 (2) each action taken or decision made by the
 6-25 ~~[attorney in fact or]~~ agent;

6-26 (3) a complete account of receipts, disbursements, and
 6-27 other actions of the ~~[attorney in fact or]~~ agent that includes the
 6-28 source and nature of each receipt, disbursement, or action, with
 6-29 receipts of principal and income shown separately;

6-30 (4) a listing of all property over which the ~~[attorney~~
 6-31 ~~in fact or]~~ agent has exercised control that includes:

6-32 (A) an adequate description of each asset; and

6-33 (B) the asset's current value, if the value is
 6-34 known to the ~~[attorney in fact or]~~ agent;

6-35 (5) the cash balance on hand and the name and location
 6-36 of the depository at which the cash balance is kept;

6-37 (6) each known liability; and

6-38 (7) any other information and facts known to the
 6-39 ~~[attorney in fact or]~~ agent as necessary for a full and definite
 6-40 understanding of the exact condition of the property belonging to
 6-41 the principal.

6-42 (c) Unless directed otherwise by the principal, the
 6-43 ~~[attorney in fact or]~~ agent shall also provide to the principal all
 6-44 documentation regarding the principal's property.

6-45 Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT. If the
 6-46 ~~[attorney in fact or]~~ agent fails or refuses to inform the
 6-47 principal, provide documentation, or deliver an accounting under
 6-48 Section 751.104 within 60 days of a demand under that section, or a
 6-49 longer or shorter period as demanded by the principal or ordered by
 6-50 a court, the principal may file suit to:

6-51 (1) compel the ~~[attorney in fact or]~~ agent to deliver
 6-52 the accounting or the assets; or

6-53 (2) terminate the durable power of attorney.

6-54 Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S
 6-55 RIGHTS. This subchapter does not limit the right of the principal
 6-56 to terminate the durable power of attorney or to make additional
 6-57 requirements of or to give additional instructions to the ~~[attorney~~
 6-58 ~~in fact or]~~ agent.

6-59 SECTION 5. Chapter 751, Estates Code, is amended by adding
 6-60 Subchapters C-1 and C-2 to read as follows:

6-61 SUBCHAPTER C-1. OTHER DUTIES OF AGENT

6-62 Sec. 751.121. DUTY TO NOTIFY OF BREACH OF FIDUCIARY DUTY BY
 6-63 OTHER AGENT. (a) An agent who has actual knowledge of a breach or
 6-64 imminent breach of fiduciary duty by another agent shall notify the
 6-65 principal and, if the principal is incapacitated, take any action
 6-66 reasonably appropriate under the circumstances to safeguard the
 6-67 principal's best interest. An agent who fails to notify the
 6-68 principal or take action as required by this subsection is liable
 6-69 for the reasonably foreseeable damages that could have been avoided

7-1 if the agent had notified the principal or taken the action.

7-2 (b) Except as otherwise provided by Subsection (a) or the
 7-3 durable power of attorney, an agent who does not participate in or
 7-4 conceal a breach of fiduciary duty committed by another agent,
 7-5 including a predecessor agent, is not liable for the actions of the
 7-6 other agent.

7-7 Sec. 751.122. DUTY TO PRESERVE PRINCIPAL'S ESTATE PLAN. An
 7-8 agent shall preserve to the extent reasonably possible the
 7-9 principal's estate plan to the extent the agent has actual
 7-10 knowledge of the plan if preserving the plan is consistent with the
 7-11 principal's best interest based on all relevant factors, including:

7-12 (1) the value and nature of the principal's property;

7-13 (2) the principal's foreseeable obligations and need
 7-14 for maintenance;

7-15 (3) minimization of taxes, including income, estate,
 7-16 inheritance, generation-skipping transfer, and gift taxes; and

7-17 (4) eligibility for a benefit, a program, or
 7-18 assistance under a statute or regulation.

7-19 SUBCHAPTER C-2. DURATION OF DURABLE POWER OF ATTORNEY AND AGENT'S
 7-20 AUTHORITY

7-21 Sec. 751.131. TERMINATION OF DURABLE POWER OF ATTORNEY. A
 7-22 durable power of attorney terminates when:

7-23 (1) the principal dies;

7-24 (2) the principal revokes the power of attorney;

7-25 (3) the power of attorney provides that it terminates;

7-26 (4) the purpose of the power of attorney is
 7-27 accomplished;

7-28 (5) one of the circumstances with respect to an agent
 7-29 described by Section 751.132(a)(1), (2), or (3) arises and the
 7-30 power of attorney does not provide for another agent to act under
 7-31 the power of attorney; or

7-32 (6) a permanent guardian of the estate of the
 7-33 principal has qualified to serve in that capacity as provided by
 7-34 Section 751.133.

7-35 Sec. 751.132. TERMINATION OF AGENT'S AUTHORITY. (a) An
 7-36 agent's authority under a durable power of attorney terminates
 7-37 when:

7-38 (1) the principal revokes the authority;

7-39 (2) the agent dies, becomes incapacitated, is no
 7-40 longer qualified, or resigns;

7-41 (3) the agent's marriage to the principal is dissolved
 7-42 by court decree of divorce or annulment or is declared void by a
 7-43 court, unless the power of attorney otherwise provides; or

7-44 (4) the power of attorney terminates.

7-45 (b) Unless the durable power of attorney otherwise
 7-46 provides, an agent's authority may be exercised until the agent's
 7-47 authority terminates under Subsection (a), notwithstanding a lapse
 7-48 of time since the execution of the power of attorney.

7-49 Sec. 751.134. EFFECT ON CERTAIN PERSONS OF TERMINATION OF
 7-50 DURABLE POWER OF ATTORNEY OR AGENT'S AUTHORITY. Termination of an
 7-51 agent's authority or of a durable power of attorney is not effective
 7-52 as to the agent or another person who, without actual knowledge of
 7-53 the termination, acts in good faith under or in reliance on the
 7-54 power of attorney. An act performed as described by this section,
 7-55 unless otherwise invalid or unenforceable, binds the principal and
 7-56 the principal's successors in interest.

7-57 Sec. 751.135. PREVIOUS DURABLE POWER OF ATTORNEY CONTINUES
 7-58 IN EFFECT UNTIL REVOKED. The execution of a durable power of
 7-59 attorney does not revoke a durable power of attorney previously
 7-60 executed by the principal unless the subsequent power of attorney
 7-61 provides that the previous power of attorney is revoked or that all
 7-62 other durable powers of attorney are revoked.

