

UNIFORM POWER OF ATTORNEY ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Uniform Power of Attorney Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ creates a framework to create a durable power of attorney;
- ▶ sets requirements for execution and termination;
- ▶ specifies the duties of an agent once the agent accepts appointment;
- ▶ provides for judicial review;
- ▶ describes the different types of grants of authority; and
- ▶ suggests a standardized form for powers of attorney.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-9-602, as last amended by Laws of Utah 2015, Chapter 313

ENACTS:

75-9-101, Utah Code Annotated 1953



- 28 [75-9-102](#), Utah Code Annotated 1953
- 29 [75-9-103](#), Utah Code Annotated 1953
- 30 [75-9-104](#), Utah Code Annotated 1953
- 31 [75-9-105](#), Utah Code Annotated 1953
- 32 [75-9-106](#), Utah Code Annotated 1953
- 33 [75-9-107](#), Utah Code Annotated 1953
- 34 [75-9-108](#), Utah Code Annotated 1953
- 35 [75-9-109](#), Utah Code Annotated 1953
- 36 [75-9-110](#), Utah Code Annotated 1953
- 37 [75-9-111](#), Utah Code Annotated 1953
- 38 [75-9-112](#), Utah Code Annotated 1953
- 39 [75-9-113](#), Utah Code Annotated 1953
- 40 [75-9-114](#), Utah Code Annotated 1953
- 41 [75-9-115](#), Utah Code Annotated 1953
- 42 [75-9-116](#), Utah Code Annotated 1953
- 43 [75-9-117](#), Utah Code Annotated 1953
- 44 [75-9-118](#), Utah Code Annotated 1953
- 45 [75-9-119](#), Utah Code Annotated 1953
- 46 [75-9-120](#), Utah Code Annotated 1953
- 47 [75-9-121](#), Utah Code Annotated 1953
- 48 [75-9-122](#), Utah Code Annotated 1953
- 49 [75-9-123](#), Utah Code Annotated 1953
- 50 [75-9-201](#), Utah Code Annotated 1953
- 51 [75-9-202](#), Utah Code Annotated 1953
- 52 [75-9-203](#), Utah Code Annotated 1953
- 53 [75-9-204](#), Utah Code Annotated 1953
- 54 [75-9-205](#), Utah Code Annotated 1953
- 55 [75-9-206](#), Utah Code Annotated 1953
- 56 [75-9-207](#), Utah Code Annotated 1953
- 57 [75-9-208](#), Utah Code Annotated 1953
- 58 [75-9-209](#), Utah Code Annotated 1953

- 59 [75-9-210](#), Utah Code Annotated 1953
- 60 [75-9-211](#), Utah Code Annotated 1953
- 61 [75-9-212](#), Utah Code Annotated 1953
- 62 [75-9-213](#), Utah Code Annotated 1953
- 63 [75-9-214](#), Utah Code Annotated 1953
- 64 [75-9-215](#), Utah Code Annotated 1953
- 65 [75-9-216](#), Utah Code Annotated 1953
- 66 [75-9-217](#), Utah Code Annotated 1953
- 67 [75-9-301](#), Utah Code Annotated 1953
- 68 [75-9-302](#), Utah Code Annotated 1953
- 69 [75-9-401](#), Utah Code Annotated 1953
- 70 [75-9-402](#), Utah Code Annotated 1953
- 71 [75-9-403](#), Utah Code Annotated 1953

72 REPEALS:

- 73 [75-5-501](#), as last amended by Laws of Utah 2012, Chapter 274
- 74 [75-5-502](#), as last amended by Laws of Utah 1994, Chapter 82
- 75 [75-5-503](#), as enacted by Laws of Utah 2003, Chapter 241
- 76 [75-5-504](#), as enacted by Laws of Utah 2003, Chapter 241



78 *Be it enacted by the Legislature of the state of Utah:*

79 Section 1. Section **58-9-602** is amended to read:

80 **58-9-602. Determination of control of disposition.**

81 The right and duty to control the disposition of a deceased person, which may include
82 cremation as well as the location, manner and conditions of the disposition, and arrangements
83 for funeral goods and services to be provided, vests in the following degrees of relationship in
84 the order named, provided the person is at least 18 and is mentally competent:

85 (1) the person designated:

86 (a) in a written instrument, excluding a power of attorney that terminates at death under
87 [~~Sections 75-5-501 and 75-5-502~~] [Section 75-9-110](#), if the written instrument is acknowledged
88 before a Notary Public or executed with the same formalities required of a will under Section
89 [75-2-502](#); or

90 (b) by a service member while serving in a branch of the United States Armed Forces
91 as defined in 10 U.S.C. Sec. 1481 in a federal Record of Emergency Data, DD Form 93 or
92 subsequent form;

93 (2) the surviving, legally recognized spouse of the decedent, unless a personal
94 representative was nominated by the decedent subsequent to the marriage, in which case the
95 personal representative shall take priority over the spouse;

96 (3) the person nominated to serve as the personal representative of the decedent's estate
97 in a will executed with the formalities required in Section [75-2-502](#);

98 (4) (a) the sole surviving child of the decedent, or if there is more than one child of the
99 decedent, the majority of the surviving children;

100 (b) less than one-half of the surviving children are vested with the rights of this section
101 if they have used reasonable efforts to notify all other surviving children of their instructions
102 and are not aware of any opposition to those instructions on the part of more than one-half of
103 all surviving children;

104 (5) the surviving parent or parents of the decedent, however:

105 (a) if one of the surviving parents is absent, the remaining parent is vested with the
106 rights and duties of this section after reasonable efforts have been unsuccessful in locating the
107 absent surviving parent; or

108 (b) if the parents are divorced or separated and the decedent was an incapacitated adult,
109 the parent who was designated as the guardian of the decedent is vested with the rights and
110 duties of this section;

111 (6) (a) the surviving brother or sister of the decedent, or if there is more than one
112 sibling of the decedent, the majority of the surviving siblings;

113 (b) less than the majority of surviving siblings, if they have used reasonable efforts to
114 notify all other surviving siblings of their instructions and are not aware of any opposition to
115 those instructions on the part of more than one-half of all surviving siblings;

116 (7) the person in the classes of the next degree of kinship, in descending order, under
117 the laws of descent and distribution to inherit the estate of the decedent, and if there is more
118 than one person of the same degree, any person of that degree may exercise the right of
119 disposition;

120 (8) in the absence of any person under Subsections (1) through (7), the person who was

121 the decedent's guardian at the time of death;

122 (9) any public official charged with arranging the disposition of deceased persons; and

123 (10) in the absence of any person under Subsections (1) through (9), any other person

124 willing to assume the responsibilities to act and arrange the final disposition of the decedent's

125 remains, including the personal representative of the decedent's estate or the funeral service

126 director with custody of the body, after attesting in writing that a good faith effort has been

127 made to no avail to contact the individuals referred to in Subsections (1) through (9).

128 Section 2. Section 75-9-101 is enacted to read:

129 **CHAPTER 9. UNIFORM POWER OF ATTORNEY ACT**

130 **Part 1. General Provisions**

131 **75-9-101. Title.**

132 This chapter is known as the "Uniform Power of Attorney Act."

133 Section 3. Section 75-9-102 is enacted to read:

134 **75-9-102. Definitions.**

135 In this chapter:

136 (1) "Agent" means a person granted authority to act for a principal under a power of
137 attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an
138 original agent, coagent, successor agent, and person to which an agent's authority is delegated.

139 (2) "Durable," with respect to a power of attorney, means not terminated by the
140 principal's incapacity.

141 (3) "Electronic" means relating to technology having electrical, digital, magnetic,
142 wireless, optical, electromagnetic, or similar capabilities.

143 (4) "Good faith" means honesty in fact.

144 (5) "Incapacity" means the inability of an individual to manage property or business
145 affairs because the individual:

146 (a) has an impairment in the ability to receive and evaluate information or make or
147 communicate decisions even with the use of technological assistance; or

148 (b) is:

149 (i) missing;

150 (ii) detained, including incarcerated in a penal system; or

151 (iii) outside the United States and unable to return.

152 (6) "Person" means an individual, corporation, business trust, estate, trust, partnership,
153 limited liability company, association, joint venture, public corporation, government or
154 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

155 (7) "Power of attorney" means a writing or other record that grants authority to an
156 agent to act in the place of the principal, whether or not the term power of attorney is used.

