

Representative V. Lowry Snow proposes the following substitute bill:

UNIFORM POWER OF ATTORNEY ACT

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: V. Lowry Snow

Senate Sponsor: Lyle W. Hillyard

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



26 ENACTS:

- 27 [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 (1) 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 before a notary public or other individual authorized by the law to take
202 acknowledgments. A signature on a power of attorney is presumed to be genuine if the
203 principal acknowledges the signature before a notary public or other individual authorized by
204 law to take acknowledgments.

205 (2) If the principal resides in a hospital, assisted living facility, skilled nursing or
206 similar residential care facility, at the time of execution of the power of attorney, a certification
207 of the principal's competency from a physician, psychologist, or psychiatrist shall be attached
208 to the power of attorney.

209 (3) If the principal resides or is about to reside in a hospital, assisted living, skilled
210 nursing, or similar facility, at the time of execution of the power of attorney, the principal may
211 not name any agent that is the owner, operator, health care provider, or employee of the

212 hospital, assisted living facility, skilled nursing, or similar residential care facility unless the
213 agent is the spouse, legal guardian, next of kin of the principal, or unless the agent's authority is
214 strictly limited to the purpose of assisting the principal to establish eligibility for Medicaid.

215 (4) A person who violates the provisions of Subsection 75-9-105(3) is guilty of a third
216 degree felony.

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

218 **75-9-106. Validity of power of attorney.**

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

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

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

225 (a) the law of the jurisdiction that determines the meaning and effect of the power of
226 attorney pursuant to Section 75-9-107; or

227 (b) the requirements for a military power of attorney pursuant to 10 U.S.C. Sec. 1044b.

228 (4) Except as otherwise provided by statute other than this chapter, a photocopy or
229 electronically transmitted copy of an original power of attorney has the same effect as the
230 original.

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

232 **75-9-107. Meaning and effect of power of attorney.**

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

236 Section 9. Section 75-9-108 is enacted to read:

237 **75-9-108. Nomination of conservator or guardian -- Relation of agent to court**
238 **appointed fiduciary.**

239 (1) In a power of attorney, a principal may nominate a conservator of the principal's
240 estate or guardian of the principal's person for consideration by the court if protective
241 proceedings for the principal's estate or person are begun after the principal executes the power
242 of attorney. Except for good cause shown or disqualification, the court shall make its

243 appointment in accordance with the principal's most recent nomination.

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

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

250 **75-9-109. When power of attorney is effective.**

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

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

257 (3) If a power of attorney becomes effective upon the principal's incapacity and the
258 principal has not authorized a person to determine whether the principal is incapacitated, or the
259 person authorized is unable or unwilling to make the determination, the power of attorney
260 becomes effective upon a determination in a writing or other record by:

261 (a) a physician that the principal is incapacitated within the meaning of Subsection
262 [75-9-102\(5\)\(a\)](#); or

263 (b) an attorney at law, a judge, or an appropriate governmental official that the
264 principal is incapacitated within the meaning of Subsection [75-9-102\(5\)\(b\)](#).

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

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

271 **75-9-110. Termination of power of attorney or agent's authority.**

272 (1) A power of attorney terminates when:

273 (a) the principal dies;

274 (b) the principal becomes incapacitated, if the power of attorney is not durable;
275 (c) the principal revokes the power of attorney;
276 (d) the power of attorney provides that it terminates;
277 (e) the purpose of the power of attorney is accomplished; or
278 (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated,
279 or resigns, and the power of attorney does not provide for another agent to act under the power
280 of attorney.

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

282 (a) the principal revokes the authority;

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

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

286 (d) the power of attorney terminates.

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

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

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

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

302 (7) The principal may revoke or amend a power of attorney:

303 (a) by substantial compliance with a method provided in the terms of the power of
304 attorney that expressly excludes all other methods for amending or revoking the power of

305 attorney; or

306 (b) if the terms of the power of attorney do not provide a method or the method
307 provided in the terms is not expressly made exclusive, by any other method manifesting clear
308 and convincing evidence of the principal's intent.

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

310 **75-9-111. Coagents and successor agents.**

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

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

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

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

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

324 (4) An agent that has accepted appointment and that has actual knowledge of a breach
325 or imminent breach of fiduciary duty by another agent shall notify the principal and, if the
326 principal is incapacitated, take any action reasonably appropriate in the circumstances to
327 safeguard the principal's best interest. An agent that fails to notify the principal or take action
328 as required by this subsection is liable for the reasonably foreseeable damages that could have
329 been avoided if the agent had notified the principal or taken action.