7-63 SECTION 6. Section 751.052, Estates Code, is transferred to
 7-64 Subchapter C-2, Chapter 751, Estates Code, as added by this Act,
 7-65 redesignated as Section 751.133, Estates Code, and amended to read
 7-66 as follows:

7-67 Sec. 751.133 [751.052]. RELATION OF [ATTORNEY IN FACT OR]
 7-68 AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE. (a) If, after
 7-69 execution of a durable power of attorney, a court of the principal's

8-1 domicile appoints a permanent guardian of the estate of the
 8-2 principal, the powers of the [~~attorney in fact or~~] agent terminate
 8-3 on the qualification of the guardian of the estate. The [~~attorney~~
 8-4 ~~in fact or~~] agent shall:

8-5 (1) deliver to the guardian of the estate all assets of
 8-6 the incapacitated person's [~~ward's~~] estate that are in the
 8-7 possession of the [~~attorney in fact or~~] agent; and

8-8 (2) account to the guardian of the estate as the
 8-9 [~~attorney in fact or~~] agent would account to the principal if the
 8-10 principal had terminated the powers of the [~~attorney in fact or~~]
 8-11 agent.

8-12 (b) If, after execution of a durable power of attorney, a
 8-13 court of the principal's domicile appoints a temporary guardian of
 8-14 the estate of the principal, the court may suspend the powers of the
 8-15 [~~attorney in fact or~~] agent on the qualification of the temporary
 8-16 guardian of the estate until the date the term of the temporary
 8-17 guardian expires. This subsection may not be construed to prohibit
 8-18 the application for or issuance of a temporary restraining order
 8-19 under applicable law.

8-20 SECTION 7. Section 751.151, Estates Code, is amended to
 8-21 read as follows:

8-22 Sec. 751.151. RECORDING FOR REAL PROPERTY TRANSACTIONS
 8-23 REQUIRING EXECUTION AND DELIVERY OF INSTRUMENTS. A durable power
 8-24 of attorney for a real property transaction requiring the execution
 8-25 and delivery of an instrument that is to be recorded, including a
 8-26 release, assignment, satisfaction, mortgage, including a reverse
 8-27 mortgage, security agreement, deed of trust, encumbrance, deed of
 8-28 conveyance, oil, gas, or other mineral lease, memorandum of a
 8-29 lease, lien, including a home equity lien, or other claim or right
 8-30 to real property, must be recorded in the office of the county clerk
 8-31 of the county in which the property is located not later than the
 8-32 30th day after the date the instrument is filed for recording.

8-33 SECTION 8. Chapter 751, Estates Code, is amended by adding
 8-34 Subchapters E and F to read as follows:

8-35 SUBCHAPTER E. ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF
 8-36 ATTORNEY

8-37 Sec. 751.201. ACCEPTANCE OF DURABLE POWER OF ATTORNEY
 8-38 REQUIRED; EXCEPTIONS. (a) Unless one or more grounds for refusal
 8-39 under Section 751.206 exist, a person who is presented with and
 8-40 asked to accept a durable power of attorney by an agent with
 8-41 authority to act under the power of attorney shall:

8-42 (1) accept the power of attorney; or

8-43 (2) before accepting the power of attorney:

8-44 (A) request an agent's certification under
 8-45 Section 751.203 or an opinion of counsel under Section 751.204 not
 8-46 later than the seventh business day after the date the power of
 8-47 attorney is presented, except as provided by Subsection (c); or

8-48 (B) if applicable, request an English
 8-49 translation under Section 751.205 not later than the fifth business
 8-50 day after the date the power of attorney is presented, except as
 8-51 provided by Subsection (c).

8-52 (b) Unless one or more grounds for refusal under Section
 8-53 751.206 exist and except as provided by Subsection (c), a person who
 8-54 requests:

8-55 (1) an agent's certification must accept the durable
 8-56 power of attorney not later than the fifth business day after the
 8-57 date the person receives the requested certification; and

8-58 (2) an opinion of counsel must accept the durable
 8-59 power of attorney not later than the seventh business day after the
 8-60 date the person receives the requested opinion.

8-61 (c) An agent presenting a durable power of attorney for
 8-62 acceptance and the person to whom the power of attorney is presented
 8-63 may agree to extend a period prescribed by Subsection (a) or (b).

8-64 (d) If an English translation of a durable power of attorney
 8-65 is requested as authorized by Subsection (a)(2)(B), the power of
 8-66 attorney is not considered presented for acceptance under
 8-67 Subsection (a) until the date the requestor receives the
 8-68 translation. On and after that date, the power of attorney shall be
 8-69 treated as a power of attorney originally prepared in English for

9-1 all the purposes of this subchapter.

9-2 (e) A person is not required to accept a durable power of
 9-3 attorney under this section if the agent refuses to or does not
 9-4 provide a requested certification, opinion of counsel, or English
 9-5 translation under this subchapter.

9-6 Sec. 751.202. OTHER FORM OR RECORDING OF DURABLE POWER OF
 9-7 ATTORNEY AS CONDITION OF ACCEPTANCE PROHIBITED. A person who is
 9-8 asked to accept a durable power of attorney under Section 751.201
 9-9 may not require that:

9-10 (1) an additional or different form of the power of
 9-11 attorney be presented for authority that is granted in the power of
 9-12 attorney presented to the person; or

9-13 (2) the power of attorney be recorded in the office of
 9-14 a county clerk unless the recording of the instrument is required by
 9-15 Section 751.151 or another law of this state.

9-16 Sec. 751.203. AGENT'S CERTIFICATION. (a) Before
 9-17 accepting a durable power of attorney under Section 751.201, the
 9-18 person to whom the power of attorney is presented may request that
 9-19 the agent presenting the power of attorney provide to the person an
 9-20 agent's certification, under penalty of perjury, of any factual
 9-21 matter concerning the principal, agent, or power of attorney.

9-22 (b) A certification described by Subsection (a) may be in
 9-23 the following form:

9-24 CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

9-25 I, _____ (agent), certify under penalty of perjury
 9-26 that:

9-27 1. I am the agent named in the power of attorney validly
 9-28 executed by _____ (principal) ("principal") on _____
 9-29 (date), and the power of attorney is now in full force and effect.

9-30 2. The principal is not deceased and is presently domiciled
 9-31 in _____ (city and state/territory or foreign country).

9-32 3. To the best of my knowledge after diligent search and
 9-33 inquiry:

9-34 a. The power of attorney has not been revoked by the
 9-35 principal or suspended or terminated by the occurrence of any
 9-36 event, whether or not referenced in the power of attorney;

9-37 b. A permanent guardian of the estate of the principal
 9-38 has not qualified to serve in that capacity;

9-39 c. My powers under the power of attorney have not been
 9-40 suspended by a court in a temporary guardianship or other
 9-41 proceeding;

9-42 d. If I am (or was) the principal's spouse, my marriage
 9-43 to the principal has not been dissolved by court decree of divorce
 9-44 or annulment or declared void by a court, or the power of attorney
 9-45 provides specifically that my appointment as the agent for the
 9-46 principal does not terminate if my marriage to the principal has
 9-47 been dissolved by court decree of divorce or annulment or declared
 9-48 void by a court;

9-49 e. No proceeding has been commenced for a temporary or
 9-50 permanent guardianship of the person or estate, or both, of the
 9-51 principal; and

9-52 f. The exercise of my authority is not prohibited by
 9-53 another agreement or instrument.