157 (8) "Presently exercisable general power of appointment," with respect to property or a
158 property interest subject to a power of appointment, means power exercisable at the time in
159 question to vest absolute ownership in the principal individually, the principal's estate, the
160 principal's creditors, or the creditors of the principal's estate. The term includes a power of
161 appointment not exercisable until the occurrence of a specified event, the satisfaction of an
162 ascertainable standard, or the passage of a specified period only after the occurrence of the
163 specified event, the satisfaction of the ascertainable standard, or the passage of the specified
164 period. The term does not include a power exercisable in a fiduciary capacity or only by will.

165 (9) "Principal" means an individual who grants authority to an agent in a power of
166 attorney.

167 (10) "Property" means anything that may be the subject of ownership, whether real or
168 personal, or legal or equitable, or any interest or right therein.

169 (11) "Record" means information that is inscribed on a tangible medium or that is
170 stored in an electronic or other medium and is retrievable in perceivable form.

171 (12) "Sign" means, with present intent to authenticate or adopt a record:

172 (a) to execute or adopt a tangible symbol; or

173 (b) to attach to or logically associate with the record an electronic sound, symbol, or
174 process.

175 (13) "State" means a state of the United States, the District of Columbia, Puerto Rico,
176 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
177 of the United States.

178 (14) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of
179 securities and financial instruments, whether held directly, indirectly, or in any other manner.
180 The term does not include commodity futures contracts and call or put options on stocks or
181 stock indexes.

182 Section 4. Section **75-9-103** is enacted to read:

183 **75-9-103. Applicability.**

184 This chapter applies to all powers of attorney except:

185 (1) a power to the extent it is coupled with an interest in the subject of the power,
186 including a power given to or for the benefit of a creditor in connection with a credit

187 transaction;

188 (2) a power to make health care decisions;

189 (3) a proxy or other delegation to exercise voting rights or management rights with
190 respect to an entity; and

191 (4) a power created on a form prescribed by a government or governmental
192 subdivision, agency, or instrumentality for a governmental purpose.

193 Section 5. Section **75-9-104** is enacted to read:

194 **75-9-104. Power of attorney is durable.**

195 A power of attorney created under this chapter is durable unless it expressly provides
196 that it is terminated by the incapacity of the principal.

197 Section 6. Section **75-9-105** is enacted to read:

198 **75-9-105. Execution of power of attorney.**

199 A power of attorney shall be signed by the principal or in the principal's conscious
200 presence by another individual directed by the principal to sign the principal's name on the
201 power of attorney. A signature on a power of attorney is presumed to be genuine if the
202 principal acknowledges the signature before a notary public or other individual authorized by
203 law to take acknowledgments.

204 Section 7. Section **75-9-106** is enacted to read:

205 **75-9-106. Validity of power of attorney.**

206 (1) A power of attorney executed in this state on or after May 10, 2016, is valid if its
207 execution complies with Section [75-9-105](#).

208 (2) A power of attorney executed in this state before May 10, 2016, is valid if its
209 execution complied with the law of this state as it existed at the time of execution.

210 (3) A power of attorney executed other than in this state is valid in this state if, when
211 the power of attorney was executed, the execution complied with:

212 (a) the law of the jurisdiction that determines the meaning and effect of the power of
213 attorney pursuant to Section [75-9-107](#); or

214 (b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.
215 (4) Except as otherwise provided by statute other than this chapter, a photocopy or
216 electronically transmitted copy of an original power of attorney has the same effect as the
217 original.

218 Section 8. Section **75-9-107** is enacted to read:

219 **75-9-107. Meaning and effect of power of attorney.**

220 The meaning and effect of a power of attorney is determined by the law of the
221 jurisdiction indicated in the power of attorney and, in the absence of an indication of
222 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

223 Section 9. Section **75-9-108** is enacted to read:

224 **75-9-108. Nomination of conservator or guardian -- Relation of agent to court**
225 **appointed fiduciary.**

226 (1) In a power of attorney, a principal may nominate a conservator of the principal's
227 estate or guardian of the principal's person for consideration by the court if protective
228 proceedings for the principal's estate or person are begun after the principal executes the power
229 of attorney. Except for good cause shown or disqualification, the court shall make its
230 appointment in accordance with the principal's most recent nomination.

231 (2) If, after a principal executes a power of attorney, a court appoints a conservator of
232 the principal's estate or other fiduciary charged with the management of some or all of the
233 principal's property, the agent is accountable to the fiduciary as well as to the principal. The
234 power of attorney is not terminated and the agent's authority continues unless limited,
235 suspended, or terminated by the court.

236 Section 10. Section **75-9-109** is enacted to read:

237 **75-9-109. When power of attorney is effective.**

238 (1) A power of attorney is effective when executed unless the principal provides in the
239 power of attorney that it becomes effective at a future date or upon the occurrence of a future
240 event or contingency.

241 (2) If a power of attorney becomes effective upon the occurrence of a future event or
242 contingency, the principal, in the power of attorney, may authorize one or more persons to
243 determine in a writing or other record that the event or contingency has occurred.

244 (3) If a power of attorney becomes effective upon the principal's incapacity and the

245 principal has not authorized a person to determine whether the principal is incapacitated, or the
246 person authorized is unable or unwilling to make the determination, the power of attorney
247 becomes effective upon a determination in a writing or other record by:

248 (a) a physician that the principal is incapacitated within the meaning of Subsection
249 75-9-102(5)(a); or

250 (b) an attorney at law, a judge, or an appropriate governmental official that the
251 principal is incapacitated within the meaning of Subsection 75-9-102(5)(b).

252 (4) A person authorized by the principal in the power of attorney to determine that the
253 principal is incapacitated may act as the principal's personal representative pursuant to the
254 Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social
255 Security Act, 42 U.S.C. Sec. 1320d, and applicable regulations, to obtain access to the
256 principal's health care information and communicate with the principal's health care provider.

257 Section 11. Section **75-9-110** is enacted to read:

258 **75-9-110. Termination of power of attorney or agent's authority.**

259 (1) A power of attorney terminates when:

260 (a) the principal dies;

261 (b) the principal becomes incapacitated, if the power of attorney is not durable;

262 (c) the principal revokes the power of attorney;

263 (d) the power of attorney provides that it terminates;

264 (e) the purpose of the power of attorney is accomplished; or

265 (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated,
266 or resigns, and the power of attorney does not provide for another agent to act under the power
267 of attorney.

268 (2) An agent's authority terminates when:

269 (a) the principal revokes the authority;

270 (b) the agent dies, becomes incapacitated, or resigns;

271 (c) an action is filed for the dissolution or annulment of the agent's marriage to the
272 principal or their legal separation, unless the power of attorney otherwise provides; or

273 (d) the power of attorney terminates.

274 (3) Unless the power of attorney otherwise provides, an agent's authority is exercisable
275 until the authority terminates under Subsection (2), notwithstanding a lapse of time since the

276 execution of the power of attorney.

277 (4) Termination of an agent's authority or of a power of attorney is not effective as to
278 the agent or another person that, without actual knowledge of the termination, acts in good faith
279 under the power of attorney. An act so performed, unless otherwise invalid or unenforceable,
280 binds the principal and the principal's successors in interest.

281 (5) Incapacity of the principal of a power of attorney that is not durable does not revoke
282 or terminate the power of attorney as to an agent or other person that, without actual knowledge
283 of the incapacity, acts in good faith under the power of attorney. An act so performed, unless
284 otherwise invalid or unenforceable, binds the principal and the principal's successors in
285 interest.

286 (6) The execution of a power of attorney does not revoke a power of attorney
287 previously executed by the principal unless the subsequent power of attorney provides that the
288 previous power of attorney is revoked or that all other powers of attorney are revoked.

289 Section 12. Section **75-9-111** is enacted to read:

290 **75-9-111. Coagents and successor agents.**

291 (1) A principal may designate two or more persons to act as coagents. Unless the
292 power of attorney otherwise provides, each coagent may exercise its authority independently.

293 (2) A principal may designate one or more successor agents to act if an agent resigns,
294 dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may
295 grant authority to designate one or more successor agents to an agent or other person
296 designated by name, office, or function. Unless the power of attorney otherwise provides, a
297 successor agent:

298 (a) has the same authority as that granted to the original agent; and

299 (b) may not act until all predecessor agents have resigned, died, become incapacitated,
300 are no longer qualified to serve, or have declined to serve.

