

CHAPTER 49

S.B. No. 176

AN ACT

relating to the adoption of the Durable Power of Attorney Act.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. The Texas Probate Code is amended by adding Chapter XII to read as follows:

CHAPTER XII. DURABLE POWER OF ATTORNEY ACT

Sec. 481. *SHORT TITLE.* This chapter may be cited as the Durable Power of Attorney Act.

Sec. 482. *DEFINITION.* A "durable power of attorney" means a written instrument that:

(1) designates another person as attorney in fact or agent;

(2) is signed by an adult principal;

(3) contains the words "This power of attorney is not affected by subsequent disability or incapacity of the principal," or "This power of attorney becomes effective on the disability or incapacity of the principal," or similar words showing the principal's intent that the authority conferred on the attorney in fact or agent shall be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal before an officer authorized to take acknowledgments to deeds of conveyance and to administer oaths under the laws of this state or another state.

Sec. 483. *DURATION.* A durable power of attorney does not lapse because of the passage of time unless the instrument creating the power of attorney specifically states a time limitation.

Sec. 484. *EFFECT OF ACTS BY ATTORNEY IN FACT OR AGENT DURING INCAPACITY OF PRINCIPAL.* All acts done by an attorney in fact or agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were not disabled or incapacitated.

Sec. 485. *RELATION OF ATTORNEY IN FACT OR AGENT TO COURT-APPOINTED GUARDIAN OF ESTATE.* If, after execution of a durable power of attorney, a court in the principal's domicile appoints a guardian of the estate of the principal, the powers of the attorney in fact or agent terminate on the qualification of the guardian of the estate, and the attorney in fact or agent shall deliver to the guardian of the estate all assets of the estate then in the attorney's or agent's possession and shall account to the guardian of the

estate as the attorney or agent would to the principal had the principal terminated his powers.

Sec. 486. KNOWLEDGE OF DEATH, GUARDIAN OF ESTATE, OR REVOCATION; GOOD-FAITH ACTS. *The revocation by, the death of, or the qualification of a guardian of the estate of a principal who has executed a durable power of attorney does not revoke or terminate the agency as to the attorney in fact, agent, or other person who, without actual knowledge of the termination of the power by revocation, by the principal's death, or by the qualification of a guardian of the estate of the principal, acts in good faith under or in reliance on the power. Any action so taken, unless otherwise invalid or unenforceable, binds successors in interest of the principal.*

Sec. 487. AFFIDAVIT OF LACK OF KNOWLEDGE OR TERMINATION OF POWER; RECORDING. (a) *As to acts undertaken in good-faith reliance on the durable power of attorney, an affidavit executed by the attorney in fact or agent under a durable power of attorney stating that the attorney in fact or agent did not have at the time of exercise of the power actual knowledge of the termination of the power by revocation, by the principal's death, or by the qualification of a guardian of the estate of the principal is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the nonrevocation or nontermination of the power at that time.*

(b) *As to acts undertaken in good-faith reliance on the durable power of attorney, an affidavit executed by the attorney in fact or agent under a durable power of attorney stating that the principal is disabled or incapacitated, as defined by the power, is conclusive proof as between the attorney in fact or agent and a person other than the principal or the principal's personal representative dealing with the attorney in fact or agent of the disability or incapacity of the principal at that time.*

(c) *If the exercise of the power of attorney requires execution and delivery of any instrument that is to be recorded, an affidavit executed under Subsection (a) or (b) of this section, when authenticated for record, may also be recorded.*

(d) *This section does not affect any provision in a durable power of attorney for its termination by expiration of time or occurrence of an event other than express revocation.*

Sec. 488. REVOCATION OF DURABLE POWER OF ATTORNEY. *Unless otherwise provided by the durable power of attorney, a revocation of a durable power of attorney is not effective as to a third party relying on the power of attorney until the third party receives actual notice of the revocation.*

Sec. 489. RECORDING DURABLE POWER OF ATTORNEY FOR REAL PROPERTY TRANSACTIONS. *A durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded, including a release, assignment, satisfaction, mortgage, security agreement, deed of trust, encumbrance, deed of conveyance, oil, gas, or other mineral lease, memorandum of a lease, lien, or other claim or right to real property, shall be recorded in the office of the county clerk of the county in which the property is located.*

Sec. 490. STATUTORY DURABLE POWER OF ATTORNEY. (a) *The following form is known as a "statutory durable power of attorney." A person may use a statutory durable power of attorney to grant an attorney in fact or agent powers with respect to a person's property and financial matters. A power of attorney in substantially the following form has the meaning and effect prescribed by this chapter. The validity of a power of attorney as meeting the requirements of a statutory durable power of attorney is not affected by the fact that one or more of the categories of optional powers listed in the form are struck or the form includes specific limitations on or additions to the attorney in fact's or agent's powers.*

When a power in substantially the form set forth in this chapter is used, third parties who rely in good faith on the acts of the agent within the scope of the power may do so without fear of liability to the principal.

