

FOR DISCUSSION ONLY

Draft Report

The Proposed Mississippi Uniform Power of Attorney Act

2013 Secretary of State Business Law Reform Study Groups
Trust Law Study Group

Uniform Power of Attorney Act Task Force

Prepared For:
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1. Statement of the problem area

General Overview

Powers of Attorney are commonly used by many Mississippians to conduct all types of business. These documents provide a convenient and cost effective way to grant authority to act on one's behalf. Unfortunately, the usefulness of a power of attorney is dependent on the document being accepted. Because businesses and financial institutions are being faced with more and more regulations and oversight, they have become extremely cautious in accepting and honoring a power of attorney. Coupled with the fact that the current structure of the law in Mississippi does not provide sufficient protection to businesses and financial institutions which accept and rely on a power of attorney for their authority to take certain actions, many businesses and financial institutions are refusing to accept a power of attorney. Legislation is needed to increase the acceptance of powers of attorneys while also adequately protecting institutions from claims arising from the acceptance of a power of attorney.

Development of the Uniform Power of Attorney Act

Adopted by the Uniform Law Commission in 2006, the Uniform Power of Attorney Act replaces the 1979 Uniform Durable Power of Attorney Act, on which Mississippi's existing durable powers of attorney law is largely based. According the drafters of the Uniform Power of Attorney Act, the purpose was to develop a uniform act that "strikes a balance between the need for flexibility and acceptance of an agent's authority [by third parties] and the need to prevent and redress financial abuse."

Since its adoption in 2006, the Uniform Power of Attorney Act has been adopted in 14 states and has been endorsed by the AARP and the American Bar Association.

Consideration of Uniform Power of Attorney Act Mississippi

During the 2013 Legislative Session, the House Judiciary A Committee adopted the Uniform Power of Attorney Act as a committee substitute to House Bill 468. The House passed the bill by a vote of 119-0. After House Bill 468 was referred to the Senate, the Senate Judiciary recommended additional study of the Uniform Power of Attorney Act before the next legislative session. The Mississippi Secretary of State's Office offered to facilitate the review through its Business Law Reform Study Groups, annual working groups of Mississippi professionals who examine Mississippi's business laws and make recommendations to the Legislature.

2. History of the Uniform Power of Attorney Act Task Force Project

The Uniform Power of Attorney Act Task Force ("Task Force") began meeting in May 2013. Pete Cajoleas, Senior Vice President of Regions Financial and current chair of the Estates and Trusts Section of the Mississippi Bar, agreed to chair the Task Force. Other members of the Task Force were Jamie Houston, Watkins & Eager; David Cleland, Bank Plus; David Webb,

Baker Donelson; John Keilholz, Hancock Bank; and Julie Swain, BancorpSouth. Attorneys from the Secretary of State's Policy and Research Division provided additional support. Gordon Fellows, Vice-President of Governmental Affairs for the Mississippi Bankers Association, served as a liaison between the Task Force and Bankers Association and participated in several of the Task Force conference calls.

The Task Force's specific goals were to review House Bill 468 and make any needed revisions for potential reintroduction in 2014. The Task Force began by reviewing the various non-uniform provisions in other states. The Task Force also considered the concerns raised by stakeholders during the Legislature's consideration of House Bill 468 in 2013.

During its review, the Task Force sought input of the Mississippi Bankers Association, specifically the Bank Attorneys Committee of the Bankers Association. Several suggestions from the Bank Attorneys Committee were provided and incorporated into the Task Force's proposal. Please see the appendix for the proposed language of the Mississippi Uniform Power of Attorney Act.

3. Summary of Recommendations

The draft Uniform Power of Attorney Act contains four (4) articles.

Article 1 addresses general provisions and definitions. It states that a power of attorney is durable unless the document expressly provides for termination by the incapacity of the principal. This article provides the rules for creating a power of attorney and the effect of a court later appointing a conservator or guardian. In that situation, the power of attorney and authority of an agent is not terminated simply by the appointment of a conservator or guardian, but may be terminated by the court. Detailed rules are provided for the termination of a power of attorney or agent's authority under a power of attorney. Importantly, a third party who accepts and acts on an acknowledged power of attorney, without knowledge that it has been terminated, is not liable for any damage to the principal. Also, a power of attorney is not revoked by a subsequent power of attorney unless the later document expressly revokes the earlier power of attorney or all previous powers of attorney. Article 1 includes guidelines for co-agents and the duties of agents.

Article 2 provides a list of actions that an agent may undertake for a principal only if authority is expressly granted in the power of attorney. A principal may incorporate by reference the list of powers that must be specifically granted and may also modify such list in the power of attorney. Article 2 also contains instructive provisions on the general authority granted to an agent. A non-uniform provision which has been added to Article 2 requires an attorney drafting a power of attorney to put his or her name, address, phone number and bar number at the bottom of the power of attorney. Also, Article 2 cites to section 89-1-29 which requires a power of

attorney used with regard to a homestead to designate an agent other than the spouse of the principle.

Article 3 provides the statutory forms for powers of attorney and the agent's certification. The form power of attorney provides detailed sections to address liability, powers, limitations, and a number of other issues. The form also contains a number of optional provisions to assist drafters dealing with different situations.

Article 4 contains miscellaneous provisions regarding uniformity among the states and electronic signatures. The effective date of the act is July 1, 2014, and the act will apply to all powers of attorney created on or after the effective date. The act applies to judicial proceedings instituted before July 1, 2014, unless the court finds application of the act would substantially interfere with the proceedings or the rights of a party. Finally, the Act repeals the Uniform Durable Power of Attorney Act, Sections 87-3-101 through 87-1-113.

An important aspect of the act, which is contained in Article 1, is the requirement to accept an acknowledged power of attorney under most circumstances. Refusal is generally limited to situations where the third party knows the power of attorney is terminated, void, or invalid, or if the third party knows the requested action exceeds the agent's authority. To promote the acceptance of acknowledged powers of attorney strong protections are given to third parties who rely on an acknowledged power of attorney unless actual knowledge exists that the document or agent's authority is void, terminated, invalid or exceeded. Third parties are also given the option to request an opinion of counsel before accepting a power of attorney. If such is requested, the agent or principal must provide the opinion of counsel at their own expense and the third party must approve the attorney providing the opinion.

4. Conclusion

After countless hours of review of different legislation and after discussions with other interested parties, the Uniform Power of Attorney Act Task Force has drafted a proposed Mississippi Uniform Power of Attorney Act. This proposal takes the best aspects of the uniform law and non-uniform provisions used in other states. It also incorporates the suggestions of trust professionals in Mississippi to make it a Mississippi-specific statute.