301 (3) Except as otherwise provided in the power of attorney and Subsection (4), an agent
302 that does not participate in or conceal a breach of fiduciary duty committed by another agent,
303 including a predecessor agent, is not liable for the actions of the other agent.

304 (4) An agent that has actual knowledge of a breach or imminent breach of fiduciary
305 duty by another agent shall notify the principal and, if the principal is incapacitated, take any
306 action reasonably appropriate in the circumstances to safeguard the principal's best interest. An

307 agent that fails to notify the principal or take action as required by this subsection is liable for
308 the reasonably foreseeable damages that could have been avoided if the agent had notified the
309 principal or taken action.

310 Section 13. Section **75-9-112** is enacted to read:

311 **75-9-112. Reimbursement and compensation of agent.**

312 Unless the power of attorney otherwise provides, an agent is entitled to reimbursement
313 of expenses reasonably incurred on behalf of the principal and to compensation that is
314 reasonable under the circumstances.

315 Section 14. Section **75-9-113** is enacted to read:

316 **75-9-113. Agent's acceptance.**

317 Except as otherwise provided in the power of attorney, a person accepts appointment as
318 an agent under a power of attorney by exercising authority or performing duties as an agent or
319 by any other assertion or conduct indicating acceptance.

320 Section 15. Section **75-9-114** is enacted to read:

321 **75-9-114. Agent's duties.**

322 (1) Notwithstanding provisions in the power of attorney, an agent that has accepted
323 appointment shall:

324 (a) act in accordance with the principal's reasonable expectations to the extent actually
325 known by the agent and, otherwise, in the principal's best interest;

326 (b) act in good faith; and

327 (c) act only within the scope of authority granted in the power of attorney.

328 (2) Except as otherwise provided in the power of attorney, an agent that has accepted
329 appointment shall:

330 (a) act loyally for the principal's benefit;

331 (b) act so as not to create a conflict of interest that impairs the agent's ability to act
332 impartially in the principal's best interest;

333 (c) act with the care, competence, and diligence ordinarily exercised by agents in
334 similar circumstances;

335 (d) keep a record of all receipts, disbursements, and transactions made on behalf of the
336 principal;

337 (e) cooperate with a person that has authority to make health care decisions for the

338 principal to carry out the principal's reasonable expectations to the extent actually known by the
339 agent and, otherwise, act in the principal's best interest; and

340 (f) attempt to preserve the principal's estate plan, to the extent actually known by the
341 agent, if preserving the plan is consistent with the principal's best interest based on all relevant
342 factors, including:

343 (i) the value and nature of the principal's property;

344 (ii) the principal's foreseeable obligations and need for maintenance;

345 (iii) minimization of taxes, including income, estate, inheritance, generation-skipping
346 transfer, and gift taxes; and

347 (iv) eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.

348 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's
349 estate plan for failure to preserve the plan.

350 (4) An agent that acts with care, competence, and diligence for the best interest of the
351 principal is not liable solely because the agent also benefits from the act or has an individual or
352 conflicting interest in relation to the property or affairs of the principal.

353 (5) If an agent is selected by the principal because of special skills or expertise
354 possessed by the agent or in reliance on the agent's representation that the agent has special
355 skills or expertise, the special skills or expertise shall be considered in determining whether the
356 agent has acted with care, competence, and diligence under the circumstances.

357 (6) Absent a breach of duty to the principal, an agent is not liable if the value of the
358 principal's property declines.

359 (7) An agent that exercises authority to delegate to another person the authority granted
360 by the principal or that engages another person on behalf of the principal is not liable for an act,
361 error of judgment, or default of that person if the agent exercises care, competence, and
362 diligence in selecting and monitoring the person.

363 (8) Except as otherwise provided in the power of attorney, an agent is not required to
364 disclose receipts, disbursements, or transactions conducted on behalf of the principal unless
365 ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary
366 acting for the principal, a governmental agency having authority to protect the welfare of the
367 principal, or, upon the death of the principal, by the personal representative or successor in
368 interest of the principal's estate. If so requested, within 30 days the agent shall comply with the

369 request or provide a writing or other record substantiating why additional time is needed and
370 shall comply with the request within an additional 30 days.

371 Section 16. Section **75-9-115** is enacted to read:

372 **75-9-115. Exoneration of agent.**

373 A provision in a power of attorney relieving an agent of liability for breach of duty is
374 binding on the principal and the principal's successors in interest except to the extent the
375 provision:

376 (1) relieves the agent of liability for breach of duty committed dishonestly, with an
377 improper motive, or with reckless indifference to the purposes of the power of attorney or the
378 best interest of the principal; or

379 (2) was inserted as a result of an abuse of a confidential or fiduciary relationship with
380 the principal.

381 Section 17. Section **75-9-116** is enacted to read:

382 **75-9-116. Judicial relief.**

383 (1) The following persons may petition a court to construe a power of attorney or
384 review the agent's conduct and grant appropriate relief:

385 (a) the principal or the agent;

386 (b) a guardian, conservator, or other fiduciary acting for the principal;

387 (c) a person authorized to make health care decisions for the principal;

388 (d) the principal's spouse, parent, or descendant;

389 (e) an individual who would qualify as a presumptive heir of the principal;

390 (f) a person named as a beneficiary to receive any property, benefit, or contractual right
391 on the principal's death or as a beneficiary of a trust created by or for the principal that has a
392 financial interest in the principal's estate;

393 (g) a governmental agency having regulatory authority to protect the welfare of the
394 principal;

395 (h) the principal's caregiver or another person that demonstrates sufficient interest in
396 the principal's welfare; and

397 (i) a person asked to accept the power of attorney.

398 (2) Upon motion by the principal, the court shall dismiss a petition filed under this
399 section, unless the court finds that the principal lacks capacity to revoke the agent's authority or

400 the power of attorney.

401 Section 18. Section **75-9-117** is enacted to read:

402 **75-9-117. Agent's liability.**

403 An agent that violates this chapter is liable to the principal or the principal's successors
404 in interest for the amount required to:

405 (1) restore the value of the principal's property to what it would have been had the
406 violation not occurred; and

407 (2) reimburse the principal or the principal's successors in interest for the attorney fees
408 and costs paid on the agent's behalf.

409 Section 19. Section **75-9-118** is enacted to read:

410 **75-9-118. Agent's resignation -- Notice.**

411 Unless the power of attorney provides a different method for an agent's resignation, an
412 agent may resign by giving notice to the principal and, if the principal is incapacitated:

413 (1) to the guardian, if one has been appointed for the principal, and a coagent or
414 successor agent; or

415 (2) if there is no person described in Subsection (1), to:

416 (a) the principal's caregiver;

417 (b) another person reasonably believed by the agent to have sufficient interest in the
418 principal's welfare; or

419 (c) a governmental agency having authority to protect the welfare of the principal.

420 Section 20. Section **75-9-119** is enacted to read:

421 **75-9-119. Acceptance of and reliance upon acknowledged power of attorney.**

422 (1) For purposes of this section and Section [75-9-120](#), "acknowledged" means
423 purportedly verified before a notary public or other individual authorized to take
424 acknowledgements.

425 (2) A person that in good faith accepts an acknowledged power of attorney without
426 actual knowledge that the signature is not genuine may rely upon the presumption under
427 Section [75-9-105](#) that the signature is genuine.

428 (3) A person that in good faith accepts an acknowledged power of attorney without
429 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported
430 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly

431 exercising the agent's authority may rely upon the power of attorney as if the power of attorney
432 were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in
433 effect, and the agent had not exceeded and had properly exercised the authority.

434 (4) A person that is asked to accept an acknowledged power of attorney may request,
435 and rely upon, without further investigation:

436 (a) an agent's certification under penalty of perjury of any factual matter concerning the
437 principal, agent, or power of attorney;

438 (b) an English translation of the power of attorney if the power of attorney contains, in
439 whole or in part, language other than English; and

440 (c) an opinion of counsel as to any matter of law concerning the power of attorney if
441 the person making the request provides in a writing or other record the reason for the request.

442 (5) An English translation or an opinion of counsel requested under this section shall
443 be provided at the principal's expense unless the request is made more than seven business days
444 after the power of attorney is presented for acceptance.