9-54 4. If under its terms the power of attorney becomes
 9-55 effective on the disability or incapacity of the principal or at a
 9-56 future time or on the occurrence of a contingency, the principal now
 9-57 has a disability or is incapacitated or the specified future time or
 9-58 contingency has occurred.

9-59 5. I am acting within the scope of my authority under the
 9-60 power of attorney, and my authority has not been altered or
 9-61 terminated.

9-62 6. If applicable, I am the successor to _____
 9-63 (predecessor agent), who has resigned, died, or become
 9-64 incapacitated, is not qualified to serve or has declined to serve as
 9-65 agent, or is otherwise unable to act. There are no unsatisfied
 9-66 conditions remaining under the power of attorney that preclude my
 9-67 acting as successor agent.

9-68 7. I agree not to:

9-69 a. Exercise any powers granted by the power of

10-1 attorney if I attain knowledge that the power of attorney has been
 10-2 revoked, suspended, or terminated; or

10-3 b. Exercise any specific powers that have been
 10-4 revoked, suspended, or terminated.

10-5 8. A true and correct copy of the power of attorney is
 10-6 attached to this document.

10-7 9. If used in connection with an extension of credit under
 10-8 Section 50(a)(6), Article XVI, Texas Constitution, the power of
 10-9 attorney was executed in the office of the lender, the office of a
 10-10 title company, or the law office of _____.

10-11 Date: _____, 20__.

10-12 _____ (signature of agent)

10-13 (c) A certification made in compliance with this section is
 10-14 conclusive proof of the factual matter that is the subject of the
 10-15 certification.

10-16 Sec. 751.204. OPINION OF COUNSEL. (a) Before accepting a
 10-17 durable power of attorney under Section 751.201, the person to whom
 10-18 the power of attorney is presented may request from the agent
 10-19 presenting the power of attorney an opinion of counsel regarding
 10-20 any matter of law concerning the power of attorney so long as the
 10-21 person provides to the agent the reason for the request in a writing
 10-22 or other record.

10-23 (b) Except as otherwise provided in an agreement to extend
 10-24 the request period under Section 751.201(c), an opinion of counsel
 10-25 requested under this section must be provided by the principal or
 10-26 agent, at the principal's expense. If, without an extension, the
 10-27 requestor requests the opinion later than the seventh business day
 10-28 after the date the durable power of attorney is presented to the
 10-29 requestor, the principal or agent may, but is not required to,
 10-30 provide the opinion, at the requestor's expense.

10-31 Sec. 751.205. ENGLISH TRANSLATION. (a) Before accepting a
 10-32 durable power of attorney under Section 751.201 that contains,
 10-33 wholly or partly, language other than English, the person to whom
 10-34 the power of attorney is presented may request from the agent
 10-35 presenting the power of attorney an English translation of the
 10-36 power of attorney.

10-37 (b) Except as otherwise provided in an agreement to extend
 10-38 the request period under Section 751.201(c), an English translation
 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 translation later than the fifth business
 10-42 day 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 translation, at the requestor's expense.

10-45 Sec. 751.206. GROUNDS FOR REFUSING ACCEPTANCE. A person is
 10-46 not required to accept a durable power of attorney under this
 10-47 subchapter if:

10-48 (1) the person would not otherwise be required to
 10-49 engage in a transaction with the principal under the same
 10-50 circumstances, including a circumstance in which the agent seeks
 10-51 to:

10-52 (A) establish a customer relationship with the
 10-53 person under the power of attorney when the principal is not already
 10-54 a customer of the person or expand an existing customer
 10-55 relationship with the person under the power of attorney; or

10-56 (B) acquire a product or service under the power
 10-57 of attorney that the person does not offer;

10-58 (2) the person's engaging in the transaction with the
 10-59 agent or with the principal under the same circumstances would be
 10-60 inconsistent with:

10-61 (A) another law of this state or a federal
 10-62 statute, rule, or regulation;

10-63 (B) a request from a law enforcement agency; or

10-64 (C) a policy adopted by the person in good faith
 10-65 that is necessary to comply with another law of this state or a
 10-66 federal statute, rule, regulation, regulatory directive, guidance,
 10-67 or executive order applicable to the person;

10-68 (3) the person would not engage in a similar
 10-69 transaction with the agent because the person or an affiliate of the

11-1 person:
 11-2 (A) has filed a suspicious activity report as
 11-3 described by 31 U.S.C. Section 5318(g) with respect to the
 11-4 principal or agent;
 11-5 (B) believes in good faith that the principal or
 11-6 agent has a prior criminal history involving financial crimes; or
 11-7 (C) has had a previous, unsatisfactory business
 11-8 relationship with the agent due to or resulting in:
 11-9 (i) material loss to the person;
 11-10 (ii) financial mismanagement by the agent;
 11-11 (iii) litigation between the person and the
 11-12 agent alleging substantial damages; or
 11-13 (iv) multiple nuisance lawsuits filed by
 11-14 the agent;
 11-15 (4) the person has actual knowledge of the termination
 11-16 of the agent's authority or of the power of attorney before an
 11-17 agent's exercise of authority under the power of attorney;
 11-18 (5) the agent refuses to comply with a request for a
 11-19 certification, opinion of counsel, or translation under Section
 11-20 751.201 or, if the agent complies with one or more of those
 11-21 requests, the requestor in good faith is unable to determine the
 11-22 validity of the power of attorney or the agent's authority to act
 11-23 under the power of attorney because the certification, opinion, or
 11-24 translation is incorrect, incomplete, unclear, limited, qualified,
 11-25 or otherwise deficient in a manner that makes the certification,
 11-26 opinion, or translation ineffective for its intended purpose, as
 11-27 determined in good faith by the requestor;
 11-28 (6) regardless of whether an agent's certification,
 11-29 opinion of counsel, or translation has been requested or received
 11-30 by the person under this subchapter, the person believes in good
 11-31 faith that:
 11-32 (A) the power of attorney is not valid;
 11-33 (B) the agent does not have the authority to act
 11-34 as attempted; or
 11-35 (C) the performance of the requested act would
 11-36 violate the terms of:
 11-37 (i) a business entity's governing
 11-38 documents; or
 11-39 (ii) an agreement affecting a business
 11-40 entity, including how the entity's business is conducted;
 11-41 (7) the person commenced, or has actual knowledge that
 11-42 another person commenced, a judicial proceeding to construe the
 11-43 power of attorney or review the agent's conduct and that proceeding
 11-44 is pending;
 11-45 (8) the person commenced, or has actual knowledge that
 11-46 another person commenced, a judicial proceeding for which a final
 11-47 determination was made that found:
 11-48 (A) the power of attorney invalid with respect to
 11-49 a purpose for which the power of attorney is being presented for
 11-50 acceptance; or
 11-51 (B) the agent lacked the authority to act in the
 11-52 same manner in which the agent is attempting to act under the power
 11-53 of attorney;
 11-54 (9) the person makes, has made, or has actual
 11-55 knowledge that another person has made a report to a law enforcement
 11-56 agency or other federal or state agency, including the Department
 11-57 of Family and Protective Services, stating a good faith belief that
 11-58 the principal may be subject to physical or financial abuse,
 11-59 neglect, exploitation, or abandonment by the agent or a person
 11-60 acting with or on behalf of the agent;
 11-61 (10) the person receives conflicting instructions or
 11-62 communications with regard to a matter from co-agents acting under
 11-63 the same power of attorney or from agents acting under different
 11-64 powers of attorney signed by the same principal or another adult
 11-65 acting for the principal as authorized by Section 751.0021,
 11-66 provided that the person may refuse to accept the power of attorney
 11-67 only with respect to that matter; or
 11-68 (11) the person is not required to accept the durable
 11-69 power of attorney by the law of the jurisdiction that applies in