Adopting this proposal will make the use of powers of attorney much easier for both those presenting powers of attorneys and those expected to accept a power of attorney.

Appendix

Draft Mississippi Uniform Power of Attorney Act

1 AN ACT TO CREATE THE UNIFORM POWER OF ATTORNEY ACT; TO DEFINE
2 CERTAIN TERMS; TO PROVIDE FOR THE APPLICABILITY OF THIS ACT; TO
3 PROVIDE FOR THE EXECUTION, VALIDITY AND MEANING OF A POWER OF
4 ATTORNEY; TO PROVIDE FOR THE NOMINATION OF CONSERVATORS OR
5 GUARDIANS; TO PROVIDE FOR WHEN A POWER OF ATTORNEY IS EFFECTIVE;
6 TO PROVIDE FOR THE TERMINATION OF A POWER OF ATTORNEY OR AN
7 AGENT'S AUTHORITY; TO PROVIDE THE DUTIES AND RESPONSIBILITIES OF
8 AGENTS; TO PROVIDE FOR THE EXONERATION OF AN AGENT; TO PROVIDE
9 FOR JUDICIAL RELIEF; TO PROVIDE FOR THE RESIGNATION OF AGENTS
10 AND NOTICE THEREOF; TO PROVIDE FOR ACCEPTANCE AND RELIANCE UPON
11 AN ACKNOWLEDGED POWER OF ATTORNEY; TO PROVIDE FOR LIABILITY FOR
12 REFUSAL TO ACCEPT AN ACKNOWLEDGED POWER OF ATTORNEY; TO PROVIDE
13 AUTHORITY THAT REQUIRES SPECIFIC GRANT; TO PROVIDE FOR THE
14 INCORPORATION AND CONSTRUCTION OF AUTHORITY; TO PROVIDE FOR THE
15 AUTHORITY OF AN AGENT AND THE USES THEREFOR; TO PROVIDE FORMS
16 FOR POWER OF ATTORNEY; TO PROVIDE FOR AN AGENT'S CERTIFICATION;
17 TO REPEAL SECTIONS 87-3-101, 87-3-103, 87-3-105, 87-3-107, 87-3-
18 109, 87-3-111 AND 87-3-113, MISSISSIPPI CODE OF 1972, WHICH
19 PROVIDE THE UNIFORM DURABLE POWER OF ATTORNEY ACT; AND FOR
20 RELATED PURPOSES.

21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF
22 MISSISSIPPI:

23 **SECTION 1.** The following shall be codified in Chapter 3 of
24 Title 87, Mississippi Code of 1972:

25 **ARTICLE 1**

26 Section 101. **Short title.** This act may be cited as the
27 Uniform Power of Attorney Act.

28 Section 102. **Definitions.** In this act:

29 (1) "Agent" means a person granted authority to act
30 for a principal under a power of attorney, whether denominated
31 an agent, attorney-in-fact, or otherwise. The term includes an
32 original agent, coagent, successor agent, and a person to which
33 an agent's authority is delegated. The term does not include a

34 trustee and does not include an authorized signer on a deposit
35 account.

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

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

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

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

44 (A) Has an impairment in the ability to receive
45 and evaluate information or make or communicate decisions even
46 with the use of technological assistance; or

47 (B) Is:

48 (i) Missing;

49 (ii) Detained, including incarcerated in a
50 penal system; or

51 (iii) Outside the United States and unable
52 to return.

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

58 (7) "Power of attorney" means a writing or other
59 record that grants authority to an agent to act in the place of

60 the principal, whether or not the term power of attorney is
61 used. Specifically excluded from the definition of power of
62 attorney is a health care power of attorney, a trust, and a
63 writing or record granting the authority to be an authorized
64 signer on a deposit account or bank account.

65 (8) "Presently exercisable general power of
66 appointment," with respect to property or a property interest
67 subject to a power of appointment, means power exercisable at
68 the time in question to vest absolute ownership in the principal
69 individually, the principal's estate, the principal's creditors,
70 or the creditors of the principal's estate. The term includes a
71 power of appointment not exercisable until the occurrence of a
72 specified event, the satisfaction of an ascertainable standard,
73 or the passage of a specified period only after the occurrence
74 of the specified event, the satisfaction of the ascertainable
75 standard, or the passage of the specified period. The term does
76 not include a power exercisable in a fiduciary capacity or only
77 by will.

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

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

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

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

88 (A) To execute or adopt a tangible symbol; or

89 (B) To attach to or logically associate with the
90 record an electronic sound, symbol, or process.

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

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

100 Section 103. **Applicability.** This act applies to all
101 powers of attorney except:

102 (1) A power to the extent it is coupled with an
103 interest in the subject of the power, including a power given to
104 or for the benefit of a creditor in connection with a credit
105 transaction;

106 (2) A power to make health care decisions;

107 (3) A proxy or other delegation to exercise voting
108 rights or management rights with respect to an entity;

109 (4) A power created on a form prescribed by a
110 government or governmental subdivision, agency, or
111 instrumentality for a governmental purpose;

112 (5) A power, delegation or grant of authority under a
113 trust or will;

114 (6) A power, delegation or grant of authority under a
115 court order to a conservator, guardian, executor, executrix,
116 administrator, administratrix or other court appointed
117 fiduciary; and

118 (7) A power, delegation or grant of authority under a
119 writing or record to an authorized signer on a deposit account.

120 Section 104. **Power of attorney is durable.** A power of
121 attorney created under this act is durable unless it expressly
122 provides that it is terminated by the incapacity of the
123 principal.

124 Section 105. **Execution of power of attorney.** A power of
125 attorney must be signed by the principal or in the principal's
126 conscious presence by another individual directed by the
127 principal to sign the principal's name on the power of
128 attorney. A signature on a power of attorney is presumed to be
129 genuine if the principal acknowledges the signature before a
130 notary public or other individual authorized by law to take
131 acknowledgments.

132 Section 106. **Validity of power of attorney.**

133 (a) A power of attorney executed in this state on or after
134 July 1, 2013, is valid if its execution complies with Section
135 105.

136 (b) A power of attorney executed in this state before July
137 1, 2013, is valid if its execution complied with the law of this
138 state as it existed at the time of execution.