445 (6) For purposes of this section and Section 75-9-120, a person that conducts activities
446 through employees is without actual knowledge of a fact relating to a power of attorney, a
447 principal, or an agent if the employee conducting the transaction involving the power of
448 attorney is without actual knowledge of the fact.

449 Section 21. Section **75-9-120** is enacted to read:

450 **75-9-120. Liability for refusal to accept acknowledged statutory form power of**
451 **attorney.**

452 (1) In this section, "statutory form power of attorney" means a power of attorney
453 substantially in the form provided in Section 75-9-301 or that meets the requirements for a
454 military power of attorney pursuant to 10 U.S.C. Sec. 1044b.

455 (2) Except as otherwise provided in Subsection (3):

456 (a) a person shall either accept an acknowledged statutory form power of attorney or
457 request a certification, a translation, or an opinion of counsel under Subsection 75-9-119(4) no
458 later than seven business days after presentation of the power of attorney for acceptance;

459 (b) if a person requests a certification, a translation, or an opinion of counsel under
460 Subsection 75-9-119(4), the person shall accept the statutory form power of attorney no later
461 than five business days after receipt of the certification, translation, or opinion of counsel; and

462 (c) a person may not require an additional or different form of power of attorney for
463 authority granted in the statutory form power of attorney presented.

464 (3) A person is not required to accept an acknowledged statutory form power of
465 attorney if:

466 (a) the person is not otherwise required to engage in a transaction with the principal in
467 the same circumstances;

468 (b) engaging in a transaction with the agent or the principal in the same circumstances
469 would be inconsistent with federal law;

470 (c) the person has actual knowledge of the termination of the agent's authority or of the
471 power of attorney before exercise of the power;

472 (d) a request for a certification, a translation, or an opinion of counsel under Subsection
473 75-9-119(4) is refused;

474 (e) the person in good faith believes that the power is not valid or that the agent does
475 not have the authority to perform the act requested, whether or not a certification, a translation,
476 or an opinion of counsel under Subsection 75-9-119(4) has been requested or provided; or

477 (f) the person makes, or has actual knowledge that another person has made, a report to
478 the Division of Aging and Adult Services stating a good faith belief that the principal may be
479 subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a
480 person acting for or with the agent.

481 (4) A person that refuses in violation of this section to accept an acknowledged
482 statutory form power of attorney is subject to:

483 (a) a court order mandating acceptance of the power of attorney; and

484 (b) liability for reasonable attorney fees and costs incurred in any action or proceeding
485 that confirms the validity of the power of attorney or mandates acceptance of the power of
486 attorney.

487 Section 22. Section **75-9-121** is enacted to read:

488 **75-9-121. Principles of law and equity.**

489 Unless displaced by a provision of this chapter, the principles of law and equity
490 supplement this act.

491 Section 23. Section **75-9-122** is enacted to read:

492 **75-9-122. Laws applicable to financial institutions and entities.**

493 This chapter does not supersede any other law applicable to financial institutions or
494 other entities, and the other law controls if inconsistent with this chapter.

495 Section 24. Section **75-9-123** is enacted to read:

496 **75-9-123. Remedies under other law.**

497 The remedies under this chapter are not exclusive and do not abrogate any right or
498 remedy under the law of this state other than this chapter.

499 Section 25. Section **75-9-201** is enacted to read:

500 **Part 2. Authority**

501 **75-9-201. Authority that requires specific grant -- Grant of general authority.**

502 (1) An agent under a power of attorney may do the following on behalf of the principal
503 or with the principal's property only if the power of attorney expressly grants the agent the
504 authority, and exercise of the authority is not otherwise prohibited by another agreement or
505 instrument to which the authority or property is subject:

506 (a) create, amend, revoke, or terminate an inter vivos trust;

507 (b) make a gift;

508 (c) create or change rights of survivorship;

509 (d) create or change a beneficiary designation;

510 (e) delegate authority granted under the power of attorney;

511 (f) waive the principal's right to be a beneficiary of a joint and survivor annuity,

512 including a survivor benefit under a retirement plan;

513 (g) exercise fiduciary powers that the principal has authority to delegate; or

514 (h) disclaim property, including a power of appointment.

515 (2) Notwithstanding a grant of authority to do an act described in Subsection (1),

516 unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or

517 descendant of the principal may not exercise authority under a power of attorney to create in

518 the agent, or in an individual to whom the agent owes a legal obligation of support, an interest

519 in the principal's property, whether by gift, right of survivorship, beneficiary designation,

520 disclaimer, or otherwise.

521 (3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent

522 authority to do all acts that a principal could do, the agent has the general authority described in

523 Sections [75-9-204](#) through [75-9-216](#).

524 (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift
525 is subject to Section 75-9-217.

526 (5) Subject to Subsections (1), (2), and (4), if the subjects over which authority is
527 granted in a power of attorney are similar or overlap, the broadest authority controls.

528 (6) Authority granted in a power of attorney is exercisable with respect to property that
529 the principal has when the power of attorney is executed or acquires later, whether or not the
530 property is located in this state and whether or not the authority is exercised or the power of
531 attorney is executed in this state.

532 (7) An act performed by an agent pursuant to a power of attorney has the same effect,
533 inures to the benefit of, and binds the principal and the principal's successors in interest as if
534 the principal had performed the act.

535 Section 26. Section **75-9-202** is enacted to read:

536 **75-9-202. Incorporation of authority.**

537 (1) An agent has authority described in this part if the power of attorney refers to
538 general authority with respect to the descriptive term for the subjects stated in Sections
539 75-9-204 through 75-9-217 or cites the section in which the authority is described.

540 (2) A reference in a power of attorney to general authority with respect to the
541 descriptive term for a subject in Sections 75-9-204 through 75-9-217 or a citation to a section
542 of Sections 75-9-204 through 75-9-217 incorporates the entire section as if it were set out in
543 full in the power of attorney.

544 (3) A principal may modify authority incorporated by reference.

545 Section 27. Section **75-9-203** is enacted to read:

546 **75-9-203. Construction of authority generally.**

547 Except as otherwise provided in the power of attorney, by executing a power of attorney
548 that incorporates by reference a subject described in Sections 75-9-204 through 75-9-217 or
549 that grants to an agent authority to do all acts that a principal could do pursuant to Subsection
550 75-9-201(3), a principal authorizes the agent, with respect to that subject, to:

551 (1) demand, receive, and obtain, by litigation or otherwise, money or another thing of
552 value to which the principal is, may become, or claims to be entitled, and conserve, invest,
553 disburse, or use anything so received or obtained for the purposes intended;

554 (2) contract in any manner with any person, on terms agreeable to the agent, to

555 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
556 release, or modify the contract or another contract made by or on behalf of the principal;

557 (3) execute, acknowledge, seal, deliver, file, or record any instrument or
558 communication the agent considers desirable to accomplish a purpose of a transaction,
559 including creating at any time a schedule listing some or all of the principal's property and
560 attaching it to the power of attorney;

561 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
562 propose or accept a compromise with respect to a claim existing in favor of or against the
563 principal or intervene in litigation relating to the claim;

564 (5) seek on the principal's behalf the assistance of a court or other governmental agency
565 to carry out an act authorized in the power of attorney;

566 (6) engage, compensate, and discharge an attorney, accountant, discretionary
567 investment manager, expert witness, or other advisor;

568 (7) prepare, execute, and file a record, report, or other document to safeguard or
569 promote the principal's interest under a statute or regulation;

570 (8) communicate with any representative or employee of a government or
571 governmental subdivision, agency, or instrumentality on behalf of the principal;

572 (9) access communications intended for, and communicate on behalf of the principal,
573 whether by mail, electronic transmission, telephone, or other means; and

574 (10) do any lawful act with respect to the subject and all property related to the subject.