12-1 determining the power of attorney's meaning and effect, or the
 12-2 powers conferred under the durable power of attorney that the agent
 12-3 is attempting to exercise are not included within the scope of
 12-4 activities to which the law of that jurisdiction applies.

12-5 Sec. 751.207. WRITTEN STATEMENT OF REFUSAL OF ACCEPTANCE
 12-6 REQUIRED. (a) Except as provided by Subsection (b), a person who
 12-7 refuses to accept a durable power of attorney under this subchapter
 12-8 shall provide to the agent presenting the power of attorney for
 12-9 acceptance a written statement advising the agent of the reason or
 12-10 reasons the person is refusing to accept the power of attorney.

12-11 (b) If the reason a person is refusing to accept a durable
 12-12 power of attorney is a reason described by Section 751.206(2) or
 12-13 (3):

12-14 (1) the person shall provide to the agent presenting
 12-15 the power of attorney for acceptance a written statement signed by
 12-16 the person under penalty of perjury stating that the reason for the
 12-17 refusal is a reason described by Section 751.206(2) or (3); and

12-18 (2) the person refusing to accept the power of
 12-19 attorney is not required to provide any additional explanation for
 12-20 refusing to accept the power of attorney.

12-21 (c) The person must provide to the agent the written
 12-22 statement required under Subsection (a) or (b) on or before the date
 12-23 the person would otherwise be required to accept the durable power
 12-24 of attorney under Section 751.201.

12-25 Sec. 751.208. DATE OF ACCEPTANCE. A durable power of
 12-26 attorney is considered accepted by a person under Section 751.201
 12-27 on the first day the person agrees to act at the agent's direction
 12-28 under the power of attorney.

12-29 Sec. 751.209. GOOD FAITH RELIANCE ON DURABLE POWER OF
 12-30 ATTORNEY. (a) A person who in good faith accepts a durable power
 12-31 of attorney without actual knowledge that the signature of the
 12-32 principal or of another adult directed by the principal to sign the
 12-33 principal's name as authorized by Section 751.0021 is not genuine
 12-34 may rely on the presumption under Section 751.0022 that the
 12-35 signature is genuine and that the power of attorney was properly
 12-36 executed.

12-37 (b) A person who in good faith accepts a durable power of
 12-38 attorney without actual knowledge that the power of attorney is
 12-39 void, invalid, or terminated, that the purported agent's authority
 12-40 is void, invalid, or terminated, or that the agent is exceeding or
 12-41 improperly exercising the agent's authority may rely on the power
 12-42 of attorney as if:

12-43 (1) the power of attorney were genuine, valid, and
 12-44 still in effect;

12-45 (2) the agent's authority were genuine, valid, and
 12-46 still in effect; and

12-47 (3) the agent had not exceeded and had properly
 12-48 exercised the authority.

12-49 Sec. 751.210. RELIANCE ON CERTAIN REQUESTED INFORMATION. A
 12-50 person may rely on, without further investigation or liability to
 12-51 another person, an agent's certification, opinion of counsel, or
 12-52 English translation that is provided to the person under this
 12-53 subchapter.

12-54 Sec. 751.211. ACTUAL KNOWLEDGE OF PERSON WHEN TRANSACTIONS
 12-55 CONDUCTED THROUGH EMPLOYEES. (a) This section applies to a person
 12-56 who conducts a transaction or activity through an employee of the
 12-57 person.

12-58 (b) For purposes of this chapter, a person is not considered
 12-59 to have actual knowledge of a fact relating to a durable power of
 12-60 attorney, principal, or agent if the employee conducting the
 12-61 transaction or activity involving the power of attorney does not
 12-62 have actual knowledge of the fact.

12-63 (c) For purposes of this chapter, a person is considered to
 12-64 have actual knowledge of a fact relating to a durable power of
 12-65 attorney, principal, or agent if the employee conducting the
 12-66 transaction or activity involving the power of attorney has actual
 12-67 knowledge of the fact.

12-68 Sec. 751.212. CAUSE OF ACTION FOR REFUSAL TO ACCEPT DURABLE
 12-69 POWER OF ATTORNEY. (a) The principal or an agent acting on the

13-1 principal's behalf may bring an action against a person who refuses
 13-2 to accept a durable power of attorney in violation of this
 13-3 subchapter.

13-4 (b) An action under Subsection (a) may not be commenced
 13-5 against a person until after the date the person is required to
 13-6 accept the durable power of attorney under Section 751.201.

13-7 (c) If the court finds that the person refused to accept the
 13-8 durable power of attorney in violation of this subchapter, the
 13-9 court, as the exclusive remedy under this chapter:

13-10 (1) shall order the person to accept the power of
 13-11 attorney; and

13-12 (2) may award the plaintiff court costs and reasonable
 13-13 and necessary attorney's fees.

13-14 (d) The court shall dismiss an action under this section
 13-15 that was commenced after the date a written statement described by
 13-16 Section 751.207(b) was provided to the agent.

13-17 (e) Notwithstanding Subsection (c), if the agent receives a
 13-18 written statement described by Section 751.207(b) after the date a
 13-19 timely action is commenced under this section, the court may not
 13-20 order the person to accept the durable power of attorney, but
 13-21 instead may award the plaintiff court costs and reasonable and
 13-22 necessary attorney's fees as the exclusive remedy under this
 13-23 chapter.