139 (c) A power of attorney executed other than in this state
140 is valid in this state if, when the power of attorney was
141 executed, the execution complied with:

142 (1) The law of the jurisdiction that determines the
143 meaning and effect of the power of attorney pursuant to Section
144 107; or

145 (2) The requirements for a military power of attorney
146 pursuant to 10 USCS Section 1044b.

147 (d) Except as otherwise provided by statute other than
148 this act, a photocopy or electronically transmitted copy of an
149 original power of attorney has the same effect as the original.

150 Section 107. **Meaning and effect of power of attorney.**

151 The meaning and effect of a power of attorney is determined
152 by the law of the jurisdiction indicated in the power of
153 attorney and, in the absence of an indication of jurisdiction,
154 by the law of the jurisdiction in which the power of attorney
155 was executed.

156 Section 108. **Nomination of conservator or guardian;
157 relation of agent to court-appointed fiduciary.**

158 (a) In a power of attorney, a principal may nominate a
159 conservator or guardian of the principal's estate or guardian of
160 the principal's person for consideration by the court if
161 protective proceedings for the principal's estate or person are

162 begun after the principal executes the power of
163 attorney. Except for good cause shown or disqualification, the
164 court shall make its appointment in accordance with the
165 principal's most recent nomination. If the power of attorney
166 names a conservator or a guardian but does not specify whether
167 the nomination applies to the principal's estate or to the
168 principal's person, the nomination applies to both the
169 principal's estate and the principal's person.

170 (b) If, after a principal executes a power of attorney, a
171 court appoints a conservator or guardian of the principal's
172 estate or other fiduciary charged with the management of some or
173 all of the principal's property, the agent is accountable to the
174 fiduciary as well as to the principal. The power of attorney is
175 not terminated and the agent's authority continues unless
176 limited, suspended, or terminated by the court. The limitation,
177 suspension or termination is not effective as to a third party
178 until the third party has actual knowledge of the appointment of
179 a conservator, guardian or other fiduciary and has a reasonable
180 time to act on such knowledge.

181 Section 109. **When power of attorney is effective.**

182 (a) A power of attorney is effective when executed unless
183 the principal provides in the power of attorney that it becomes
184 effective at a future date or upon the occurrence of a future
185 event or contingency.

186 (b) If a power of attorney becomes effective upon the
187 occurrence of a future event or contingency, the principal, in

188 the power of attorney, may authorize one or more persons
189 including the agent to determine in a writing or other record
190 that the event or contingency has occurred.

191 (c) If a power of attorney becomes effective upon the
192 principal's incapacity and the principal has not authorized a
193 person to determine whether the principal is incapacitated, or
194 the person authorized is unable or unwilling to make the
195 determination, the power of attorney becomes effective upon a
196 determination in a writing or other record by:

197 (1) A physician or licensed psychologist that the
198 principal is incapacitated within the meaning of Section
199 102(5)(A); or

200 (2) An attorney at law, a judge, or an appropriate
201 governmental official that the principal is incapacitated within
202 the meaning of Section 102(5)(B).

203 (d) A person authorized by the principal in the power of
204 attorney to determine that the principal is incapacitated may
205 act as the principal's personal representative pursuant to the
206 Health Insurance Portability and Accountability Act, Sections
207 1171 through 1179 of the Social Security Act, 42 USCS Section
208 1320d and applicable regulations, to obtain access to the
209 principal's health-care information and communicate with the
210 principal's health-care provider.

211 Section 110. Termination of power of attorney or agent's
212 **authority.**

213 (a) A power of attorney terminates when:

214 (1) The principal dies;

215 (2) The principal becomes incapacitated, if the power
216 of attorney is not durable;

217 (3) The principal revokes the power of attorney;

218 (4) The power of attorney provides that it
219 terminates;

220 (5) The purpose of the power of attorney is
221 accomplished; or

222 (6) The principal revokes the agent's authority or
223 the agent dies, becomes incapacitated, or resigns, and the power
224 of attorney does not provide for another agent to act under the
225 power of attorney.

226 (b) An agent's authority terminates when:

227 (1) The principal revokes the authority;

228 (2) The agent dies, becomes incapacitated, or
229 resigns;

230 (3) An action is filed for the dissolution or
231 annulment of the agent's marriage to the principal or their
232 legal separation, unless the power of attorney otherwise
233 provides; or

234 (4) The power of attorney terminates.

235 (c) Unless the power of attorney otherwise provides, an
236 agent's authority is exercisable until the authority terminates
237 under subsection (b), notwithstanding a lapse of time since the
238 execution of the power of attorney.

239 (d) Termination of an agent's authority or of a power of
240 attorney is not effective as to the agent or another person
241 that, without actual knowledge of the termination, acts under
242 the power of attorney. An act so performed, unless otherwise
243 invalid or unenforceable, binds the principal and the
244 principal's successors in interest. A third party may continue
245 to act on a power of attorney and/or at an agent's direction
246 until that third party has actual knowledge of the termination
247 of the power of attorney or of the agent's authority and has had
248 a reasonable time to act on that knowledge.

249 (e) Incapacity of the principal of a power of attorney
250 that is not durable does not revoke or terminate the power of
251 attorney as to an agent or other person that, without actual
252 knowledge of the incapacity, acts under the power of
253 attorney. An act so performed, unless otherwise invalid or
254 unenforceable, binds the principal and the principal's
255 successors in interest.

256 (f) The execution of a power of attorney does not revoke a
257 power of attorney previously executed by the principal unless
258 the subsequent power of attorney provides that the previous
259 power of attorney is revoked or that all other powers of
260 attorney are revoked. If the subsequent power of attorney does
261 not expressly revoke the previous power of attorney, the
262 previous power of attorney remains in full force and effect.

263 Section 111. **Coagents and successor agents.**

264 (a) A principal may designate two or more persons to act
265 as coagents. Unless the power of attorney otherwise provides,
266 each coagent may exercise its authority independently. If a
267 power of attorney requires that two or more persons act together
268 as co-agents, notwithstanding the requirement that they act
269 together, one or more of the agents may delegate to a co-agent
270 the authority to conduct banking transactions as provided by
271 law. In the event of such delegation, a third party, without
272 liability, may rely upon such delegation to conduct banking
273 transactions.

274 (b) A principal may designate one or more successor agents
275 to act if an agent resigns, dies, becomes incapacitated, is not
276 qualified to serve, or declines to serve. A principal may grant
277 authority to designate one or more successor agents to an agent
278 or other person designated by name, office, or function. Unless
279 the power of attorney otherwise provides, a successor agent:

280 (1) Has the same authority as that granted to the
281 original agent; and

282 (2) May not act until all predecessor agents have
283 resigned, died, become incapacitated, are no longer qualified to
284 serve, or have declined to serve.