575 Section 28. Section **75-9-204** is enacted to read:

576 **75-9-204. Real property.**

577 Unless the power of attorney otherwise provides, language in a power of attorney
578 granting general authority with respect to real property authorizes the agent to:

579 (1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit,
580 or otherwise acquire or reject an interest in real property or a right incident to real property;

581 (2) (a) sell;

582 (b) exchange;

583 (c) convey with or without covenants, representations, or warranties;

584 (d) quitclaim;

585 (e) release;

- 586 (f) surrender;
- 587 (g) retain title for security;
- 588 (h) encumber;
- 589 (i) partition;
- 590 (j) consent to partitioning;
- 591 (k) subject to an easement or covenant;
- 592 (l) subdivide;
- 593 (m) apply for zoning or other governmental permits;
- 594 (n) plat or consent to platting;
- 595 (o) develop;
- 596 (p) grant an option concerning;
- 597 (q) lease;
- 598 (r) sublease;
- 599 (s) contribute to an entity in exchange for an interest in that entity; or
- 600 (t) otherwise grant or dispose of an interest in real property or a right incident to real
601 property;
- 602 (3) pledge or mortgage an interest in real property or right incident to real property as
603 security to borrow money or pay, renew, or extend the time of payment of a debt of the
604 principal or a debt guaranteed by the principal;
- 605 (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of
606 trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or
607 is asserted;
- 608 (5) manage or conserve an interest in real property or a right incident to real property
609 owned or claimed to be owned by the principal, including:
- 610 (a) insuring against liability or casualty or other loss;
- 611 (b) obtaining or regaining possession of or protecting the interest or right by litigation
612 or otherwise;
- 613 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
614 and receiving refunds in connection with taxes or assessments; and
- 615 (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to
616 the real property;

617 (6) use, develop, alter, replace, remove, erect, or install structures or other
618 improvements upon real property in or incident to which the principal has, or claims to have,
619 an interest or right;

620 (7) participate in a reorganization with respect to real property or an entity that owns an
621 interest in or right incident to real property and receive, hold, and act with respect to stocks and
622 bonds or other property received in a plan of reorganization, including:

623 (a) selling or otherwise disposing of stocks and bonds;

624 (b) exercising or selling an option, right of conversion, or similar right with respect to
625 stocks and bonds; and

626 (c) exercising any voting rights in person or by proxy;

627 (8) change the form of title of an interest in or right incident to real property; and

628 (9) dedicate to public use, with or without consideration, easements or other real
629 property in which the principal has, or claims to have, an interest.

630 Section 29. Section **75-9-205** is enacted to read:

631 **75-9-205. Tangible personal property.**

632 Unless the power of attorney otherwise provides, language in a power of attorney
633 granting general authority with respect to tangible personal property authorizes the agent to:

634 (1) demand, buy, receive, accept as a gift or as security for an extension of credit, or
635 otherwise acquire or reject ownership or possession of tangible personal property or an interest
636 in tangible personal property;

637 (2) sell; exchange; convey with or without covenants, representations, or warranties;
638 quitclaim; release; surrender; create a security interest in; grant options concerning; lease;
639 sublease; or otherwise dispose of tangible personal property or an interest in tangible personal
640 property;

641 (3) grant a security interest in tangible personal property or an interest in tangible
642 personal property as security to borrow money or pay, renew, or extend the time of payment of
643 a debt of the principal or a debt guaranteed by the principal;

644 (4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien,
645 or other claim on behalf of the principal, with respect to tangible personal property or an
646 interest in tangible personal property;

647 (5) manage or conserve tangible personal property or an interest in tangible personal

648 property on behalf of the principal, including:

649 (a) insuring against liability, casualty, or other loss;

650 (b) obtaining or regaining possession of or protecting the property or interest, by
651 litigation or otherwise;

652 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
653 and receiving refunds in connection with taxes or assessments;

654 (d) moving the property from place to place;

655 (e) storing the property for hire or on a gratuitous bailment; and

656 (f) using and making repairs, alterations, or improvements to the property; and

657 (6) change the form of title of an interest in tangible personal property.

658 Section 30. Section **75-9-206** is enacted to read:

659 **75-9-206. Stocks and bonds.**

660 Unless the power of attorney otherwise provides, language in a power of attorney
661 granting general authority with respect to stocks and bonds authorizes the agent to:

662 (1) buy, sell, and exchange stocks and bonds;

663 (2) establish, continue, modify, or terminate an account with respect to stocks and
664 bonds;

665 (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of
666 payment of a debt of the principal;

667 (4) receive certificates and other evidences of ownership with respect to stocks and
668 bonds; and

669 (5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter
670 into voting trusts, and consent to limitations on the right to vote.

671 Section 31. Section **75-9-207** is enacted to read:

672 **75-9-207. Commodities and options.**

673 Unless the power of attorney otherwise provides, language in a power of attorney
674 granting general authority with respect to commodities and options authorizes the agent to:

675 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and
676 call or put options on stocks or stock indexes traded on a regulated option exchange; and

677 (2) establish, continue, modify, and terminate option accounts.

678 Section 32. Section **75-9-208** is enacted to read:

679 **75-9-208. Banks and other financial institutions.**

680 Unless the power of attorney otherwise provides, language in a power of attorney
681 granting general authority with respect to banks and other financial institutions authorizes the
682 agent to:

683 (1) continue, modify, and terminate an account or other banking arrangement made by
684 or on behalf of the principal;

685 (2) establish, modify, and terminate an account or other banking arrangement with a
686 bank, trust company, savings and loan association, credit union, thrift company, brokerage
687 firm, or other financial institution selected by the agent;

688 (3) contract for services available from a financial institution, including renting a safe
689 deposit box or space in a vault;

690 (4) withdraw, by check, order, electronic funds transfer, or otherwise, money or
691 property of the principal deposited with or left in the custody of a financial institution;

692 (5) receive statements of account, vouchers, notices, and similar documents from a
693 financial institution and act with respect to them;

694 (6) enter a safe deposit box or vault and withdraw or add to the contents;

695 (7) borrow money and pledge as security personal property of the principal necessary
696 to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a
697 debt guaranteed by the principal;

698 (8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes,
699 checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the
700 principal or the principal's order, transfer money, receive the cash or other proceeds of those
701 transactions, and accept a draft drawn by a person upon the principal and pay it when due;

702 (9) receive for the principal and act upon a sight draft, warehouse receipt, or other
703 document of title whether tangible or electronic, or other negotiable or nonnegotiable
704 instrument;

705 (10) apply for, receive, and use letters of credit, credit and debit cards, electronic
706 transaction authorizations, and traveler's checks from a financial institution and give an
707 indemnity or other agreement in connection with letters of credit; and

708 (11) consent to an extension of the time of payment with respect to commercial paper
709 or a financial transaction with a financial institution.

710 Section 33. Section **75-9-209** is enacted to read:

711 **75-9-209. Operation of entity or business.**

712 Subject to the terms of a document or an agreement governing an entity or an entity
713 ownership interest, and unless the power of attorney otherwise provides, language in a power
714 of attorney granting general authority with respect to operation of an entity or business
715 authorizes the agent to:

716 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

717 (2) perform a duty or discharge a liability and exercise in person or by proxy a right,
718 power, privilege, or option that the principal has, may have, or claims to have;

719 (3) enforce the terms of an ownership agreement;

720 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
721 propose or accept a compromise with respect to litigation to which the principal is a party
722 because of an ownership interest;

723 (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,
724 privilege, or option the principal has or claims to have as the holder of stocks and bonds;

725 (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
726 propose or accept a compromise with respect to litigation to which the principal is a party
727 concerning stocks and bonds;

728 (7) with respect to an entity or business owned solely by the principal:

729 (a) continue, modify, renegotiate, extend, and terminate a contract made by or on
730 behalf of the principal with respect to the entity or business before execution of the power of
731 attorney;

732 (b) determine:

733 (i) the location of its operation;

734 (ii) the nature and extent of its business;

735 (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and
736 advertising employed in its operation;

737 (iv) the amount and types of insurance carried; and

738 (v) the mode of engaging, compensating, and dealing with its employees and
739 accountants, attorneys, or other advisors;

740 (c) change the name or form of organization under which the entity or business is

741 operated and enter into an ownership agreement with other persons to take over all or part of
742 the operation of the entity or business; and

743 (d) demand and receive money due or claimed by the principal or on the principal's
744 behalf in the operation of the entity or business and control and disburse the money in the
745 operation of the entity or business;

746 (8) put additional capital into an entity or business in which the principal has an
747 interest;

748 (9) join in a plan of reorganization, consolidation, conversion, domestication, or
749 merger of the entity or business;

750 (10) sell or liquidate all or part of an entity or business;

751 (11) establish the value of an entity or business under a buy-out agreement to which the
752 principal is a party;

753 (12) prepare, sign, file, and deliver reports, compilations of information, returns, or
754 other papers with respect to an entity or business and make related payments; and

755 (13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform
756 any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or
757 penalties, with respect to an entity or business, including attempts to recover, in any manner
758 permitted by law, money paid before or after the execution of the power of attorney.