The following form is not exclusive, and other forms of power of attorney may be used.

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, _____ (insert your name and address), my social security number _____ being _____ (insert your proper SS#), appoint _____ (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

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

INITIAL

- _____ (A) real property transactions;
- _____ (B) tangible personal property transactions;
- _____ (C) stock and bond transactions;
- _____ (D) commodity and option transactions;
- _____ (E) banking and other financial institution transactions;
- _____ (F) business operating transactions;
- _____ (G) insurance and annuity transactions;
- _____ (H) estate, trust, and other beneficiary transactions;
- _____ (I) claims and litigation;
- _____ (J) personal and family maintenance;
- _____ (K) benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- _____ (L) retirement plan transactions;
- _____ (M) tax matters;
- _____ (N) ALL OF THE POWERS LISTED IN (A) THROUGH (M). YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

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

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

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

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

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

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

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

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

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

Signed this _____ day of _____, 19____

(your signature)

State of _____

County of _____

This document was acknowledged before me on

(date) by _____

(name of principal)

(signature of notarial officer)

(Seal, if any, of notary)

(printed name)

My commission expires: _____

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

(b) A statutory durable power of attorney is legally sufficient under this chapter if the wording of the form complies substantially with Subsection (a) of this section, the form is properly completed, and the signature of the principal is acknowledged.

(c) If the line in front of (N) of the form under Subsection (a) of this section is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N).

Sec. 491. CONSTRUCTION OF POWERS GENERALLY. The principal, by executing a statutory durable power of attorney that confers authority with respect to any class of transactions, empowers the attorney in fact or agent for that class of transactions to:

(1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;

(2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;

(3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(5) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in an action or litigation relating to the claim;

(6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(10) reimburse the attorney in fact or agent for expenditures made in exercising the powers granted by the durable power of attorney; and

(11) in general, do any other lawful act that the principal may do with respect to a transaction.

Sec. 492. CONSTRUCTION OF POWER RELATING TO REAL PROPERTY TRANSACTIONS. In a statutory durable power of attorney, the language conferring authority with respect to real property transactions empowers the attorney in fact or agent without further reference to a specific description of the real property to:

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

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

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

(4) do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including power to:

(A) insure against a casualty, liability, or loss;

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

(C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with them; and

(D) purchase supplies, hire assistance or labor, or make repairs or alterations in the real property;

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

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

(A) selling or otherwise disposing of the shares or obligations;

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

(C) voting the shares or obligations in person or by proxy;

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

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

Sec. 493. CONSTRUCTION OF POWER RELATING TO TANGIBLE PERSONAL PROPERTY TRANSACTIONS. *In a statutory durable power of attorney, the language conferring general authority with respect to tangible personal property transactions empowers the attorney in fact or agent to:*

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

(2) sell, exchange, convey with or without covenants, release, surrender, mortgage, encumber, pledge, hypothecate, create a security interest in, pawn, grant options concerning, lease or sublet to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) release, assign, satisfy, or enforce by litigation, action, or otherwise a mortgage, security interest, encumbrance, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property; and

(4) do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring against casualty, liability, or loss;

(B) obtaining or regaining possession or protecting the property or interest by litigation, action, or otherwise;

(C) paying, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving from place to place;

(E) storing for hire or on a gratuitous bailment; and

(F) using, altering, and making repairs or alterations.

Sec. 494. CONSTRUCTION OF POWER RELATING TO STOCK AND BOND TRANSACTIONS. *In a statutory durable power of attorney, the language conferring authority with respect to stock and bond transactions empowers the attorney in fact or agent to buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments other than commodity futures contracts and call and put options on stocks and stock indexes, receive certificates and other evidences of ownership with respect to securities, exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.*

Sec. 495. CONSTRUCTION OF POWER RELATING TO COMMODITY AND OPTION TRANSACTIONS. *In a statutory durable power of attorney, the language conferring authority with respect to commodity and option transactions empowers the attorney in fact or agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call and put options on stocks and stock indexes traded on a regulated options exchange and establish, continue, modify, or terminate option accounts with a broker.*

Sec. 496. CONSTRUCTION OF POWER RELATING TO BANKING AND OTHER FINANCIAL INSTITUTION TRANSACTIONS. *In a statutory durable power of attorney, the language conferring authority with respect to banking and other financial institution transactions empowers the attorney in fact or agent to:*