13-24 Sec. 751.213. LIABILITY OF PRINCIPAL. If the court finds in
 13-25 an action under Section 751.212 that the action was commenced after
 13-26 the date the written statement described by Section 751.207(b) was
 13-27 timely provided to the agent and expressly finds that the refusal of
 13-28 the person against whom the action was brought to accept the durable
 13-29 power of attorney was permitted under this chapter, and if Section
 13-30 751.212(e) does not apply and the court does not issue an order
 13-31 ordering the person to accept the power of attorney, the principal
 13-32 may be liable to the person who refused to accept the power of
 13-33 attorney for court costs and reasonable and necessary attorney's
 13-34 fees incurred in defending the action.

13-35 SUBCHAPTER F. CIVIL REMEDIES

13-36 Sec. 751.251. JUDICIAL RELIEF. (a) The following may
 13-37 bring an action requesting a court to construe, or determine the
 13-38 validity or enforceability of, a durable power of attorney, or to
 13-39 review an agent's conduct under a durable power of attorney and
 13-40 grant appropriate relief:

13-41 (1) the principal or the agent;

13-42 (2) a guardian, conservator, or other fiduciary acting
 13-43 for the principal;

13-44 (3) a person named as a beneficiary to receive
 13-45 property, a benefit, or a contractual right on the principal's
 13-46 death;

13-47 (4) a governmental agency with regulatory authority to
 13-48 protect the principal's welfare; and

13-49 (5) a person who demonstrates to the court sufficient
 13-50 interest in the principal's welfare or estate.

13-51 (b) A person who is asked to accept a durable power of
 13-52 attorney may bring an action requesting a court to construe, or
 13-53 determine the validity or enforceability of, the power of attorney.

13-54 (c) On the principal's motion, the court shall dismiss an
 13-55 action under Subsection (a) unless the court finds that the
 13-56 principal lacks capacity to revoke the agent's authority or the
 13-57 durable power of attorney.

13-58 SECTION 9. Section 752.051, Estates Code, is amended to
 13-59 read as follows:

13-60 Sec. 752.051. FORM. The following form is known as a
 13-61 "statutory durable power of attorney":

13-62 STATUTORY DURABLE POWER OF ATTORNEY

13-63 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
 13-64 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
 13-65 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE
 13-66 POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT
 13-67 AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS
 13-68 FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO
 13-69 DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME

14-1 EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE
14-2 SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A
14-3 TITLE COMPANY.

14-4 You should select someone you trust to serve as your agent
14-5 [~~attorney in fact~~]. Unless you specify otherwise, generally the
14-6 agent's [~~attorney in fact's~~] authority will continue until:

- 14-7 (1) you die or revoke the power of attorney;
- 14-8 (2) your agent [~~attorney in fact~~] resigns or is
14-9 unable to act for you; or
- 14-10 (3) a guardian is appointed for your estate.

14-11 I, _____ (insert your name and address), appoint
14-12 _____ (insert the name and address of the person appointed) as
14-13 my agent [~~attorney in fact~~] to act for me in any lawful way with
14-14 respect to all of the following powers that I have initialed below.
14-15 (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE,
14-16 CO-AGENTS MAY ACT INDEPENDENTLY.)

14-17 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
14-18 FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
14-19 LISTED IN (A) THROUGH (M).

14-20 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
14-21 POWER YOU ARE GRANTING.

14-22 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
14-23 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- 14-24 _____ (A) Real property transactions;
- 14-25 _____ (B) Tangible personal property transactions;
- 14-26 _____ (C) Stock and bond transactions;
- 14-27 _____ (D) Commodity and option transactions;
- 14-28 _____ (E) Banking and other financial institution
14-29 transactions;
- 14-30 _____ (F) Business operating transactions;
- 14-31 _____ (G) Insurance and annuity transactions;
- 14-32 _____ (H) Estate, trust, and other beneficiary transactions;
- 14-33 _____ (I) Claims and litigation;
- 14-34 _____ (J) Personal and family maintenance;
- 14-35 _____ (K) Benefits from social security, Medicare, Medicaid,
14-36 or other governmental programs or civil or military service;
- 14-37 _____ (L) Retirement plan transactions;
- 14-38 _____ (M) Tax matters;
- 14-39 _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU DO
14-40 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
14-41 INITIAL LINE (N).

14-42 SPECIAL INSTRUCTIONS:

14-43 Special instructions applicable to agent compensation
14-44 (initial in front of one of the following sentences to have it
14-45 apply; if no selection is made, each agent will be entitled to
14-46 compensation that is reasonable under the circumstances):

14-47 _____ My agent is entitled to reimbursement of reasonable
14-48 expenses incurred on my behalf and to compensation that is
14-49 reasonable under the circumstances.

14-50 _____ My agent is entitled to reimbursement of reasonable
14-51 expenses incurred on my behalf but shall receive no compensation
14-52 for serving as my agent.

14-53 Special instructions applicable to co-agents (if you have
14-54 appointed co-agents to act, initial in front of one of the following
14-55 sentences to have it apply; if no selection is made, each agent will
14-56 be entitled to act independently):

14-57 _____ Each of my co-agents may act independently for me.

14-58 _____ My co-agents may act for me only if the co-agents act
14-59 jointly.

14-60 _____ My co-agents may act for me only if a majority of the
14-61 co-agents act jointly.

14-62 Special instructions applicable to gifts (initial in front of
14-63 the following sentence to have it apply):

14-64 _____ I grant my agent [~~attorney in fact~~] the power to apply my
14-65 property to make gifts outright to or for the benefit of a person,
14-66 including by the exercise of a presently exercisable general power
14-67 of appointment held by me, except that the amount of a gift to an
14-68 individual may not exceed the amount of annual exclusions allowed
14-69 from the federal gift tax for the calendar year of the gift.

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

15-1
15-2
15-3
15-4
15-5
15-6
15-7
15-8
15-9
15-10
15-11

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

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

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

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

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

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

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

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

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

Signed this _____ day of _____, _____

(your signature)

State of _____

County of _____

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

(name of principal)

(signature of notarial officer)

(Seal, if any, of notary) _____

(printed name)

My commission expires: _____

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

Agent's Duties

When you accept the authority granted under this power of

16-1 attorney, you establish a "fiduciary" relationship with the
16-2 principal. This is a special legal relationship that imposes on you
16-3 legal duties that continue until you resign or the power of attorney
16-4 is terminated or revoked by the principal or by operation of law. A
16-5 fiduciary duty generally includes the duty to:

- 16-6 (1) act in good faith;
- 16-7 (2) do nothing beyond the authority granted in this
16-8 power of attorney;
- 16-9 (3) act loyally for the principal's benefit;
- 16-10 (4) avoid conflicts that would impair your ability to
16-11 act in the principal's best interest; and
- 16-12 (5) disclose your identity as an agent [~~or attorney in~~
16-13 ~~fact~~] when you act for the principal by writing or printing the name
16-14 of the principal and signing your own name as "agent" [~~or "attorney~~
16-15 ~~in fact"~~] in the following manner:

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

16-18 In addition, the Durable Power of Attorney Act (Subtitle P,
16-19 Title 2, Estates Code) requires you to:

- 16-20 (1) maintain records of each action taken or decision
16-21 made on behalf of the principal;
- 16-22 (2) maintain all records until delivered to the
16-23 principal, released by the principal, or discharged by a court; and
- 16-24 (3) if requested by the principal, provide an
16-25 accounting to the principal that, unless otherwise directed by the
16-26 principal or otherwise provided in the Special Instructions, must
16-27 include:

16-28 (A) the property belonging to the principal that
16-29 has come to your knowledge or into your possession;

16-30 (B) each action taken or decision made by you as
16-31 agent [~~or attorney in fact~~];

16-32 (C) a complete account of receipts,
16-33 disbursements, and other actions of you as agent [~~or attorney in~~
16-34 ~~fact~~] that includes the source and nature of each receipt,
16-35 disbursement, or action, with receipts of principal and income
16-36 shown separately;

16-37 (D) a listing of all property over which you have
16-38 exercised control that includes an adequate description of each
16-39 asset and the asset's current value, if known to you;

16-40 (E) the cash balance on hand and the name and
16-41 location of the depository at which the cash balance is kept;

16-42 (F) each known liability;

16-43 (G) any other information and facts known to you
16-44 as necessary for a full and definite understanding of the exact
16-45 condition of the property belonging to the principal; and

16-46 (H) all documentation regarding the principal's
16-47 property.

16-48 Termination of Agent's Authority

16-49 You must stop acting on behalf of the principal if you learn
16-50 of any event that terminates this power of attorney or your
16-51 authority under this power of attorney. An event that terminates
16-52 this power of attorney or your authority to act under this power of
16-53 attorney includes:

16-54 (1) the principal's death;

16-55 (2) the principal's revocation of this power of
16-56 attorney or your authority;

16-57 (3) the occurrence of a termination event stated in
16-58 this power of attorney;

16-59 (4) if you are married to the principal, the
16-60 dissolution of your marriage by a court decree of divorce or
16-61 annulment or declaration that your marriage is void, unless
16-62 otherwise provided in this power of attorney;

16-63 (5) the appointment and qualification of a permanent
16-64 guardian of the principal's estate; or

16-65 (6) if ordered by a court, the suspension of this power
16-66 of attorney on the appointment and qualification of a temporary
16-67 guardian until the date the term of the temporary guardian expires.

16-68 Liability of Agent

16-69 The authority granted to you under this power of attorney is

17-1 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
 17-2 Estates Code). If you violate the Durable Power of Attorney Act or
 17-3 act beyond the authority granted, you may be liable for any damages
 17-4 caused by the violation or subject to prosecution for
 17-5 misapplication of property by a fiduciary under Chapter 32 of the
 17-6 Texas Penal Code.

17-7 THE ~~[ATTORNEY IN FACT OR]~~ AGENT, BY ACCEPTING OR ACTING UNDER
 17-8 THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL
 17-9 RESPONSIBILITIES OF AN AGENT.

17-10 SECTION 10. Subchapter B, Chapter 752, Estates Code, is
 17-11 amended by adding Section 752.052 to read as follows:

17-12 Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC
 17-13 AUTHORITY. The statutory durable power of attorney may be modified
 17-14 to allow the principal to grant the agent the specific authority
 17-15 described by Section 751.031(b) by including the following
 17-16 language:

17-17 "GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

17-18 My agent MAY NOT do any of the following specific acts for me
 17-19 UNLESS I have INITIALED the specific authority listed below:

17-20 (CAUTION: Granting any of the following will give your agent the
 17-21 authority to take actions that could significantly reduce your
 17-22 property or change how your property is distributed at your death.
 17-23 INITIAL ONLY the specific authority you WANT to give your agent. If
 17-24 you DO NOT want to grant your agent one or more of the following
 17-25 powers, you may also CROSS OUT a power you DO NOT want to grant.)

17-26 _____ Create, amend, revoke, or terminate an inter vivos
 17-27 trust

17-28 _____ Make a gift, subject to the limitations of Section
 17-29 751.032 of the Durable Power of Attorney Act (Section 751.032,
 17-30 Estates Code) and any special instructions in this power of
 17-31 attorney

17-32 _____ Create or change rights of survivorship

17-33 _____ Create or change a beneficiary designation

17-34 _____ Authorize another person to exercise the authority
 17-35 granted under this power of attorney".

17-36 SECTION 11. Section 752.102, Estates Code, is amended to
 17-37 read as follows:

17-38 Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The
 17-39 language conferring authority with respect to real property
 17-40 transactions in a statutory durable power of attorney empowers the
 17-41 ~~[attorney in fact or]~~ agent, without further reference to a
 17-42 specific description of the real property, to:

17-43 (1) accept as a gift or as security for a loan or
 17-44 reject, demand, buy, lease, receive, or otherwise acquire an
 17-45 interest in real property or a right incident to real property;

17-46 (2) sell, exchange, convey with or without covenants,
 17-47 quitclaim, release, surrender, mortgage, encumber, partition or
 17-48 consent to partitioning, subdivide, apply for zoning, rezoning, or
 17-49 other governmental permits, plat or consent to platting, develop,
 17-50 grant options concerning, lease or sublet, or otherwise dispose of
 17-51 an estate or interest in real property or a right incident to real
 17-52 property;

17-53 (3) release, assign, satisfy, and enforce by
 17-54 litigation, action, or otherwise a mortgage, deed of trust,
 17-55 encumbrance, lien, or other claim to real property that exists or is
 17-56 claimed to exist;

17-57 (4) perform any act of management or of conservation
 17-58 with respect to an interest in real property, or a right incident to
 17-59 real property, owned or claimed to be owned by the principal,
 17-60 including the authority to:

17-61 (A) insure against a casualty, liability, or
 17-62 loss;

17-63 (B) obtain or regain possession or protect the
 17-64 interest or right by litigation, action, or otherwise;

17-65 (C) pay, compromise, or contest taxes or
 17-66 assessments or apply for and receive refunds in connection with the
 17-67 taxes or assessments;

17-68 (D) purchase supplies, hire assistance or labor,
 17-69 or make repairs or alterations to the real property; and