759 Section 34. Section **75-9-210** is enacted to read:

760 **75-9-210. Insurance and annuities.**

761 Unless the power of attorney otherwise provides, language in a power of attorney
762 granting general authority with respect to insurance and annuities authorizes the agent to:

763 (1) continue, pay the premium or make a contribution on, modify, exchange, rescind,
764 release, or terminate a contract procured by or on behalf of the principal that insures or
765 provides an annuity to either the principal or another person, whether or not the principal is a
766 beneficiary under the contract;

767 (2) procure new, different, and additional contracts of insurance and annuities for the
768 principal and the principal's spouse, children, and other dependents, and select the amount, type
769 of insurance or annuity, and mode of payment;

770 (3) pay the premium or make a contribution on, modify, exchange, rescind, release, or
771 terminate a contract of insurance or annuity procured by the agent;

- 772 (4) apply for and receive a loan secured by a contract of insurance or annuity;
 - 773 (5) surrender and receive the cash surrender value on a contract of insurance or
 - 774 annuity;
 - 775 (6) exercise an election;
 - 776 (7) exercise investment powers available under a contract of insurance or annuity;
 - 777 (8) change the manner of paying premiums on a contract of insurance or annuity;
 - 778 (9) change or convert the type of insurance or annuity with respect to which the
 - 779 principal has or claims to have authority described in this section;
 - 780 (10) apply for and procure a benefit or assistance under a statute or regulation to
 - 781 guarantee or pay premiums of a contract of insurance on the life of the principal;
 - 782 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
 - 783 principal in a contract of insurance or annuity;
 - 784 (12) select the form and timing of the payment of proceeds from a contract of insurance
 - 785 or annuity; and
 - 786 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in
 - 787 connection with a tax or assessment levied by a taxing authority with respect to a contract of
 - 788 insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.
- 789 Section 35. Section **75-9-211** is enacted to read:
- 790 **75-9-211. Estates, trusts, and other beneficial interests.**
- 791 (1) In this section, "estate, trust, or other beneficial interest" means a trust, probate
 - 792 estate, guardianship, conservatorship, escrow, custodianship, or fund from which the principal
 - 793 is, may become, or claims to be entitled to a share or payment.
 - 794 (2) Unless the power of attorney otherwise provides, language in a power of attorney
 - 795 granting general authority with respect to estates, trusts, and other beneficial interests
 - 796 authorizes the agent to:
 - 797 (a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment
 - 798 from an estate, trust, or other beneficial interest;
 - 799 (b) demand or obtain money or another thing of value to which the principal is, may
 - 800 become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by
 - 801 litigation or otherwise;
 - 802 (c) exercise for the benefit of the principal a presently exercisable general power of

803 appointment held by the principal;

804 (d) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
805 propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or
806 effect of a deed, will, declaration of trust, or other instrument or transaction affecting the
807 interest of the principal;

808 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
809 propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a
810 fiduciary;

811 (f) conserve, invest, disburse, or use anything received for an authorized purpose;

812 (g) transfer an interest of the principal in real property, stocks and bonds, accounts with
813 financial institutions or securities intermediaries, insurance, annuities, and other property to the
814 trustee of a revocable trust created by the principal as settlor; and

815 (h) reject, renounce, disclaim, release, or consent to a reduction in or modification of a
816 share in or payment from an estate, trust, or other beneficial interest.

817 Section 36. Section **75-9-212** is enacted to read:

818 **75-9-212. Claims and litigation.**

819 Unless the power of attorney otherwise provides, language in a power of attorney
820 granting general authority with respect to claims and litigation authorizes the agent to:

821 (1) assert and maintain before a court or administrative agency a claim, claim for relief,
822 cause of action, counterclaim, offset, recoupment, or defense, including an action to recover
823 property or other thing of value, recover damages sustained by the principal, eliminate or
824 modify tax liability, or seek an injunction, specific performance, or other relief;

825 (2) bring an action to determine adverse claims or intervene or otherwise participate in
826 litigation;

827 (3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional,
828 or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or
829 decree;

830 (4) make or accept a tender, offer of judgment, or admission of facts, submit a
831 controversy on an agreed statement of facts, consent to examination, and bind the principal in
832 litigation;

833 (5) submit to alternative dispute resolution, settle, and propose or accept a

834 compromise;

835 (6) waive the issuance and service of process upon the principal, accept service of
836 process, appear for the principal, designate persons upon which process directed to the
837 principal may be served, execute and file or deliver stipulations on the principal's behalf, verify
838 pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and
839 pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a
840 consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement,
841 or other instrument in connection with the prosecution, settlement, or defense of a claim or
842 litigation;

843 (7) act for the principal with respect to bankruptcy or insolvency, whether voluntary or
844 involuntary, concerning the principal or some other person, or with respect to a reorganization,
845 receivership, or application for the appointment of a receiver or trustee that affects an interest
846 of the principal in property or other thing of value;

847 (8) pay a judgment, award, or order against the principal or a settlement made in
848 connection with a claim or litigation; and

849 (9) receive money or other thing of value paid in settlement of or as proceeds of a
850 claim or litigation.

851 Section 37. Section **75-9-213** is enacted to read:

852 **75-9-213. Personal and family maintenance.**

853 (1) Unless the power of attorney otherwise provides, language in a power of attorney
854 granting general authority with respect to personal and family maintenance authorizes the agent
855 to:

856 (a) perform the acts necessary to maintain the customary standard of living of the
857 principal, the principal's spouse, and the following individuals, whether living when the power
858 of attorney is executed or later born:

859 (i) the principal's children;

860 (ii) other individuals legally entitled to be supported by the principal; and

861 (iii) the individuals whom the principal has customarily supported or indicated the
862 intent to support;

863 (b) make periodic payments of child support and other family maintenance required by
864 a court or governmental agency or an agreement to which the principal is a party;

865 (c) provide living quarters for the individuals described in Subsection (1)(a) by:

866 (i) purchase, lease, or other contract; or

867 (ii) paying the operating costs, including interest, amortization payments, repairs,

868 improvements, and taxes, for premises owned by the principal or occupied by those

869 individuals;

870 (d) provide normal domestic help, usual vacations and travel expenses, and funds for

871 shelter, clothing, food, appropriate education, including postsecondary and vocational

872 education, and other current living costs for the individuals described in Subsection (1)(a);

873 (e) pay expenses for necessary health care and custodial care on behalf of the

874 individuals described in Subsection (1)(a);

875 (f) act as the principal's personal representative pursuant to the Health Insurance

876 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42

877 U.S.C. Sec. 1320d, and applicable regulations, in making decisions related to the past, present,

878 or future payment for the provision of health care consented to by the principal or anyone

879 authorized under the law of this state to consent to health care on behalf of the principal;

880 (g) continue any provision made by the principal for automobiles or other means of

881 transportation, including registering, licensing, insuring, and replacing them, for the individuals

882 described in Subsection (1)(a);

883 (h) maintain credit and debit accounts and open new accounts for the convenience of

884 the individuals described in Subsection (1)(a); and

885 (i) continue payments incidental to the membership or affiliation of the principal in a

886 religious institution, club, society, order, or other organization or to continue contributions to

887 those organizations.

888 (2) Authority with respect to personal and family maintenance is neither dependent

889 upon, nor limited by, authority that an agent may or may not have with respect to gifts under

890 this chapter.

891 Section 38. Section **75-9-214** is enacted to read:

892 **75-9-214. Benefits from governmental programs or civil or military service.**

893 (1) In this section, "benefits from governmental programs or civil or military service"

894 means any benefit, program, or assistance provided under a statute or regulation, including

895 social security, Medicare, and Medicaid.