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

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

(3) hire a safe deposit box or space in a vault;

(4) contract to procure other services available from a financial institution as the attorney in fact or agent considers desirable;

(5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to them;

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

(8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security real or personal property of the principal necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order, to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due;

(10) receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

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

Sec. 497. CONSTRUCTION OF POWER RELATING TO BUSINESS OPERATING TRANSACTIONS. In a statutory durable power of attorney, the language conferring authority with respect to business operating transactions empowers the attorney in fact or agent to:

(1) operate, buy, sell, enlarge, reduce, or terminate a business interest;

(2) to the extent that an agent is permitted by law to act for a principal and subject to the terms of the partnership agreement:

(A) perform a duty or discharge a liability or exercise a right, power, privilege, or option that the principal has, may have, or claims to have under a partnership agreement, whether or not the principal is a general or limited partner;

(B) enforce the terms of a partnership agreement by litigation, action, or otherwise; and

(C) defend, submit to arbitration, settle, or compromise litigation or an action to which the principal is a party because of membership in the partnership;

(3) exercise in person or by proxy or enforce by litigation, action, or otherwise a right, power, privilege, or option the principal has or claims to have as the holder of a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise a legal proceeding to which the principal is a party because of a bond, share, or similar instrument;

(4) with respect to a business owned solely by the principal:

(A) continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity, firm, association, or corporation by or on behalf of the principal with respect to the business before execution of the power of attorney;

(B) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

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

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

(v) the mode of engaging, compensating, and dealing with its accountants, attorneys, and other agents and employees;

(C) change the name or form of organization under which the business is operated and enter into a partnership agreement with other persons or organize a corporation to take over all or part of the operation of the business; and

(D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business and control and disburse the money in the operation of the business;

(5) put additional capital into a business in which the principal has an interest;

(6) join in a plan of reorganization, consolidation, or merger of the business;

(7) sell or liquidate a business or part of it at the time and on the terms that the attorney in fact or agent considers desirable;

(8) establish the value of a business under a buy-out agreement to which the principal is a party;

(9) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency, department, or instrumentality or that the attorney in fact or agent considers desirable and make related payments; and

(10) pay, compromise, or contest taxes or assessments and do any other act that the attorney in fact or agent considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

Sec. 498. CONSTRUCTION OF POWER RELATING TO INSURANCE TRANSACTIONS. In a statutory durable power of attorney, the language conferring authority with respect to insurance and annuity transactions empowers the attorney in fact or agent to:

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

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

(3) pay the premium or assessment on or modify, rescind, release, or terminate a contract of insurance or annuity procured by the attorney in fact or agent;

(4) designate the beneficiary of the contract, except that an attorney in fact or agent may be named a beneficiary of the contract or an extension, renewal, or substitute for the contract only to the extent the attorney in fact or agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;

(5) apply for and receive a loan on the security of the contract of insurance or annuity;

(6) surrender and receive the cash surrender value;

(7) exercise an election;

(8) change the manner of paying premiums;

(9) change or convert the type of insurance contract or annuity with respect to which the principal has or claims to have a power described in this section;

(10) change the beneficiary of a contract of insurance or annuity, except that the attorney in fact or agent may be designated a beneficiary only to the extent authorized by Subdivision (4) of this section;

(11) apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(12) collect, sell, assign, hypothecate, borrow on, or pledge the interest of the principal in a contract of insurance or annuity; and

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

Sec. 499. CONSTRUCTION OF POWER RELATING TO ESTATE, TRUST, AND OTHER BENEFICIARY TRANSACTIONS. *In a statutory durable power of attorney, the language conferring authority with respect to estate, trust, and other beneficiary transactions empowers the attorney in fact or agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled, as a beneficiary, to a share or payment, including to:*

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

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

(3) initiate, participate in, or oppose a legal or judicial proceeding to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(4) initiate, participate in, or oppose a legal or judicial proceeding to remove, substitute, or surcharge a fiduciary;

(5) conserve, invest, disburse, or use anything received for an authorized purpose; and

(6) transfer all or part of an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor.