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

331 **75-9-112. Reimbursement and compensation of agent.**

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

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

336 75-9-113. Agent's acceptance.

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

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

341 75-9-114. Agent's duties.

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

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

346 (b) act in good faith;

347 (c) act only within the scope of authority granted in the power of attorney; and

348 (d) comply with the terms of the power of attorney.

349 (2) Except as otherwise provided in the power of attorney or other provision of this
350 chapter, an agent that has accepted appointment shall have no further obligation to act under
351 the power of attorney. However, with respect to any action taken by the agent under the power
352 of attorney, the agent shall:

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

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

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

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

360 (e) cooperate with a person that has authority to make health care decisions for the
361 principal to carry out the principal's reasonable expectations to the extent actually known by the
362 agent and, otherwise, act in the principal's best interest; and

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

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

- 367 (ii) the principal's foreseeable obligations and need for maintenance;
368 (iii) minimization of taxes, including income, estate, inheritance, generation-skipping
369 transfer, and gift taxes; and
370 (iv) eligibility for a benefit, a program, or assistance under a statute, rule, or regulation.
371 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's
372 estate plan for failure to preserve the plan.
373 (4) An agent that acts with care, competence, and diligence for the best interest of the
374 principal is not liable solely because the agent also benefits from the act or has an individual or
375 conflicting interest in relation to the property or affairs of the principal.
376 (5) If an agent is selected by the principal because of special skills or expertise
377 possessed by the agent or in reliance on the agent's representation that the agent has special
378 skills or expertise, the special skills or expertise shall be considered in determining whether the
379 agent has acted with care, competence, and diligence under the circumstances.
380 (6) Absent a breach of duty to the principal, an agent is not liable if the value of the
381 principal's property declines.
382 (7) An agent that exercises authority to delegate to another person the authority granted
383 by the principal or that engages another person on behalf of the principal is not liable for an act,
384 error of judgment, or default of that person if the agent exercises care, competence, and
385 diligence in selecting and monitoring the person.
386 (8) Except as otherwise provided in the power of attorney, an agent is not required to
387 disclose receipts, disbursements, or transactions conducted on behalf of the principal unless
388 ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary
389 acting for the principal, a governmental agency having authority to protect the welfare of the
390 principal, an interested person as defined in Subsection 75-1-201(24) after the principal's
391 incapacity, or upon the death of the principal, by the personal representative or successor in
392 interest of the principal's estate. If so requested, within 30 days the agent shall comply with the
393 request or provide a writing or other record substantiating why additional time is needed and
394 shall comply with the request within an additional 30 days.

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

396 **75-9-115. Exoneration of agent.**

397 A provision in a power of attorney relieving an agent of liability for breach of duty is

398 binding on the principal and the principal's successors in interest except to the extent the
399 provision:

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

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

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

406 **75-9-116. Judicial relief.**

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

409 (a) the principal or the agent;

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

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

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

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

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

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

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

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

422 (2) Upon motion by the principal, the court shall dismiss a petition filed under this
423 section, unless the court finds that the principal lacks capacity to revoke the agent's authority or
424 the power of attorney.

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

426 **75-9-117. Agent's liability.**

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

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

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

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

434 **75-9-118. Agent's resignation -- Notice.**

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

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

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

440 (a) the principal's caregiver;

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

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

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

445 **75-9-119. Acceptance of and reliance upon acknowledged power of attorney.**

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

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

452 (3) A person that in good faith accepts an acknowledged power of attorney without
453 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported
454 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly
455 exercising the agent's authority may rely upon the power of attorney as if the power of attorney
456 were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in
457 effect, and the agent had not exceeded and had properly exercised the authority.

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

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

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

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

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

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

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

474 **75-9-120. Liability for Refusal to Accept Acknowledged Power of Attorney.**

475 (1) Except as otherwise provided in subsection (2):

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

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

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

484 (2) A person is not required to accept an acknowledged power of attorney if:

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

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

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

491 (d) a request for a certification, a translation, or an opinion of counsel under Section
492 75-9-119(4) is refused;

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

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

500 (3) A person that refuses in violation of this section to accept an acknowledged power
501 of attorney is subject to:

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

503 (b) liability for reasonable attorney's fees and costs incurred in any action or proceeding
504 that confirms the validity of the power of attorney or mandates acceptance of the power of
505 attorney.

506 (4) Court proceedings under this section shall be conducted pursuant to the terms in the
507 Uniform Probate Code governing venue and procedures.