896 (2) Unless the power of attorney otherwise provides, language in a power of attorney
897 granting general authority with respect to benefits from governmental programs or civil or
898 military service authorizes the agent to:

899 (a) execute vouchers in the name of the principal for allowances and reimbursements
900 payable by the United States or a foreign government or by a state or subdivision of a state to
901 the principal, including allowances and reimbursements for transportation of the individuals
902 described in Subsection 75-9-213(1)(a), and for shipment of their household effects;

903 (b) take possession and order the removal and shipment of property of the principal
904 from a post, warehouse, depot, dock, or other place of storage or safekeeping, either
905 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,
906 shipping ticket, certificate, or other instrument for that purpose;

907 (c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's
908 behalf, a benefit or program;

909 (d) prepare, file, and maintain a claim of the principal for a benefit or assistance,
910 financial or otherwise, to which the principal may be entitled under a statute or regulation;

911 (e) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
912 propose or accept a compromise with respect to litigation concerning any benefit or assistance
913 the principal may be entitled to receive under a statute or regulation; and

914 (f) receive the financial proceeds of a claim described in Subsection (2)(d) and
915 conserve, invest, disburse, or use for a lawful purpose anything received.

916 Section 39. Section 75-9-215 is enacted to read:

917 **75-9-215. Retirement plans.**

918 (1) In this section, "retirement plan" means a plan or account created by an employer,
919 the principal, or another individual to provide retirement benefits or deferred compensation of
920 which the principal is a participant, beneficiary, or owner, including a plan or account under the
921 following sections of the Internal Revenue Code:

922 (a) an individual retirement account under Section 408, Internal Revenue Code;

923 (b) a Roth individual retirement account under Section 408A, Internal Revenue Code;

924 (c) a deemed individual retirement account under Section 408(q), Internal Revenue
925 Code;

926 (d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue

927 Code;
928 (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under
929 Section 401(a), Internal Revenue Code;
930 (f) a plan under Section 457(b), Internal Revenue Code; and
931 (g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue
932 Code.
933 (2) Unless the power of attorney otherwise provides, language in a power of attorney
934 granting general authority with respect to retirement plans authorizes the agent to:
935 (a) select the form and timing of payments under a retirement plan and withdraw
936 benefits from a plan;
937 (b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
938 retirement plan to another;
939 (c) establish a retirement plan in the principal's name;
940 (d) make contributions to a retirement plan;
941 (e) exercise investment powers available under a retirement plan; and
942 (f) borrow from, sell assets to, or purchase assets from a retirement plan.
943 Section 40. Section **75-9-216** is enacted to read:
944 **75-9-216. Taxes.**
945 Unless the power of attorney otherwise provides, language in a power of attorney
946 granting general authority with respect to taxes authorizes the agent to:
947 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
948 property, Federal Insurance Contributions Act, and other tax returns, claims for refunds,
949 requests for extension of time, petitions regarding tax matters, and any other tax-related
950 documents, including receipts, offers, waivers, consents, including consents and agreements
951 under Section 2032A, Internal Revenue Code, closing agreements, and any power of attorney
952 required by the Internal Revenue Service or other taxing authority with respect to a tax year
953 upon which the statute of limitations has not run and the following 25 tax years;
954 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and
955 contest deficiencies determined by the Internal Revenue Service or other taxing authority;
956 (3) exercise any election available to the principal under federal, state, local, or foreign
957 tax law; and

958 (4) act for the principal in all tax matters for all periods before the Internal Revenue
959 Service or other taxing authority.

960 Section 41. Section **75-9-217** is enacted to read:

961 **75-9-217. Gifts.**

962 (1) In this section, a gift "for the benefit of" a person includes a gift to a trust, an
963 account under the Uniform Transfers to Minors Act (1983/1986), and a tuition savings account
964 or prepaid tuition plan as defined under Section 529, Internal Revenue Code.

965 (2) Unless the power of attorney otherwise provides, language in a power of attorney
966 granting general authority with respect to gifts authorizes the agent only to:

967 (a) make outright to, or for the benefit of, a person a gift of any of the principal's
968 property, including by the exercise of a presently exercisable general power of appointment
969 held by the principal, in an amount per donee not to exceed the annual dollar limits of the
970 federal gift tax exclusion under Section 2503(b), Internal Revenue Code, without regard to
971 whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to
972 consent to a split gift pursuant to Section 2513, Internal Revenue Code, in an amount per donee
973 not to exceed twice the annual federal gift tax exclusion limit; and

974 (b) consent, pursuant to Section 2513, Internal Revenue Code, to the splitting of a gift
975 made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift
976 tax exclusions for both spouses.

977 (3) An agent may make a gift of the principal's property only as the agent determines is
978 consistent with the principal's objectives if actually known by the agent and, if unknown, as the
979 agent determines is consistent with the principal's best interest based on all relevant factors,
980 including:

981 (a) the value and nature of the principal's property;

982 (b) the principal's foreseeable obligations and need for maintenance;

983 (c) minimization of taxes, including income, estate, inheritance, generation-skipping
984 transfer, and gift taxes;

985 (d) eligibility for a benefit, program, or assistance under a statute or regulation; and

986 (e) the principal's personal history of making or joining in making gifts.

987 Section 42. Section **75-9-301** is enacted to read:

988 **Part 3. Statutory Forms**

989 **75-9-301. Statutory form power of attorney.**

990 A document substantially in the following form may be used to create a statutory form
991 power of attorney that has the meaning and effect prescribed by this chapter.

992 **STATUTORY FORM POWER OF ATTORNEY**

993 **IMPORTANT INFORMATION**

994 This power of attorney authorizes another person (your agent) to make decisions
995 concerning your property for you (the principal). Your agent will be able to make decisions
996 and act with respect to your property (including your money) whether or not you are able to act
997 for yourself. The meaning of authority over subjects listed on this form is explained in Title
998 75, Chapter 9, Uniform Power of Attorney Act.

999 This power of attorney does not authorize the agent to make health care decisions for
1000 you.

1001 You should select someone you trust to serve as your agent. Unless you specify
1002 otherwise, generally the agent's authority will continue until you die or revoke the power of
1003 attorney, or the agent resigns or is unable to act for you.

1004 Your agent is entitled to reasonable compensation unless you state otherwise in the
1005 Special Instructions.

1006 This form provides for designation of one agent. If you wish to name more than one
1007 agent you may name a coagent in the Special Instructions. Coagents are not required to act
1008 together unless you include that requirement in the Special Instructions.

1009 If your agent is unable or unwilling to act for you, your power of attorney will end
1010 unless you have named a successor agent. You may also name a second successor agent.

1011 This power of attorney becomes effective immediately unless you state otherwise in the
1012 Special Instructions.

1013 **If you have questions about the power of attorney or the authority you are**
1014 **granting to your agent, you should seek legal advice before signing this form.**

1015 **DESIGNATION OF AGENT**

1016 I _____ name the following

1017 (Name of Principal)

1018 person as my agent:

1019 Name of Agent: _____

1020 Agent's Address: _____

1021 Agent's Telephone Number: _____

1022 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

1023 If my agent is unable or unwilling to act for me, I name as my successor agent:

1024 Name of Successor Agent: _____

1025 Successor Agent's Address: _____

1026 Successor Agent's Telephone Number: _____

1027 If my successor agent is unable or unwilling to act for me, I name as my second successor

1028 agent:

1029 Name of Second Successor Agent: _____

1030 Second Successor Agent's Address: _____

1031 Second Successor Agent's Telephone Number: _____

1032 **GRANT OF GENERAL AUTHORITY**

1033 I grant my agent and any successor agent general authority to act for me with respect to the

1034 following subjects as defined in Title 75, Chapter 9, Uniform Power of Attorney Act:

1035 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant

1036 general authority over all of the subjects you may initial "All Preceding Subjects" instead of

1037 initialing each subject.)

1038 () Real Property

1039 () Tangible Personal Property

1040 () Stocks and Bonds

1041 () Commodities and Options

1042 () Banks and Other Financial Institutions

1043 () Operation of Entity or Business

1044 () Insurance and Annuities

1045 () Estates, Trusts, and Other Beneficial Interests

1046 () Claims and Litigation

1047 () Personal and Family Maintenance

1048 () Benefits from Governmental Programs or Civil or Military Service

1049 () Retirement Plans

1050 () Taxes

1051 () All Preceding Subjects

1052 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

1053 My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED
1054 the specific authority listed below:

1055 (CAUTION: Granting any of the following will give your agent the authority to take actions
1056 that could significantly reduce your property or change how your property is distributed at your
1057 death. INITIAL ONLY the specific authority you WANT to give your agent.)