Sec. 500. CONSTRUCTION OF POWER RELATING TO CLAIMS AND LITIGATION. *In a statutory durable power of attorney, the language conferring general authority with respect to claims and litigation empowers the attorney in fact or agent to:*

(1) assert and prosecute before a court or administrative agency a claim, a claim for relief, a counterclaim, or an offset or defend against an individual, a legal entity, or a government, including suits to recover property or other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims, intervene in an action or litigation, and act as amicus curiae;

(3) in connection with an action or litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

(4) in connection with an action or litigation, perform any lawful act the principal could perform, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and binding of the principal in litigation;

(5) submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

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

(7) act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, concerning the principal or some other person, with respect to a reorganization proceeding or a receivership or application for the appointment of a

receiver or trustee that affects an interest of the principal in real or personal property or other thing of value; and

(8) pay a judgment against the principal or a settlement made in connection with a claim or litigation and receive and conserve money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Sec. 501. CONSTRUCTION OF POWER RELATING TO PERSONAL AND FAMILY MAINTENANCE. In a statutory durable power of attorney, the language conferring authority with respect to personal and family maintenance empowers the attorney in fact or agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract, or paying the operating costs, including interest, amortization payments, repairs, and taxes on premises owned by the principal and occupied by those individuals;

(2) provide for the individuals described by Subdivision (1) of this section normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) pay necessary medical, dental, and surgical care, hospitalization, and custodial care for the individuals described by Subdivision (1) of this section;

(4) continue any provision made by the principal, for the individuals described by Subdivision (1) of this section, for automobiles or other means of transportation, including registering, licensing, insuring, and replacing the automobiles or other means of transportation;

(5) maintain or open charge accounts for the convenience of the individuals described by Subdivision (1) of this section and open new accounts the attorney in fact or agent considers desirable to accomplish a lawful purpose; and

(6) continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or to continue contributions to those organizations.

Sec. 502. CONSTRUCTION OF POWER RELATING TO BENEFITS FROM CERTAIN GOVERNMENTAL PROGRAMS OR CIVIL OR MILITARY SERVICE. In a statutory durable power of attorney, the language conferring authority with respect to benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service empowers the attorney in fact or agent to:

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States, a foreign government, or a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described by Section 501(1) of this code, and for shipment of their household effects;

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

(3) prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive; and

(5) receive the financial proceeds of a claim of the type described in this section and conserve, invest, disburse, or use anything received for a lawful purpose.

Sec. 503. CONSTRUCTION OF POWER RELATING TO RETIREMENT PLAN TRANSACTIONS. In a statutory durable power of attorney, the language conferring authority with respect to retirement plan transactions empowers the attorney in fact or

agent to do any lawful act the principal may do with respect to a transaction relating to a retirement plan, including to:

- (1) apply for service or disability retirement benefits;
- (2) select payment options under any retirement plan in which the principal participates, including plans for self-employed individuals;
- (3) designate or change the designation of a beneficiary or benefits payable by a retirement plan, except that an attorney in fact or agent may be named a beneficiary only to the extent the attorney in fact or agent was a named beneficiary under the retirement plan before the durable power of attorney was executed;
- (4) make voluntary contributions to retirement plans if authorized by the plan;
- (5) exercise the investment powers available under any self-directed retirement plan;
- (6) make "rollovers" of plan benefits into other retirement plans;
- (7) borrow from, sell assets to, and purchase assets from retirement plans if authorized by the plan;
- (8) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed;
- (9) receive, endorse, and cash payments from a retirement plan;
- (10) waive the right of the principal to receive all or a portion of benefits payable by a retirement plan; and
- (11) request and receive information relating to the principal from retirement plan records.

Sec. 504. **CONSTRUCTION OF POWER RELATING TO TAX MATTERS.** In a statutory durable power of attorney, the language conferring authority with respect to tax matters empowers the attorney in fact or agent to:

- (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Section 2032A, Internal Revenue Code of 1986 (26 U.S.C. Section 2032A), closing agreements, and any power of attorney form required by the Internal Revenue Service or other taxing authority with respect to a tax year on which the statute of limitations has not run and 25 tax years following that tax year;
- (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- (3) exercise any election available to the principal under federal, state, local, or foreign tax law; and
- (4) act for the principal in all tax matters for all periods before the Internal Revenue Service and any other taxing authority.

Sec. 505. **EXISTING INTEREST; FOREIGN INTERESTS.** The powers described in Sections 492 through 504 of this code may be exercised equally with respect to an interest the principal has at the time the durable power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the durable power of attorney is executed in this state.

Sec. 506. **UNIFORMITY OF APPLICATION AND CONSTRUCTION.** This chapter shall be applied and construed to effect its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

SECTION 2. Section 36A, Probate Code, is repealed. A power of attorney executed in compliance with that section before the effective date of this Act is valid according to the terms of that section as it existed at the time of the execution, and that section is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1993.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on February 18, 1993, by a viva-voce vote; the Senate concurred in House amendments on April 15, 1993, by a viva-voce vote; passed the House, with amendments, on March 25, 1993, by a non-record vote.

Approved April 29, 1993.

Effective Sept. 1, 1993.