18-1 (E) manage and supervise an interest in real
 18-2 property, including the mineral estate~~[, by, for example:~~
 18-3 ~~[(i) entering into a lease for oil, gas, and~~
 18-4 ~~mineral purposes,~~
 18-5 ~~[(ii) making contracts for development of~~
 18-6 ~~the mineral estate, or~~
 18-7 ~~[(iii) making pooling and unitization~~
 18-8 ~~agreements];~~
 18-9 (5) use, develop, alter, replace, remove, erect, or
 18-10 install structures or other improvements on real property in which
 18-11 the principal has or claims to have an estate, interest, or right;
 18-12 (6) participate in a reorganization with respect to
 18-13 real property or a legal entity that owns an interest in or right
 18-14 incident to real property, receive and hold shares of stock or
 18-15 obligations received in a plan or reorganization, and act with
 18-16 respect to the shares or obligations, including:
 18-17 (A) selling or otherwise disposing of the shares
 18-18 or obligations;
 18-19 (B) exercising or selling an option, conversion,
 18-20 or similar right with respect to the shares or obligations; and
 18-21 (C) voting the shares or obligations in person or
 18-22 by proxy;
 18-23 (7) change the form of title of an interest in or right
 18-24 incident to real property; ~~and]~~
 18-25 (8) dedicate easements or other real property in which
 18-26 the principal has or claims to have an interest to public use, with
 18-27 or without consideration;
 18-28 (9) enter into mineral transactions, including:
 18-29 (A) negotiating and making oil, gas, and other
 18-30 mineral leases covering any land, mineral, or royalty interest in
 18-31 which the principal has or claims to have an interest;
 18-32 (B) pooling and unitizing all or part of the
 18-33 principal's land, mineral leasehold, mineral, royalty, or other
 18-34 interest with land, mineral leasehold, mineral, royalty, or other
 18-35 interest of one or more persons for the purpose of developing and
 18-36 producing oil, gas, or other minerals, and making leases or
 18-37 assignments granting the right to pool and unitize;
 18-38 (C) entering into contracts and agreements
 18-39 concerning the installation and operation of plants or other
 18-40 facilities for the cycling, repressuring, processing, or other
 18-41 treating or handling of oil, gas, or other minerals;
 18-42 (D) conducting or contracting for the conducting
 18-43 of seismic evaluation operations;
 18-44 (E) drilling or contracting for the drilling of
 18-45 wells for oil, gas, or other minerals;
 18-46 (F) contracting for and making "dry hole" and
 18-47 "bottom hole" contributions of cash, leasehold interests, or other
 18-48 interests toward the drilling of wells;
 18-49 (G) using or contracting for the use of any
 18-50 method of secondary or tertiary recovery of any mineral, including
 18-51 the injection of water, gas, air, or other substances;
 18-52 (H) purchasing oil, gas, or other mineral leases,
 18-53 leasehold interests, or other interests for any type of
 18-54 consideration, including farmout agreements requiring the drilling
 18-55 or reworking of wells or participation in the drilling or reworking
 18-56 of wells;
 18-57 (I) entering into farmout agreements committing
 18-58 the principal to assign oil, gas, or other mineral leases or
 18-59 interests in consideration for the drilling of wells or other oil,
 18-60 gas, or mineral operations;
 18-61 (J) negotiating the transfer of and transferring
 18-62 oil, gas, or other mineral leases or interests for any
 18-63 consideration, such as retained overriding royalty interests of any
 18-64 nature, drilling or reworking commitments, or production
 18-65 interests;
 18-66 (K) executing and entering into contracts,
 18-67 conveyances, and other agreements or transfers considered
 18-68 necessary or desirable to carry out the powers granted in this
 18-69 section, including entering into and executing division orders,

19-1 oil, gas, or other mineral sales contracts, exploration agreements,
 19-2 processing agreements, and other contracts relating to the
 19-3 processing, handling, treating, transporting, and marketing of
 19-4 oil, gas, or other mineral production from or accruing to the
 19-5 principal and receiving and receipting for the proceeds of those
 19-6 contracts, conveyances, and other agreements and transfers on
 19-7 behalf of the principal; and

19-8 (L) taking an action described by Paragraph (K)
 19-9 regardless of whether the action is, at the time the action is taken
 19-10 or subsequently, recognized or considered as a common or proper
 19-11 practice by those engaged in the business of prospecting for,
 19-12 developing, producing, processing, transporting, or marketing
 19-13 minerals; and

19-14 (10) designate the property that constitutes the
 19-15 principal's homestead.

19-16 (b) The power to mortgage and encumber real property
 19-17 provided by this section includes the power to execute documents
 19-18 necessary to create a lien against the principal's homestead as
 19-19 provided by Section 50, Article XVI, Texas Constitution, and to
 19-20 consent to the creation of a lien against property owned by the
 19-21 principal's spouse in which the principal has a homestead interest.

19-22 SECTION 12. Section 752.108(b), Estates Code, is amended to
 19-23 read as follows:

19-24 (b) Unless the principal has granted the authority to create
 19-25 or change a beneficiary designation expressly as required by
 19-26 Section 751.031(b)(4), an ~~[An attorney in fact or]~~ agent may be
 19-27 named a beneficiary of an insurance contract or an extension,
 19-28 renewal, or substitute for the contract only to the extent the
 19-29 ~~[attorney in fact or]~~ agent was named as a beneficiary ~~[under a~~
 19-30 ~~contract procured]~~ by the principal ~~[before executing the power of~~
 19-31 ~~attorney]~~.

19-32 SECTION 13. Sections 752.109 and 752.111, Estates Code, are
 19-33 amended to read as follows:

19-34 Sec. 752.109. ESTATE, TRUST, AND OTHER BENEFICIARY
 19-35 TRANSACTIONS. The language conferring authority with respect to
 19-36 estate, trust, and other beneficiary transactions in a statutory
 19-37 durable power of attorney empowers the ~~[attorney in fact or]~~ agent
 19-38 to act for the principal in all matters that affect a trust, probate
 19-39 estate, guardianship, conservatorship, life estate, escrow,
 19-40 custodianship, or other fund from which the principal is, may
 19-41 become, or claims to be entitled, as a beneficiary, to a share or
 19-42 payment, including to:

19-43 (1) accept, reject, disclaim, receive, receipt for,
 19-44 sell, assign, release, pledge, exchange, or consent to a reduction
 19-45 in or modification of a share in or payment from the fund;

19-46 (2) demand or obtain by litigation, action, or
 19-47 otherwise money or any other thing of value to which the principal
 19-48 is, may become, or claims to be entitled because of the fund;

19-49 (3) initiate, participate in, or oppose a legal or
 19-50 judicial proceeding to:

19-51 (A) ascertain the meaning, validity, or effect of
 19-52 a deed, will, declaration of trust, or other instrument or
 19-53 transaction affecting the interest of the principal; or

19-54 (B) remove, substitute, or surcharge a
 19-55 fiduciary;

19-56 (4) conserve, invest, disburse, or use anything
 19-57 received for an authorized purpose; and

19-58 (5) transfer all or part of the principal's interest in
 19-59 real property, stocks, bonds, accounts with financial
 19-60 institutions, insurance, and other property to the trustee of a
 19-61 revocable trust created by the principal as settlor.