1058 () Create, amend, revoke, or terminate an inter vivos trust

1059 () Make a gift, subject to the limitations of Section 75-9-217, U.C.A., 1953, and any special
1060 instructions in this power of attorney

1061 () Create or change rights of survivorship

1062 () Create or change a beneficiary designation

1063 () Authorize another person to exercise the authority granted under this power of attorney

1064 () Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
1065 survivor benefit under a retirement plan

1066 () Exercise fiduciary powers that the principal has authority to delegate

1067 () Disclaim or refuse an interest in property, including a power of appointment

1068 **LIMITATION ON AGENT'S AUTHORITY**

1069 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit
1070 the agent or a person to whom the agent owes an obligation of support unless I have included
1071 that authority in the Special Instructions.

1072 **SPECIAL INSTRUCTIONS (OPTIONAL)**

1073 You may give special instructions on the following lines:

1074 _____
1075 _____
1076 _____
1077 _____
1078 _____
1079 _____
1080 _____

1081 **EFFECTIVE DATE**

1082 This power of attorney is effective immediately unless I have stated otherwise in the Special
1083 Instructions.

1084 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

1085 If it becomes necessary for a court to appoint a conservator of my estate or guardian of my
1086 person, I nominate the following person(s) for appointment:

1087 Name of Nominee for conservator of my estate: _____

1088 Nominee's Address: _____

1089 Nominee's Telephone Number: _____

1090 Name of Nominee for guardian of my person: _____

1091 Nominee's Address: _____

1092 Nominee's Telephone Number: _____

1093 **RELIANCE ON THIS POWER OF ATTORNEY**

1094 Any person, including my agent, may rely upon the validity of this power of attorney or a copy
1095 of it unless that person knows it has terminated or is invalid.

1096 **SIGNATURE AND ACKNOWLEDGMENT**

1097 _____

1098 Your Signature _____ Date _____

1099 _____

1100 Your Name Printed _____

1101 _____

1102 _____

1103 Your Address _____

1104 _____

1105 Your Telephone Number _____

1106 State of _____

1107 County of _____

1108 This document was acknowledged before me on _____,

1109 _____ (Date)

1110 by _____.

1111 (Name of Principal)

1112 _____ (Seal, if any)

1113 Signature of Notary
1114 My commission expires:

1115 [This document prepared by:
1116 _____
1117 _____]

1118 **IMPORTANT INFORMATION FOR AGENT**

1119 **Agent's Duties**

1120 When you accept the authority granted under this power of attorney, a special legal relationship
1121 is created between you and the principal. This relationship imposes upon you legal duties that
1122 continue until you resign or the power of attorney is terminated or revoked. You shall:

1123 (1) do what you know the principal reasonably expects you to do with the principal's
1124 property or, if you do not know the principal's expectations, act in the principal's best interest;

1125 (2) act in good faith;

1126 (3) do nothing beyond the authority granted in this power of attorney; and

1127 (4) disclose your identity as an agent whenever you act for the principal by writing or
1128 printing the name of the principal and signing your own name as "agent" in the following
1129 manner:

1130 (Principal's Name) by (Your Signature) as Agent

1131 Unless the Special Instructions in this power of attorney state otherwise, you must also:

1132 (1) act loyally for the principal's benefit;

1133 (2) avoid conflicts that would impair your ability to act in the principal's best interest;

1134 (3) act with care, competence, and diligence;

1135 (4) keep a record of all receipts, disbursements, and transactions made on behalf of the
1136 principal;

1137 (5) cooperate with any person that has authority to make health care decisions for the
1138 principal to do what you know the principal reasonably expects or, if you do not know the
1139 principal's expectations, to act in the principal's best interest; and

1140 (6) attempt to preserve the principal's estate plan if you know the plan and preserving
1141 the plan is consistent with the principal's best interest.

1142 **Termination of Agent's Authority**

1143 You must stop acting on behalf of the principal if you learn of any event that terminates this

1144 power of attorney or your authority under this power of attorney. Events that terminate a power
1145 of attorney or your authority to act under a power of attorney include:

- 1146 (1) death of the principal;
- 1147 (2) the principal's revocation of the power of attorney or your authority;
- 1148 (3) the occurrence of a termination event stated in the power of attorney;
- 1149 (4) the purpose of the power of attorney is fully accomplished; or
- 1150 (5) if you are married to the principal, a legal action is filed with a court to end your
1151 marriage, or for your legal separation, unless the Special Instructions in this power of attorney
1152 state that such an action will not terminate your authority.

1153 **Liability of Agent**

1154 The meaning of the authority granted to you is defined in Title 75, Chapter 9, Uniform Power
1155 of Attorney Act. If you violate Title 75, Chapter 9, Uniform Power of Attorney Act, or act
1156 outside the authority granted, you may be liable for any damages caused by your violation.

1157 **If there is anything about this document or your duties that you do not understand, you**
1158 **should seek legal advice.**

1159 Section 43. Section **75-9-302** is enacted to read:

1160 **75-9-302. Agent's certification.**

1161 The following optional form may be used by an agent to certify facts concerning a
1162 power of attorney.

1163 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER**
1164 **OF ATTORNEY AND AGENT'S AUTHORITY**

1165 State of _____

1166 [County] of _____

1167 I, _____ (Name of Agent), certify under
1168 penalty of perjury that _____ (Name of Principal)
1169 granted me authority as an agent or successor agent in a power of attorney dated
1170 _____.

1171 I further certify that to my knowledge:

- 1172 (1) the principal is alive and has not revoked the power of attorney or my authority to
1173 act under the power of attorney and the power of attorney and my authority to act under the
1174 power of attorney have not terminated;

1175 (2) if the power of attorney was drafted to become effective upon the happening of an
1176 event or contingency, the event or contingency has occurred;

1177 (3) if I was named as a successor agent, the prior agent is no longer able or willing to
1178 serve; and

1179 (4)
1180 _____
1181 _____
1182 _____

1183 (Insert other relevant statements)

1184 **SIGNATURE AND ACKNOWLEDGMENT**

1185 _____
1186 Agent's Signature Date

1187 _____
1188 Agent's Name Printed

1189 _____
1190 _____

1191 Agent's Address
1192 _____

1193 Agent's Telephone Number

1194 This document was acknowledged before me on _____,

1195 (Date)

1196 by _____.

1197 (Name of Agent)

1198 _____ (Seal, if any)

1199 Signature of Notary

1200 My commission expires: _____

1201 This document prepared by:

1202 _____

1203 Section 44. Section **75-9-401** is enacted to read:

1204 **Part 4. Miscellaneous Provisions**

1205 **75-9-401. Uniformity of application and construction.**

1206 In applying and construing this uniform act, consideration shall be given to the need to
1207 promote uniformity of the law with respect to its subject matter among the states that enact it.

1208 Section 45. Section **75-9-402** is enacted to read:

1209 **75-9-402. Relation to Electronic Signatures in Global and National Commerce**
1210 **Act.**

1211 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
1212 Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or
1213 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of
1214 any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

1215 Section 46. Section **75-9-403** is enacted to read:

1216 **75-9-403. Effect on existing powers of attorney.**

1217 Except as otherwise provided:

1218 (1) this chapter applies to a power of attorney created before, on, or after May 10,
1219 2016;

1220 (2) this chapter applies to a judicial proceeding concerning a power of attorney
1221 commenced on or after May 10, 2016;

1222 (3) this chapter applies to a judicial proceeding concerning a power of attorney
1223 commenced before May 10, 2016, unless the court finds that application of a provision of this
1224 chapter would substantially interfere with the effective conduct of the judicial proceeding or
1225 prejudice the rights of a party, in which case that provision does not apply and the superseded
1226 law applies; and

1227 (4) an act done before May 10, 2016, is not affected by this chapter.

1228 Section 47. **Repealer.**

1229 This bill repeals:

1230 Section **75-5-501, Power of attorney not affected by disability or lapse of time --**
1231 **Agent responsibilities.**

1232 Section **75-5-502, Other powers of attorney not revoked until notice of death or**
1233 **disability.**

1234 Section **75-5-503, Power of attorney -- Prohibitions and restrictions.**

1235 Section **75-5-504, Voidable transactions.**

Legislative Review Note
Office of Legislative Research and General Counsel