285 (c) Except as otherwise provided in the power of attorney
286 and subsection (d), an agent that does not participate in or
287 conceal a breach of fiduciary duty committed by another agent,
288 including a predecessor agent, is not liable for the actions of
289 the other agent.

290 (d) An agent that has actual knowledge of a breach or
291 imminent breach of fiduciary duty by another agent shall notify
292 the principal and, if the principal is incapacitated, take any
293 action reasonably appropriate in the circumstances to safeguard
294 the principal's best interest. An agent that fails to notify
295 the principal or take action as required by this subsection is
296 liable for the reasonably foreseeable damages that could have
297 been avoided if the agent had notified the principal or taken
298 such action.

299 Section 112. **Reimbursement and compensation of agent.**

300 Unless the power of attorney otherwise provides, an agent
301 is entitled to reimbursement of expenses reasonably incurred on
302 behalf of the principal and to compensation that is reasonable
303 under the circumstances.

304 Section 113. **Agent's acceptance.** Except as otherwise
305 provided in the power of attorney, a person accepts appointment
306 as an agent under a power of attorney by exercising authority or
307 performing duties as an agent or by any other assertion or
308 conduct indicating acceptance.

309 Section 114. **Agent's duties.**

310 (a) Notwithstanding provisions in the power of attorney,
311 an agent that has accepted appointment shall:

312 (1) Act in accordance with the principal's reasonable
313 expectations to the extent actually known by the agent and,
314 otherwise, in the principal's best interest;

315 (2) Act in good faith; and

316 (3) Act only within the scope of authority granted in
317 the power of attorney.

318 (b) Except as otherwise provided in the power of attorney,
319 an agent that has accepted appointment shall:

320 (1) Act loyally for the principal's benefit;

321 (2) Act so as not to create a conflict of interest
322 that impairs the agent's ability to act impartially in the
323 principal's best interest;

324 (3) Act with the care, competence, and diligence
325 ordinarily exercised by agents in similar circumstances;

326 (4) Keep a record of all receipts, disbursements, and
327 transactions made on behalf of the principal;

328 (5) Cooperate with a person that has authority to
329 make health-care decisions for the principal to carry out the
330 principal's reasonable expectations to the extent actually known
331 by the agent and, otherwise, act in the principal's best
332 interest; and

333 (6) Attempt to preserve the principal's estate plan,
334 to the extent actually known by the agent, if preserving the
335 plan is consistent with the principal's best interest based on
336 all relevant factors, including:

337 (A) The value and nature of the principal's
338 property;

339 (B) The principal's foreseeable obligations and
340 need for maintenance;

341 (C) Minimization of taxes, including income,
342 estate, inheritance, generation-skipping transfer, and gift
343 taxes; and

344 (D) Eligibility for a benefit, a program, or
345 assistance under a statute or regulation.

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

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

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

360 (f) Absent a breach of duty to the principal, an agent is
361 not liable if the value of the principal's property declines.

362 (g) An agent that exercises authority to delegate to
363 another person the authority granted by the principal or that
364 engages another person on behalf of the principal is not liable
365 for an act, error of judgment, or default of that person if the

366 agent exercises care, competence, and diligence in selecting and
367 monitoring the person.

368 (h) Except as otherwise provided in the power of attorney,
369 an agent is not required to disclose receipts, disbursements, or
370 transactions conducted on behalf of the principal unless ordered
371 by a court or requested by the principal, a guardian, a
372 conservator, another fiduciary acting for the principal, a
373 governmental agency having authority to protect the welfare of
374 the principal, or, upon the death of the principal, by the
375 personal representative or successor in interest of the
376 principal's estate. If so requested, within thirty (30) days
377 the agent shall comply with the request or provide a writing or
378 other record substantiating why additional time is needed and
379 shall comply with the request within an additional thirty (30)
380 days.

381 Section 115. **Exoneration of agent.** A provision in a power
382 of attorney relieving an agent of liability for breach of duty
383 is binding on the principal and the principal's successors in
384 interest except to the extent the provision:

385 (1) Relieves the agent of liability for breach of
386 duty committed dishonestly or with reckless indifference to the
387 purposes of the power of attorney or the best interest of the
388 principal; or

389 (2) Was inserted as a result of an abuse of a
390 confidential or fiduciary relationship with the principal.

391 Section 116. **Judicial relief.**

392 (a) The following persons may petition a court to construe
393 a power of attorney or review the agent's conduct, and grant
394 appropriate relief:

395 (1) The principal or the agent;

396 (2) A guardian, conservator, or other fiduciary
397 acting for the principal;

398 (3) A person authorized to make health-care decisions
399 for the principal;

400 (4) The principal's spouse, parent, or descendant;

401 (5) An individual who would qualify as a presumptive
402 heir of the principal;

403 (6) A person named as a beneficiary to receive any
404 property, benefit, or contractual right on the principal's death
405 or as a beneficiary of a trust created by or for the principal
406 that has a financial interest in the principal's estate;

407 (7) A governmental agency having regulatory authority
408 to protect the welfare of the principal;

409 (8) The principal's caregiver or another person that
410 demonstrates sufficient interest in the principal's welfare; and

411 (9) A person asked to accept the power of attorney.

412 (b) Upon motion by the principal, the court shall dismiss
413 a petition filed under this section, unless the court finds that
414 the principal lacks capacity to revoke the agent's authority or
415 the power of attorney.

416 Section 117. **Agent's liability.** An agent that violates
417 this act is liable to the principal or the principal's
418 successors in interest for the amount required to:

419 (1) Restore the value of the principal's property to
420 what it would have been had the violation not occurred; and

421 (2) Reimburse the principal or the principal's
422 successors in interest for the attorney's fees and costs paid on
423 the agent's behalf.

424 Section 118. **Agent's resignation; notice.** Unless the
425 power of attorney provides a different method for an agent's
426 resignation, an agent may resign by giving notice to the
427 principal and, if the principal is incapacitated:

428 (1) To the conservator or guardian, if one has been
429 appointed for the principal, and a coagent or successor agent;
430 or

431 (2) If there is no person described in paragraph (1),
432 to:

433 (A) The principal's caregiver;

434 (B) Another person reasonably believed by the
435 agent to have sufficient interest in the principal's welfare; or

436 (C) A governmental agency having authority to
437 protect the welfare of the principal.