19-62 Sec. 752.111. PERSONAL AND FAMILY MAINTENANCE. The
 19-63 language conferring authority with respect to personal and family
 19-64 maintenance in a statutory durable power of attorney empowers the
 19-65 ~~[attorney in fact or]~~ agent to:

19-66 (1) perform the acts necessary to maintain the
 19-67 customary standard of living of the principal, the principal's
 19-68 spouse and children, and other individuals customarily or legally
 19-69 entitled to be supported by the principal, including:

20-1 (A) providing living quarters by purchase,
20-2 lease, or other contract; or
20-3 (B) paying the operating costs, including
20-4 interest, amortization payments, repairs, and taxes on premises
20-5 owned by the principal and occupied by those individuals;
20-6 (2) provide for the individuals described by
20-7 Subdivision (1):
20-8 (A) normal domestic help;
20-9 (B) usual vacations and travel expenses; and
20-10 (C) money for shelter, clothing, food,
20-11 appropriate education, and other living costs;
20-12 (3) pay necessary medical, dental, and surgical care,
20-13 hospitalization, and custodial care for the individuals described
20-14 by Subdivision (1);
20-15 (4) continue any provision made by the principal for
20-16 the individuals described by Subdivision (1) for automobiles or
20-17 other means of transportation, including registering, licensing,
20-18 insuring, and replacing the automobiles or other means of
20-19 transportation;
20-20 (5) maintain or open charge accounts for the
20-21 convenience of the individuals described by Subdivision (1) and
20-22 open new accounts the ~~[attorney in fact or]~~ agent considers
20-23 desirable to accomplish a lawful purpose; ~~[and]~~
20-24 (6) continue:
20-25 (A) payments incidental to the membership or
20-26 affiliation of the principal in a church, club, society, order, or
20-27 other organization; or
20-28 (B) contributions to those organizations;
20-29 (7) perform all acts necessary in relation to the
20-30 principal's mail, including:
20-31 (A) receiving, signing for, opening, reading,
20-32 and responding to any mail addressed to the principal, whether
20-33 through the United States Postal Service or a private mail service;
20-34 (B) forwarding the principal's mail to any
20-35 address; and
20-36 (C) representing the principal before the United
20-37 States Postal Service in all matters relating to mail service; and
20-38 (8) subject to the needs of the individuals described
20-39 by Subdivision (1), provide for the reasonable care of the
20-40 principal's pets.
20-41 SECTION 14. Sections 752.113(b) and (c), Estates Code, are
20-42 amended to read as follows:
20-43 (b) The language conferring authority with respect to
20-44 retirement plan transactions in a statutory durable power of
20-45 attorney empowers the ~~[attorney in fact or]~~ agent to perform any
20-46 lawful act the principal may perform with respect to a transaction
20-47 relating to a retirement plan, including to:
20-48 (1) apply for service or disability retirement
20-49 benefits;
20-50 (2) select payment options under any retirement plan
20-51 in which the principal participates, including plans for
20-52 self-employed individuals;
20-53 (3) designate or change the designation of a
20-54 beneficiary or benefits payable by a retirement plan, except as
20-55 provided by Subsection (c);
20-56 (4) make voluntary contributions to retirement plans
20-57 if authorized by the plan;
20-58 (5) exercise the investment powers available under any
20-59 self-directed retirement plan;
20-60 (6) make rollovers of plan benefits into other
20-61 retirement plans;
20-62 (7) borrow from, sell assets to, and purchase assets
20-63 from retirement plans if authorized by the plan;
20-64 (8) waive the principal's right to be a beneficiary of
20-65 a joint or survivor annuity if the principal is not the participant
20-66 in the retirement plan [a spouse who is not employed];
20-67 (9) receive, endorse, and cash payments from a
20-68 retirement plan;
20-69 (10) waive the principal's right to receive all or a

21-1 portion of benefits payable by a retirement plan; and
21-2 (11) request and receive information relating to the
21-3 principal from retirement plan records.

21-4 (c) Unless the principal has granted the authority to create
21-5 or change a beneficiary designation expressly as required by
21-6 Section 751.031(b)(4), an [An attorney in fact or] agent may be
21-7 named a beneficiary under a retirement plan only to the extent the
21-8 [attorney in fact or] agent was a named a beneficiary by the
21-9 principal under the retirement plan or, in the case of a rollover or
21-10 trustee-to-trustee transfer, the predecessor retirement plan
21-11 [before the durable power of attorney was executed].

21-12 SECTION 15. The following sections of the Estates Code are
21-13 repealed:

- 21-14 (1) Section 751.004;
- 21-15 (2) Section 751.053;
- 21-16 (3) Section 751.054;
- 21-17 (4) Section 751.055;
- 21-18 (5) Section 751.056; and
- 21-19 (6) Section 751.058.

21-20 SECTION 16. (a) Except as otherwise provided by this Act,
21-21 this Act applies to:

21-22 (1) a durable power of attorney, including a statutory
21-23 durable power of attorney, created before, on, or after the
21-24 effective date of this Act; and

21-25 (2) a judicial proceeding concerning a durable power
21-26 of attorney pending on, or commenced on or after, the effective date
21-27 of this Act.

21-28 (b) The following provisions apply only to a durable power
21-29 of attorney, including a statutory durable power of attorney,
21-30 executed on or after the effective date of this Act:

21-31 (1) Section 751.024, Estates Code, as added by this
21-32 Act;

21-33 (2) Subchapter A-2, Chapter 751, Estates Code, as
21-34 added by this Act;

21-35 (3) Subchapters B, C, and D, Chapter 751, Estates
21-36 Code, as amended by this Act; and

21-37 (4) Chapter 752, Estates Code, as amended by this Act.

21-38 (c) A durable power of attorney, including a statutory
21-39 durable power of attorney, executed before the effective date of
21-40 this Act is governed by the provisions specified in Subsections
21-41 (b)(3) and (4) of this section as those provisions existed on the
21-42 date the durable power of attorney was executed, and the former law
21-43 is continued in effect for that purpose.

21-44 (d) If the court finds that application of a provision of
21-45 this Act would substantially interfere with the effective conduct
21-46 of a judicial proceeding concerning a durable power of attorney
21-47 commenced before the effective date of this Act or would prejudice
21-48 the rights of a party to the proceeding, the provision of this Act
21-49 does not apply and the former law continues in effect for that
21-50 purpose and applies in those circumstances.

21-51 (e) An act performed by a principal or agent with respect to
21-52 a durable power of attorney before the effective date of this Act is
21-53 not affected by this Act.

21-54 SECTION 17. This Act takes effect September 1, 2017.

21-55 * * * * *