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

509 **75-9-121. Principles of law and equity.**

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

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

513 **75-9-122. Laws applicable to financial institutions and entities.**

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

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

517 **75-9-123. Remedies under other law.**

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

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

521 **Part 2. Authority**

522 75-9-201. Authority that requires specific grant -- Grant of general authority.

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

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

528 (b) make a gift;

529 (c) create or change rights of survivorship;

530 (d) create or change a beneficiary designation;

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

532 (f) waive the principal's right to be a beneficiary of a joint and survivor annuity,
533 including a survivor benefit under a retirement plan;

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

535 (h) disclaim property or otherwise exercise a power of appointment.

536 (2) Notwithstanding a grant of authority to do an act described in Subsection (1),
537 unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or
538 descendant of the principal may not exercise authority under a power of attorney to create in
539 the agent, or in an individual to whom the agent owes a legal obligation of support, an interest
540 in the principal's property, whether by gift, right of survivorship, beneficiary designation,
541 disclaimer, or otherwise.

542 (3) Subject to Subsections (1), (2), (4), and (5), if a power of attorney grants to an agent
543 authority to do all acts that a principal could do, the agent has the general authority described in
544 Sections [75-9-204](#) through [75-9-216](#).

545 (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift
546 is subject to Section [75-9-217](#).

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

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

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

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

557 **75-9-202. Incorporation of authority.**

558 (1) An agent has authority described in this part if the power of attorney refers to
559 general authority with respect to the descriptive term for the subjects stated in Sections
560 75-9-204 through 75-9-217 or cites the section in which the authority is described.

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

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

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

567 **75-9-203. Construction of authority generally.**

568 Except as otherwise provided in the power of attorney, by executing a power of attorney
569 that incorporates by reference a subject described in Sections 75-9-204 through 75-9-217 or
570 that grants to an agent authority to do all acts that a principal could do pursuant to Subsection
571 75-9-201(3), a principal authorizes the agent, with respect to that subject, to:

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

575 (2) contract in any manner with any person, on terms agreeable to the agent, to
576 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
577 release, or modify the contract or another contract made by or on behalf of the principal;

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

582 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
583 propose or accept a compromise with respect to a claim existing in favor of or against the

584 principal or intervene in litigation relating to the claim;

585 (5) seek on the principal's behalf the assistance of a court or other governmental agency

586 to carry out an act authorized in the power of attorney;

587 (6) engage, compensate, and discharge an attorney, accountant, discretionary

588 investment manager, expert witness, or other advisor;

589 (7) prepare, execute, and file a record, report, or other document to safeguard or

590 promote the principal's interest under a statute or regulation;

591 (8) communicate with any representative or employee of a government or

592 governmental subdivision, agency, or instrumentality on behalf of the principal;

593 (9) access communications intended for, and communicate on behalf of the principal,

594 whether by mail, electronic transmission, telephone, or other means; and

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

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

597 **75-9-204. Real property.**

598 Unless the power of attorney otherwise provides, language in a power of attorney

599 granting general authority with respect to real property authorizes the agent to:

600 (1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit,

601 or otherwise acquire or reject an interest in real property or a right incident to real property;

602 (2) (a) sell;

603 (b) exchange;

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

605 (d) quitclaim;

606 (e) release;

607 (f) surrender;

608 (g) retain title for security;

609 (h) encumber;

610 (i) partition;

611 (j) consent to partitioning;

612 (k) subject to an easement or covenant;

613 (l) subdivide;

614 (m) apply for zoning or other governmental permits;

- 615 (n) plat or consent to platting;
616 (o) develop;
617 (p) grant an option concerning;
618 (q) lease;
619 (r) sublease;
620 (s) contribute to an entity in exchange for an interest in that entity; or
621 (t) otherwise grant or dispose of an interest in real property or a right incident to real
622 property;
623 (3) pledge or mortgage an interest in real property or right incident to real property as
624 security to borrow money or pay, renew, or extend the time of payment of a debt of the
625 principal or a debt guaranteed by the principal;
626 (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of
627 trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or
628 is asserted;
629 (5) manage or conserve an interest in real property or a right incident to real property
630 owned or claimed to be owned by the principal, including:
631 (a) insuring against liability or casualty or other loss;
632 (b) obtaining or regaining possession of or protecting the interest or right by litigation
633 or otherwise;
634 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for
635 and receiving refunds in connection with taxes or assessments; and
636 (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations to
637 the real property;
638 (6) use, develop, alter, replace, remove, erect, or install structures or other
639 improvements upon real property in or incident to which the principal has, or claims to have,
640 an interest or right;
641 (7) participate in a reorganization with respect to real property or an entity that owns an
642 interest in or right incident to real property and receive, hold, and act with respect to stocks and
643 bonds or other property received in a plan of reorganization, including:
644 (a) selling or otherwise disposing of stocks and bonds;
645 (b) exercising or selling an option, right of conversion, or similar right with respect to