438 Section 119. **Acceptance of and reliance upon acknowledged**
439 **power of attorney.**

440 (a) For purposes of this section and Section 120,
441 "acknowledged" means purportedly verified before a notary public
442 or other individual authorized to take acknowledgements.

443 (b) A person that accepts an acknowledged power of
444 attorney without actual knowledge that the signature is not
445 genuine may rely upon the presumption under Section 105 that the
446 signature is genuine.

447 (c) A person that accepts an acknowledged power of
448 attorney without actual knowledge that the power of attorney is
449 void, invalid, or terminated, that the purported agent's
450 authority is void, invalid, or terminated, or that the agent is
451 exceeding or improperly exercising the agent's authority may
452 rely upon the power of attorney as if the power of attorney were
453 genuine, valid and still in effect, the agent's authority were
454 genuine, valid and still in effect, and the agent had not
455 exceeded and had properly exercised the authority. A person that
456 accepts an acknowledged power of attorney shall be fully
457 exonerated from all liability to the principal and any other
458 person for any and all actions taken or omitted at the request,
459 order or instruction of an agent under the power of attorney
460 without actual knowledge that (i) the power of attorney is void,
461 invalid or terminated, (ii) the purported agent's authority is
462 void, invalid or terminated, or (iii) the agent is exceeding his
463 or her authority.

464 (d) A person that is asked to accept an acknowledged power
465 of attorney may request, and rely upon, without further
466 investigation:

467 (1) An agent's certification under penalty of perjury
468 of any factual matter concerning the principal, agent, or power
469 of attorney;

470 (2) An English translation of the power of attorney
471 if the power of attorney contains, in whole or in part, language
472 other than English; and

473 (3) An opinion of counsel, who is approved by such
474 person, as to any matter of law concerning the power of attorney
475 if the person making the request provides in a writing or other
476 record the reason for the request.

477 (e) An English translation or an opinion of counsel
478 requested under this section must be provided at the principal's
479 expense unless the request is made more than seven (7) business
480 days after the power of attorney is presented for acceptance.

481 (f) For purposes of this section and Section 120, a person
482 that conducts activities through employees is without actual
483 knowledge of a fact relating to a power of attorney, a
484 principal, or an agent if the employee conducting the
485 transaction involving the power of attorney is without actual
486 knowledge of the fact.

487 Section 120. **Liability for refusal to accept acknowledged**
488 **power of attorney.**

489 (a) Except as otherwise provided in subsection (b):

490 (1) A person shall either accept an acknowledged
491 power of attorney or request a certification, a translation, or
492 an opinion of counsel under Section 119(d) no later than seven
493 (7) business days after presentation of the power of attorney
494 for acceptance;

495 (2) If a person requests a certification, a
496 translation, or an opinion of counsel under Section 119(d), the
497 person shall accept the power of attorney no later than five (5)
498 business days after receipt of the certification, translation,
499 or opinion of counsel; and

500 (3) A person may not require an additional or
501 different form of power of attorney for authority granted in the
502 power of attorney presented.

503 (b) A person is not required to accept an acknowledged
504 power of attorney if:

505 (1) The person is not otherwise required to engage in
506 a transaction with the principal in the same circumstances;

507 (2) Engaging in a transaction with the agent or the
508 principal in the same circumstances would be inconsistent with
509 federal law;

510 (3) The person has actual knowledge of the
511 termination of the agent's authority or of the power of attorney
512 before exercise of the power;

513 (4) A request for a certification, a translation, or
514 an opinion of counsel under Section 119(d) is refused or the
515 certification, translation or opinion of counsel does not

516 support acceptance of the power of attorney for the transaction
517 or purpose for which it was presented;

518 (5) The person has a reasonable basis to believe
519 that the power is not valid or that the agent does not have the
520 authority to perform the act requested, whether or not a
521 certification, a translation, or an opinion of counsel under
522 Section 119(d) has been requested or provided; or

523 (6) The person makes, or has actual knowledge that
524 another person has made, a report under the Mississippi
525 Vulnerable Adults Act or a report to the Department of Human
526 Services or to law enforcement stating a good faith belief that
527 the principal may be subject to physical or financial abuse,
528 neglect, exploitation, or abandonment by the agent or a person
529 acting for or with the agent.

530 (c) A person that refuses in violation of this section to
531 accept an acknowledged power of attorney is subject to a court
532 order mandating acceptance of the power of attorney. In any such
533 action or proceeding, the prevailing party shall be entitled to
534 recovery of reasonable attorney's fees and costs, and expenses
535 incurred.

536 (d) For purposes of this section and Section 119, each
537 transaction requested, conducted or attempted to be conducted by
538 the agent shall be deemed to be a separate presentation of the
539 power of attorney for acceptance.

540 Section 121. **Principles of law and equity.** Unless
541 displaced by a provision of this act, the principles of law and
542 equity supplement this act.

543 Section 122. **Laws applicable to financial institutions and**
544 **entities.** Except as expressly provided in this act, this act
545 does not supersede any other law applicable to financial
546 institutions or other entities, and the other law controls if
547 inconsistent with this act.

548 Section 123. **Remedies under other law.** Except as
549 expressly provided in this act, the remedies under this act are
550 not exclusive and do not abrogate any right or remedy under the
551 law of this state other than this act.

552 Section 124. The exoneration from liability provided to a
553 person under Section 119(c) expressly overrides Section 75-3-
554 307. To the extent of any conflict or inconsistency between
555 this act and Section 75-3-307, this act prevails; it being the
556 intent of this act to exonerate from liability any person for
557 actions taken or omitted at the request, instruction or order of
558 an agent under a power of attorney without actual knowledge that
559 (i) the power of attorney is void, invalid or terminated, (ii)
560 the purported agent's authority is void, invalid or terminated,
561 or (iii) the agent is exceeding his or her authority.

562

563 **ARTICLE 2**

564 **AUTHORITY**

565 Section 201. **Authority that requires specific grant; grant**
566 **of general authority.**

567 (a) An agent under a power of attorney may do the
568 following on behalf of the principal or with the principal's
569 property only if the power of attorney expressly grants the
570 agent the authority and exercise of the authority is not
571 otherwise prohibited by another agreement or instrument to which
572 the authority or property is subject:

573 (1) Create, amend, revoke, or terminate an inter
574 vivos trust;

575 (2) Make a gift;

576 (3) Create or change rights of survivorship;

577 (4) Create or change a beneficiary designation;

578 (5) Delegate authority granted under the power of
579 attorney;

580 (6) Waive the principal's right to be a beneficiary
581 of a joint and survivor annuity, including a survivor benefit
582 under a retirement plan;

583 (7) Exercise fiduciary powers that the principal has
584 authority to delegate;

585 (8) Disclaim property, including a power of
586 appointment; or

587 (9) Make the agent an owner or joint owner of a
588 deposit account.