646 stocks and bonds; and

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

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

649 (9) dedicate to public use, with or without consideration, easements or other real

650 property in which the principal has, or claims to have, an interest.

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

652 **75-9-205. Tangible personal property.**

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

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

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

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

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

668 (5) manage or conserve tangible personal property or an interest in tangible personal
669 property on behalf of the principal, including:

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

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

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

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

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

677 (f) using and making repairs, alterations, or improvements to the property; and
678 (6) change the form of title of an interest in tangible personal property.

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

680 **75-9-206. Stocks and bonds.**

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

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

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

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

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

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

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

693 **75-9-207. Commodities and options.**

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

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

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

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

700 **75-9-208. Banks and other financial institutions.**

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

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

706 (2) establish, modify, and terminate an account or other banking arrangement with a
707 bank, trust company, savings and loan association, credit union, thrift company, brokerage

708 firm, or other financial institution selected by the agent;

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

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

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

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

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

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

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

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

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

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

732 **75-9-209. Operation of entity or business.**

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

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

738 (2) perform a duty or discharge a liability and exercise in person or by proxy a right,

- 739 power, privilege, or option that the principal has, may have, or claims to have;
- 740 (3) enforce the terms of an ownership agreement;
- 741 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
- 742 propose or accept a compromise with respect to litigation to which the principal is a party
- 743 because of an ownership interest;
- 744 (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,
- 745 privilege, or option the principal has or claims to have as the holder of stocks and bonds;
- 746 (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
- 747 propose or accept a compromise with respect to litigation to which the principal is a party
- 748 concerning stocks and bonds;
- 749 (7) with respect to an entity or business owned solely by the principal:
- 750 (a) continue, modify, renegotiate, extend, and terminate a contract made by or on
- 751 behalf of the principal with respect to the entity or business before execution of the power of
- 752 attorney;
- 753 (b) determine:
- 754 (i) the location of its operation;
- 755 (ii) the nature and extent of its business;
- 756 (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and
- 757 advertising employed in its operation;
- 758 (iv) the amount and types of insurance carried; and
- 759 (v) the mode of engaging, compensating, and dealing with its employees and
- 760 accountants, attorneys, or other advisors;
- 761 (c) change the name or form of organization under which the entity or business is
- 762 operated and enter into an ownership agreement with other persons to take over all or part of
- 763 the operation of the entity or business; and
- 764 (d) demand and receive money due or claimed by the principal or on the principal's
- 765 behalf in the operation of the entity or business and control and disburse the money in the
- 766 operation of the entity or business;
- 767 (8) put additional capital into an entity or business in which the principal has an
- 768 interest;
- 769 (9) join in a plan of reorganization, consolidation, conversion, domestication, or

770 merger of the entity or business;

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

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

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

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

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

781 **75-9-210. Insurance and annuities.**

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

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

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

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

793 (4) apply for and receive a loan secured by a contract of insurance or annuity;

794 (5) surrender and receive the cash surrender value on a contract of insurance or
795 annuity;

796 (6) exercise an election;

797 (7) exercise investment powers available under a contract of insurance or annuity;

798 (8) change the manner of paying premiums on a contract of insurance or annuity;

799 (9) change or convert the type of insurance or annuity with respect to which the

800 principal has or claims to have authority described in this section;

801 (10) apply for and procure a benefit or assistance under a statute or regulation to
802 guarantee or pay premiums of a contract of insurance on the life of the principal;
803 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
804 principal in a contract of insurance or annuity;
805 (12) select the form and timing of the payment of proceeds from a contract of insurance
806 or annuity; and

807 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds in
808 connection with a tax or assessment levied by a taxing authority with respect to a contract of
809 insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

810 Section 35. Section **75-9-211** is enacted to read:

811 **75-9-211. Estates, trusts, and other beneficial interests.**

812 (1) In this section, "estate, trust, or other beneficial interest" means a trust, probate
813 estate, guardianship, conservatorship, escrow, custodianship, or fund from which the principal
814 is, may become, or claims to be entitled to a share or payment.