589 (b) Notwithstanding a grant of authority to do an act
590 described in subsection (a), unless the power of attorney

591 otherwise provides, an agent that is not an ancestor, spouse, or
592 descendant of the principal, may not exercise authority under a
593 power of attorney to create in the agent, or in an individual to
594 whom the agent owes a legal obligation of support, an interest
595 in the principal's property, whether by gift, right of
596 survivorship, beneficiary designation, disclaimer, or otherwise.

597 (c) Subject to subsections (a), (b), (d), and (e), if a
598 power of attorney grants to an agent authority to do all acts
599 that a principal could do, the agent has the general authority
600 described in Sections 204 through 216.

601 (d) Unless the power of attorney otherwise provides, a
602 grant of authority to make a gift is subject to Section 217.

603 (e) Subject to subsections (a), (b), and (d), if the
604 subjects over which authority is granted in a power of attorney
605 are similar or overlap, the broadest authority controls.

606 (f) Authority granted in a power of attorney is
607 exercisable with respect to property that the principal has when
608 the power of attorney is executed or acquires later, whether or
609 not the property is located in this state and whether or not the
610 authority is exercised or the power of attorney is executed in
611 this state.

612 (g) An act performed by an agent pursuant to a power of
613 attorney has the same effect and inures to the benefit of and
614 binds the principal and the principal's successors in interest
615 as if the principal had performed the act.

616 Section 202. **Incorporation of authority.**

617 (a) An agent has authority described in this act if the
618 power of attorney refers to general authority with respect to
619 the descriptive term for the subjects stated in Sections 204
620 through 217 or cites the section in which the authority is
621 described.

622 (b) A reference in a power of attorney to general
623 authority with respect to the descriptive term for a subject in
624 Sections 204 through 217 or a citation to a section of Sections
625 204 through 217 incorporates the entire section as if it were
626 set out in full in the power of attorney.

627 (c) A principal may modify authority incorporated by
628 reference.

629 Section 203. **Construction of authority generally.** Except
630 as otherwise provided in the power of attorney, by executing a
631 power of attorney that incorporates by reference a subject
632 described in Sections 204 through 217 or that grants to an agent
633 authority to do all acts that a principal could do pursuant to
634 Section 201(c), a principal authorizes the agent, with respect
635 to that subject, to:

636 (1) Demand, receive, and obtain by litigation or
637 otherwise, money or another thing of value to which the
638 principal is, may become, or claims to be entitled, and
639 conserve, invest, disburse, or use anything so received or
640 obtained for the purposes intended;

641 (2) Contract in any manner with any person, on terms
642 agreeable to the agent, to accomplish a purpose of a transaction

643 and perform, rescind, cancel, terminate, reform, restate,
644 release, or modify the contract or another contract made by or
645 on behalf of the principal;

646 (3) Execute, acknowledge, seal, deliver, file, or
647 record any instrument or communication the agent considers
648 desirable to accomplish a purpose of a transaction, including
649 creating at any time a schedule listing some or all of the
650 principal's property and attaching it to the power of attorney;

651 (4) Initiate, participate in, submit to alternative
652 dispute resolution, settle, oppose, or propose or accept a
653 compromise with respect to a claim existing in favor of or
654 against the principal or intervene in litigation relating to the
655 claim;

656 (5) Seek on the principal's behalf the assistance of
657 a court or other governmental agency to carry out an act
658 authorized in the power of attorney;

659 (6) Engage, compensate, and discharge an attorney,
660 accountant, discretionary investment manager, expert witness, or
661 other advisor;

662 (7) Prepare, execute, and file a record, report, or
663 other document to safeguard or promote the principal's interest
664 under a statute or regulation;

665 (8) Communicate with any representative or employee
666 of a government or governmental subdivision, agency, or
667 instrumentality, on behalf of the principal;

668 (9) Access communications intended for, and
669 communicate on behalf of the principal, whether by mail,
670 electronic transmission, telephone, or other means; and

671 (10) Do any lawful act with respect to the subject
672 and all property related to the subject.

673 Section 204. **Real property.** (a) Unless the power of
674 attorney otherwise provides, language in a power of attorney
675 granting general authority with respect to real property
676 authorizes the agent to:

677 (1) Demand, buy, lease, receive, accept as a gift or
678 as security for an extension of credit, or otherwise acquire or
679 reject an interest in real property or a right incident to real
680 property;

681 (2) Sell; exchange; convey with or without covenants,
682 representations, or warranties; quitclaim; release; surrender;
683 retain title for security; encumber; partition; consent to
684 partitioning; subject to an easement or covenant; subdivide;
685 apply for zoning or other governmental permits; plat or consent
686 to platting; develop; grant an option concerning; lease;
687 sublease; contribute to an entity in exchange for an interest in
688 that entity; or otherwise grant or dispose of an interest in
689 real property or a right incident to real property;

690 (3) Pledge or mortgage an interest in real property
691 or right incident to real property as security to borrow money
692 or pay, renew, or extend the time of payment of a debt of the
693 principal or a debt guaranteed by the principal;

694 (4) Release, assign, satisfy, or enforce by
695 litigation or otherwise a mortgage, deed of trust, conditional
696 sale contract, encumbrance, lien, or other claim to real
697 property which exists or is asserted;

698 (5) Manage or conserve an interest in real property
699 or a right incident to real property owned or claimed to be
700 owned by the principal, including:

701 (A) Insuring against liability or casualty or
702 other loss;

703 (B) Obtaining or regaining possession of or
704 protecting the interest or right by litigation or otherwise;

705 (C) Paying, assessing, compromising, or
706 contesting taxes or assessments or applying for and receiving
707 refunds in connection with them; and

708 (D) Purchasing supplies, hiring assistance or
709 labor, and making repairs or alterations to the real property;

710 (6) Use, develop, alter, replace, remove, erect, or
711 install structures or other improvements upon real property in
712 or incident to which the principal has, or claims to have, an
713 interest or right;

714 (7) Participate in a reorganization with respect to
715 real property or an entity that owns an interest in or right
716 incident to real property and receive, and hold, and act with
717 respect to stocks and bonds or other property received in a plan
718 of reorganization, including:

719 (A) Selling or otherwise disposing of them;

720 (B) Exercising or selling an option, right of
721 conversion, or similar right with respect to them; and

722 (C) Exercising any voting rights in person or by
723 proxy;

724 (8) Change the form of title of an interest in or
725 right incident to real property; and

726 (9) Dedicate to public use, with or without
727 consideration, easements or other real property in which the
728 principal has, or claims to have, an interest.