815 (2) Unless the power of attorney otherwise provides, language in a power of attorney
816 granting general authority with respect to estates, trusts, and other beneficial interests
817 authorizes the agent to:

818 (a) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment
819 from an estate, trust, or other beneficial interest;

820 (b) demand or obtain money or another thing of value to which the principal is, may
821 become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by
822 litigation or otherwise;

823 (c) exercise for the benefit of the principal a presently exercisable general power of
824 appointment held by the principal;

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

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

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

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

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

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

839 **75-9-212. Claims and litigation.**

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

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

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

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

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

854 (5) submit to alternative dispute resolution, settle, and propose or accept a
855 compromise;

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

863 litigation;

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

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

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

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

873 **75-9-213. Personal and family maintenance.**

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

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

880 (i) the principal's children;

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

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

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

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

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

888 (ii) paying the operating costs, including interest, amortization payments, repairs,
889 improvements, and taxes, for premises owned by the principal or occupied by those
890 individuals;

891 (d) provide normal domestic help, usual vacations and travel expenses, and funds for
892 shelter, clothing, food, appropriate education, including postsecondary and vocational
893 education, and other current living costs for the individuals described in Subsection (1)(a);

- 894 (e) pay expenses for necessary health care and custodial care on behalf of the
895 individuals described in Subsection (1)(a);
- 896 (f) act as the principal's personal representative pursuant to the Health Insurance
897 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42
898 U.S.C. Sec. 1320d, and applicable regulations, in making decisions related to the past, present,
899 or future payment for the provision of health care consented to by the principal or anyone
900 authorized under the law of this state to consent to health care on behalf of the principal;
- 901 (g) continue any provision made by the principal for automobiles or other means of
902 transportation, including registering, licensing, insuring, and replacing them, for the individuals
903 described in Subsection (1)(a);
- 904 (h) maintain credit and debit accounts and open new accounts for the convenience of
905 the individuals described in Subsection (1)(a); and
- 906 (i) continue payments incidental to the membership or affiliation of the principal in a
907 religious institution, club, society, order, or other organization or to continue contributions to
908 those organizations.

909 (2) Authority with respect to personal and family maintenance is neither dependent
910 upon, nor limited by, authority that an agent may or may not have with respect to gifts under
911 this chapter.

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

913 **75-9-214. Benefits from governmental programs or civil or military service.**

914 (1) In this section, "benefits from governmental programs or civil or military service"
915 means any benefit, program, or assistance provided under a statute or regulation, including
916 social security, Medicare, and Medicaid.

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

920 (a) execute vouchers in the name of the principal for allowances and reimbursements
921 payable by the United States or a foreign government or by a state or subdivision of a state to
922 the principal, including allowances and reimbursements for transportation of the individuals
923 described in Subsection [75-9-213\(1\)\(a\)](#), and for shipment of their household effects;

924 (b) take possession and order the removal and shipment of property of the principal

925 from a post, warehouse, depot, dock, or other place of storage or safekeeping, either
926 governmental or private, and execute and deliver a release, voucher, receipt, bill of lading,
927 shipping ticket, certificate, or other instrument for that purpose;

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

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

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

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

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

938 **75-9-215. Retirement plans.**

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

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

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

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

947 (d) an annuity or mutual fund custodial account under Section 403(b), Internal Revenue
948 Code;

949 (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under
950 Section 401(a), Internal Revenue Code;

951 (f) a plan under Section 457(b), Internal Revenue Code; and

952 (g) a nonqualified deferred compensation plan under Section 409A, Internal Revenue
953 Code.

954 (2) Unless the power of attorney otherwise provides, language in a power of attorney
955 granting general authority with respect to retirement plans authorizes the agent to:

956 (a) select the form and timing of payments under a retirement plan and withdraw
957 benefits from a plan;

958 (b) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
959 retirement plan to another;

960 (c) establish a retirement plan in the principal's name;

961 (d) make contributions to a retirement plan;

962 (e) exercise investment powers available under a retirement plan; and

963 (f) borrow from, sell assets to, or purchase assets from a retirement plan.