729 (b) A power of attorney used by an agent on behalf of a
730 principal concerning a conveyance, transaction or any matter
731 involving real property, including a contract relating thereto,
732 shall be recorded in the land records, or other permanent
733 records for the recordation of powers of attorney, of the
734 chancery clerk of the county in which the real property is
735 located.

736 Section 205. **Tangible personal property.** Unless the power
737 of attorney otherwise provides, language in a power of attorney
738 granting general authority with respect to tangible personal
739 property authorizes the agent to:

740 (1) Demand, buy, receive, accept as a gift or as
741 security for an extension of credit, or otherwise acquire or
742 reject ownership or possession of tangible personal property or
743 an interest in tangible personal property;

744 (2) Sell; exchange; convey with or without covenants,
745 representations, or warranties; quitclaim; release; surrender;

746 create a security interest in; grant options concerning; lease;
747 sublease; or, otherwise dispose of tangible personal property or
748 an interest in tangible personal property;

749 (3) Grant a security interest in tangible personal
750 property or an interest in tangible personal property as
751 security to borrow money or pay, renew, or extend the time of
752 payment of a debt of the principal or a debt guaranteed by the
753 principal;

754 (4) Release, assign, satisfy, or enforce by
755 litigation or otherwise, a security interest, lien, or other
756 claim on behalf of the principal, with respect to tangible
757 personal property or an interest in tangible personal property;

758 (5) Manage or conserve tangible personal property or
759 an interest in tangible personal property on behalf of the
760 principal, including:

761 (A) Insuring against liability or casualty or
762 other loss;

763 (B) Obtaining or regaining possession of or
764 protecting the property or interest, by litigation or otherwise;

765 (C) Paying, assessing, compromising, or
766 contesting taxes or assessments or applying for and receiving
767 refunds in connection with taxes or assessments;

768 (D) Moving the property from place to place;

769 (E) Storing the property for hire or on a
770 gratuitous bailment; and

771 (F) Using and making repairs, alterations, or
772 improvements to the property; and

773 (6) Change the form of title of an interest in
774 tangible personal property.

775 Section 206. **Stocks and bonds.** Unless the power of
776 attorney otherwise provides, language in a power of attorney
777 granting general authority with respect to stocks and bonds
778 authorizes the agent to:

779 (1) Buy, sell, and exchange stocks and bonds;

780 (2) Establish, continue, modify, or terminate an
781 account with respect to stocks and bonds;

782 (3) Pledge stocks and bonds as security to borrow,
783 pay, renew, or extend the time of payment of a debt of the
784 principal;

785 (4) Receive certificates and other evidences of
786 ownership with respect to stocks and bonds; and

787 (5) Exercise voting rights with respect to stocks and
788 bonds in person or by proxy, enter into voting trusts, and
789 consent to limitations on the right to vote.

790 Section 207. **Commodities and options.** Unless the power of
791 attorney otherwise provides, language in a power of attorney
792 granting general authority with respect to commodities and
793 options authorizes the agent to:

794 (1) Buy, sell, exchange, assign, settle, and exercise
795 commodity futures contracts and call or put options on stocks or
796 stock indexes traded on a regulated option exchange; and

797 (2) Establish, continue, modify, and terminate option
798 accounts.

799 Section 208. Banks and other financial

800 **institutions.** Unless the power of attorney otherwise provides,
801 language in a power of attorney granting general authority with
802 respect to banks and other financial institutions authorizes the
803 agent to:

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

806 (2) Establish, modify, and terminate an account or
807 other banking arrangement with a bank, trust company, savings
808 and loan association, credit union, thrift company, brokerage
809 firm, or other financial institution selected by the agent;

810 (3) Contract for services available from a financial
811 institution, including renting a safe deposit box or space in a
812 vault;

813 (4) Withdraw, by check, order, electronic funds
814 transfer, or otherwise, money or property of the principal
815 deposited with or left in the custody of a financial
816 institution;

817 (5) Receive statements of account, vouchers, notices,
818 and similar documents from a financial institution and act with
819 respect to them;

820 (6) Enter a safe deposit box or vault and withdraw or
821 add to the contents;

822 (7) Borrow money and pledge as security personal
823 property of the principal necessary to borrow money or pay,
824 renew, or extend the time of payment of a debt of the principal
825 or a debt guaranteed by the principal;

826 (8) Make, assign, draw, endorse, discount, guarantee,
827 and negotiate promissory notes, checks, drafts, and other
828 negotiable or nonnegotiable paper of the principal or payable to
829 the principal or the principal's order, transfer money, receive
830 the cash or other proceeds of those transactions, and accept a
831 draft drawn by a person upon the principal and pay it when due;

832 (9) Receive for the principal and act upon a sight
833 draft, warehouse receipt, or other document of title whether
834 tangible or electronic, or other negotiable or nonnegotiable
835 instrument;

836 (10) Apply for, receive, and use letters of credit,
837 credit and debit cards, electronic transaction authorizations,
838 and traveler's checks from a financial institution and give an
839 indemnity or other agreement in connection with letters of
840 credit; and

841 (11) Consent to an extension of the time of payment
842 with respect to commercial paper or a financial transaction with
843 a financial institution.