964 Section 40. Section **75-9-216** is enacted to read:

965 **75-9-216. Taxes.**

966 Unless the power of attorney otherwise provides, language in a power of attorney
967 granting general authority with respect to taxes authorizes the agent to:

968 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
969 property, Federal Insurance Contributions Act, and other tax returns, claims for refunds,
970 requests for extension of time, petitions regarding tax matters, and any other tax-related
971 documents, including receipts, offers, waivers, consents, including consents and agreements
972 under Section 2032A, Internal Revenue Code, closing agreements, and any power of attorney
973 required by the Internal Revenue Service or other taxing authority with respect to a tax year
974 upon which the statute of limitations has not run and the following 25 tax years;

975 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and
976 contest deficiencies determined by the Internal Revenue Service or other taxing authority;

977 (3) exercise any election available to the principal under federal, state, local, or foreign
978 tax law; and

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

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

982 **75-9-217. Gifts.**

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

986 (2) Unless the power of attorney otherwise provides, language in a power of attorney

987 granting general authority with respect to gifts authorizes the agent only to:

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

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

998 (3) An agent may make a gift of the principal's property only as the agent determines is
999 consistent with the principal's objectives if actually known by the agent and, if unknown, as the
1000 agent determines is consistent with the principal's best interest based on all relevant factors,
1001 including:

1002 (a) the value and nature of the principal's property;

1003 (b) the principal's foreseeable obligations and need for maintenance;

1004 (c) minimization of taxes, including income, estate, inheritance, generation-skipping
1005 transfer, and gift taxes;

1006 (d) eligibility for a benefit, program, or assistance under a statute or regulation; and

1007 (e) the principal's personal history of making or joining in making gifts.

1008 Section 42. Section **75-9-301** is enacted to read:

1009 **Part 3. Statutory Forms**

1010 **75-9-301. Statutory form power of attorney.**

1011 A document substantially in the following form may be used to create a statutory form
1012 power of attorney that has the meaning and effect prescribed by this chapter.

1013 **STATUTORY FORM POWER OF ATTORNEY**

1014 **IMPORTANT INFORMATION**

1015 This power of attorney authorizes another person (your agent) to make decisions
1016 concerning your property for you (the principal). Your agent will be able to make decisions
1017 and act with respect to your property (including your money) whether or not you are able to act

1018 for yourself. The meaning of authority over subjects listed on this form is explained in Title
1019 75, Chapter 9, Uniform Power of Attorney Act.

1020 This power of attorney does not authorize the agent to make health care decisions for
1021 you.

1022 You should select someone you trust to serve as your agent. Unless you specify
1023 otherwise, generally the agent's authority will continue until you die or revoke the power of
1024 attorney, or the agent resigns or is unable to act for you.

1025 Your agent is entitled to reasonable compensation unless you state otherwise in the
1026 Special Instructions.

1027 This form provides for designation of one agent. If you wish to name more than one
1028 agent you may name a coagent in the Special Instructions. Coagents are not required to act
1029 together unless you include that requirement in the Special Instructions.

1030 If your agent is unable or unwilling to act for you, your power of attorney will end
1031 unless you have named a successor agent. You may also name a second successor agent.

1032 This power of attorney becomes effective immediately unless you state otherwise in the
1033 Special Instructions.

1034 **If you have questions about the power of attorney or the authority you are**
1035 **granting to your agent, you should seek legal advice before signing this form.**

1036 **DESIGNATION OF AGENT**

1037 I _____ name the following

1038 (Name of Principal)

1039 person as my agent:

1040 Name of Agent: _____

1041 Agent's Address: _____

1042 Agent's Telephone Number: _____

1043 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

1044 If my agent is unable or unwilling to act for me, I name as my successor agent:

1045 Name of Successor Agent: _____

1046 Successor Agent's Address: _____

1047 Successor Agent's Telephone Number: _____

1048 If my successor agent is unable or unwilling to act for me, I name as my second successor

1049 agent:
 1050 Name of Second Successor Agent:
 1051 Second Successor Agent's Address:
 1052 Second Successor Agent's Telephone Number:

GRANT OF GENERAL AUTHORITY

1054 I grant my agent and any successor agent general authority to act for me with respect to the
 1055 following subjects as defined in Title 75, Chapter 9, Uniform Power of Attorney Act:
 1056 (INITIAL each subject you want to include in the agent's general authority. If you wish to grant
 1057 general authority over all of the subjects you may initial "All Preceding Subjects" instead of
 1058 initialing each subject.)

- 1059 () Real Property
- 1060 () Tangible Personal Property
- 1061 () Stocks and Bonds
- 1062 () Commodities and Options
- 1063 () Banks and Other Financial Institutions
- 1064 () Operation of Entity or Business
- 1065 () Insurance and Annuities
- 1066 () Estates, Trusts, and Other Beneficial Interests
- 1067 () Claims and Litigation
- 1068 () Personal and Family Maintenance
- 1069 () Benefits from Governmental Programs or Civil or Military Service
- 1070 () Retirement Plans
- 1071 () Taxes
- 1072 () All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

1074 My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED
 1075 the specific authority listed below:

1076 (CAUTION: Granting any of the following will give your agent the authority to take actions
 1077 that could significantly reduce your property or change how your property is distributed at your
 1078 death. INITIAL ONLY the specific authority you WANT to give your agent.)

- 1079 () Create, amend, revoke, or terminate an inter vivos trust

1080 () Make a gift, subject to the limitations of Section 75-9-217, U.C.A., 1953, and any special
1081 instructions in this power of attorney

1082 () Create or change rights of survivorship

1083 () Create or change a beneficiary designation

1084 () Authorize another person to exercise the authority granted under this power of attorney

1085 () Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a
1086 survivor benefit under a retirement plan

1087 () Exercise fiduciary powers that the principal has authority to delegate

1088 () Disclaim or refuse an interest in property, including a power of appointment

1089 **LIMITATION ON AGENT'S AUTHORITY**

1090 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit
1091 the agent or a person to whom the agent owes an obligation of support unless I have included
1092 that authority in the Special Instructions.

1093 **SPECIAL INSTRUCTIONS (OPTIONAL)**

1094 You may give special instructions on the following lines:

1095 _____
1096 _____
1097 _____
1098 _____
1099 _____
1100 _____
1101 _____

1102 **EFFECTIVE DATE**

1103 This power of attorney is effective immediately unless I have stated otherwise in the Special
1104 Instructions.

1105 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

1106 If it becomes necessary for a court to appoint a conservator of my estate or guardian of my
1107 person, I nominate the following person(s) for appointment:

1108 Name of Nominee for conservator of my estate: _____

1109 Nominee's Address: _____

1110 Nominee's Telephone Number: _____

1111 Name of Nominee for guardian of my person: _____

1112 Nominee's Address: _____

1113 Nominee's Telephone Number: _____

1114 **RELIANCE ON THIS POWER OF ATTORNEY**

1115 Any person, including my agent, may rely upon the validity of this power of attorney or a copy
1116 of it unless that person knows it has terminated or is invalid.

1117 **SIGNATURE AND ACKNOWLEDGMENT**

1118 _____

1119 Your Signature _____ Date _____

1120 _____

1121 Your Name Printed

1122 _____

1123 _____

1124 Your Address

1125 _____

1126 Your Telephone Number

1127 State of _____

1128 County of _____

1129 This document was acknowledged before me on _____,

1130 _____ (Date)

1131 by _____.

1132 (Name of Principal)

1133 _____ (Seal, if any)

1134 Signature of Notary

1135 My commission expires: _____

1136 [This document prepared by:

1137 _____

1138 _____]

1139 **IMPORTANT INFORMATION FOR AGENT**

1140 **Agent's Duties**

1141 When you accept the authority granted under this power of attorney, a special legal relationship

1142 is created between you and the principal. This relationship imposes upon you legal duties that
1143 continue until you resign or the power of attorney is terminated or revoked. You shall:

1144 (1) do what you know the principal reasonably expects you to do with the principal's
1145 property or, if you do not know the principal's expectations, act in the principal's best interest;

1146 (2) act in good faith;

1147 (3) do nothing beyond the authority granted in this power of attorney; and

1148 (4) disclose your identity as an agent whenever you act for the principal by writing or
1149 printing the name of the principal and signing your own name as "agent" in the following

1150 manner:

1151 (Principal's Name) by (Your Signature) as Agent

1152 Unless the Special Instructions in this power of attorney state otherwise, you must also:

1153 (1) act loyally for the principal's benefit;

1154 (2) avoid conflicts that would impair your ability to act in the principal's best interest;

1155 (3) act with care, competence, and diligence;

1156 (4) keep a record of all receipts, disbursements, and transactions made on behalf of the
1157 principal;

1158 (5) cooperate with any person that has authority to make health care decisions for the
1159 principal to do what you know the principal reasonably expects or, if you do not know the

1160 principal's expectations, to act in the principal's best interest; and

1161 (6) attempt to preserve the principal's estate plan if you know the plan and preserving
1162 the plan is consistent with the principal's best interest.

1163 **Termination of Agent's Authority**

1164 You must stop acting on behalf of the principal if you learn of any event that terminates this
1165 power of attorney or your authority under this power of attorney. Events that terminate a power

1166 of attorney or your authority to act under a power of attorney include:

1167 (1) death of the principal;

1168 (2) the principal's revocation of the power of attorney or your authority;

1169 (3) the occurrence of a termination event stated in the power of attorney;

1170 (4) the purpose of the power of attorney is fully accomplished; or

1171 (5) if you are married to the principal, a legal action is filed with a court to end your

1172 marriage, or for your legal separation, unless the Special Instructions in this power of attorney

1173 state that such an action will not terminate your authority.

1174 **Liability of Agent**

1175 The meaning of the authority granted to you is defined in Title 75, Chapter 9, Uniform Power
1176 of Attorney Act. If you violate Title 75, Chapter 9, Uniform Power of Attorney Act, or act
1177 outside the authority granted, you may be liable for any damages caused by your violation.

1178 **If there is anything about this document or your duties that you do not understand, you**
1179 **should seek legal advice.**

1180 Section 43. Section **75-9-302** is enacted to read:

1181 **75-9-302. Agent's certification.**

1182 The following optional form may be used by an agent to certify facts concerning a
1183 power of attorney.

1184 **AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER**
1185 **OF ATTORNEY AND AGENT'S AUTHORITY**

1186 State of _____

1187 [County] of _____

1188 I, _____ (Name of Agent), certify under

1189 penalty of perjury that _____ (Name of Principal)

1190 granted me authority as an agent or successor agent in a power of attorney dated

1191 _____.

1192 I further certify that to my knowledge:

1193 (1) the principal is alive and has not revoked the power of attorney or my authority to
1194 act under the power of attorney and the power of attorney and my authority to act under the
1195 power of attorney have not terminated;

1196 (2) if the power of attorney was drafted to become effective upon the happening of an
1197 event or contingency, the event or contingency has occurred;

1198 (3) if I was named as a successor agent, the prior agent is no longer able or willing to
1199 serve; and

1200 (4) _____

1201 _____

1202 _____

1203 _____

1204 (Insert other relevant statements)

1205 **SIGNATURE AND ACKNOWLEDGMENT**

1206 _____

1207 Agent's Signature _____ Date

1208 _____

1209 Agent's Name Printed

1210 _____

1211 _____

1212 Agent's Address

1213 _____

1214 Agent's Telephone Number

1215 This document was acknowledged before me on _____,

1216 _____ (Date)

1217 by _____.

1218 (Name of Agent)

1219 _____ (Seal, if any)

1220 Signature of Notary

1221 My commission expires: _____

1222 This document prepared by:

1223 _____

1224 Section 44. Section **75-9-401** is enacted to read:

1225 **Part 4. Miscellaneous Provisions**

1226 **75-9-401. Uniformity of application and construction.**

1227 In applying and construing this uniform act, consideration shall be given to the need to
1228 promote uniformity of the law with respect to its subject matter among the states that enact it.

1229 Section 45. Section **75-9-402** is enacted to read:

1230 **75-9-402. Relation to Electronic Signatures in Global and National Commerce**

1231 **Act.**

1232 This chapter modifies, limits, and supersedes the federal Electronic Signatures in

1233 Global and National Commerce Act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit, or

1234 supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of
1235 any of the notices described in Section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

1236 Section 46. Section **75-9-403** is enacted to read:

1237 **75-9-403. Effect on existing powers of attorney.**

1238 Except as otherwise provided:

1239 (1) this chapter applies to a power of attorney created before, on, or after May 10,
1240 2016;

1241 (2) this chapter applies to a judicial proceeding concerning a power of attorney
1242 commenced on or after May 10, 2016;

1243 (3) this chapter applies to a judicial proceeding concerning a power of attorney
1244 commenced before May 10, 2016, unless the court finds that application of a provision of this
1245 chapter would substantially interfere with the effective conduct of the judicial proceeding or
1246 prejudice the rights of a party, in which case that provision does not apply and the superseded
1247 law applies; and

1248 (4) an act done before May 10, 2016, is not affected by this chapter.

1249 Section 47. **Repealer.**

1250 This bill repeals:

1251 Section **75-5-501, Power of attorney not affected by disability or lapse of time --**
1252 **Agent responsibilities.**

1253 Section **75-5-502, Other powers of attorney not revoked until notice of death or**
1254 **disability.**

1255 Section **75-5-503, Power of attorney -- Prohibitions and restrictions.**

1256 Section **75-5-504, Voidable transactions.**