844 Section 209. Operation of entity or business. Subject to
845 the terms of a document or an agreement governing an entity or
846 an entity ownership interest, and unless the power of attorney
847 otherwise provides, language in a power of attorney granting

848 general authority with respect to operation of an entity or
849 business authorizes the agent to:

850 (1) Operate, buy, sell, enlarge, reduce, or terminate
851 an ownership interest;

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

855 (3) Enforce the terms of an ownership agreement;

856 (4) Initiate, participate in, submit to alternative
857 dispute resolution, settle, oppose, or propose or accept a
858 compromise with respect to litigation to which the principal is
859 a party because of an ownership interest;

860 (5) Exercise in person or by proxy, or enforce by
861 litigation or otherwise, a right, power, privilege, or option
862 the principal has or claims to have as the holder of stocks and
863 bonds;

864 (6) Initiate, participate in, submit to alternative
865 dispute resolution, settle, oppose, or propose or accept a
866 compromise with respect to litigation to which the principal is
867 a party concerning stocks and bonds;

868 (7) With respect to an entity or business owned
869 solely by the principal:

870 (A) Continue, modify, renegotiate, extend, and
871 terminate a contract made by or on behalf of the principal with
872 respect to the entity or business before execution of the power
873 of attorney;

- 874 (B) Determine:
- 875 (i) The location of its operation;
- 876 (ii) The nature and extent of its business;
- 877 (iii) The methods of manufacturing, selling,
878 merchandising, financing, accounting, and advertising employed
879 in its operation;
- 880 (iv) The amount and types of insurance
881 carried; and
- 882 (v) The mode of engaging, compensating, and
883 dealing with its employees and accountants, attorneys, or other
884 advisors;
- 885 (C) Change the name or form of organization under
886 which the entity or business is operated and enter into an
887 ownership agreement with other persons to take over all or part
888 of the operation of the entity or business; and
- 889 (D) Demand and receive money due or claimed by
890 the principal or on the principal's behalf in the operation of
891 the entity or business and control and disburse the money in the
892 operation of the entity or business;
- 893 (8) Put additional capital into an entity or business
894 in which the principal has an interest;
- 895 (9) Join in a plan of reorganization, consolidation,
896 conversion, domestication, or merger of the entity or business;
- 897 (10) Sell or liquidate all or part of an entity or
898 business;

899 (11) Establish the value of an entity or business
900 under a buy-out agreement to which the principal is a party;

901 (12) Prepare, sign, file, and deliver reports,
902 compilations of information, returns, or other papers with
903 respect to an entity or business and make related payments; and

904 (13) Pay, compromise, or contest taxes, assessments,
905 fines, or penalties and perform any other act to protect the
906 principal from illegal or unnecessary taxation, assessments,
907 fines, or penalties, with respect to an entity or business,
908 including attempts to recover, in any manner permitted by law,
909 money paid before or after the execution of the power of
910 attorney.

911 Section 210. **Insurance and annuities.** Unless the power of
912 attorney otherwise provides, language in a power of attorney
913 granting general authority with respect to insurance and
914 annuities authorizes the agent to:

915 (1) Continue, pay the premium or make a contribution
916 on, modify, exchange, rescind, release, or terminate a contract
917 procured by or on behalf of the principal which insures or
918 provides an annuity to either the principal or another person,
919 whether or not the principal is a beneficiary under the
920 contract;

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

- 925 (3) Pay the premium or make a contribution on,
926 modify, exchange, rescind, release, or terminate a contract of
927 insurance or annuity procured by the agent;
- 928 (4) Apply for and receive a loan secured by a
929 contract of insurance or annuity;
- 930 (5) Surrender and receive the cash surrender value on
931 a contract of insurance or annuity;
- 932 (6) Exercise an election;
- 933 (7) Exercise investment powers available under a
934 contract of insurance or annuity;
- 935 (8) Change the manner of paying premiums on a
936 contract of insurance or annuity;
- 937 (9) Change or convert the type of insurance or
938 annuity with respect to which the principal has or claims to
939 have authority described in this section;
- 940 (10) Apply for and procure a benefit or assistance
941 under a statute or regulation to guarantee or pay premiums of a
942 contract of insurance on the life of the principal;
- 943 (11) Collect, sell, assign, hypothecate, borrow
944 against, or pledge the interest of the principal in a contract
945 of insurance or annuity;
- 946 (12) Select the form and timing of the payment of
947 proceeds from a contract of insurance or annuity; and
- 948 (13) Pay, from proceeds or otherwise, compromise or
949 contest, and apply for refunds in connection with, a tax or
950 assessment levied by a taxing authority with respect to a

951 contract of insurance or annuity or its proceeds or liability
952 accruing by reason of the tax or assessment.

953 Section 211. **Estates, trusts, and other beneficial**
954 **interests.**

955 (a) In this section, "estate, trust, or other beneficial
956 interest" means a trust, probate estate, guardianship,
957 conservatorship, escrow, or custodianship or a fund from which
958 the principal is, may become, or claims to be, entitled to a
959 share or payment.

960 (b) Unless the power of attorney otherwise provides,
961 language in a power of attorney granting general authority with
962 respect to estates, trusts, and other beneficial interests
963 authorizes the agent to:

964 (1) Accept, receive, receipt for, sell, assign,
965 pledge, or exchange a share in or payment from an estate, trust,
966 or other beneficial interest;

967 (2) Demand or obtain money or another thing of value
968 to which the principal is, may become, or claims to be, entitled
969 by reason of an estate, trust, or other beneficial interest, by
970 litigation or otherwise;

971 (3) Exercise for the benefit of the principal a
972 presently exercisable general power of appointment held by the
973 principal;

974 (4) Initiate, participate in, submit to alternative
975 dispute resolution, settle, oppose, or propose or accept a
976 compromise with respect to litigation to ascertain the meaning,

977 validity, or effect of a deed, will, declaration of trust, or
978 other instrument or transaction affecting the interest of the
979 principal;

980 (5) Initiate, participate in, submit to alternative
981 dispute resolution, settle, oppose, or propose or accept a
982 compromise with respect to litigation to remove, substitute, or
983 surcharge a fiduciary;

984 (6) Conserve, invest, disburse, or use anything
985 received for an authorized purpose;

986 (7) Transfer an interest of the principal in real
987 property, stocks and bonds, accounts with financial institutions
988 or securities intermediaries, insurance, annuities, and other
989 property to the trustee of a revocable trust created by the
990 principal as settlor; and

991 (8) Reject, renounce, disclaim, release, or consent
992 to a reduction in or modification of a share in or payment from
993 an estate, trust, or other beneficial interest.

994 Section 212. Claims and litigation. Unless the power of
995 attorney otherwise provides, language in a power of attorney
996 granting general authority with respect to claims and litigation
997 authorizes the agent to:

998 (1) Assert and maintain before a court or
999 administrative agency a claim, claim for relief, cause of
1000 action, counterclaim, offset, recoupment, or defense, including
1001 an action to recover property or other thing of value, recover
1002 damages sustained by the principal, eliminate or modify tax

1003 liability, or seek an injunction, specific performance, or other
1004 relief;

1005 (2) Bring an action to determine adverse claims or
1006 intervene or otherwise participate in litigation;

1007 (3) Seek an attachment, garnishment, order of arrest,
1008 or other preliminary, provisional, or intermediate relief and
1009 use an available procedure to effect or satisfy a judgment,
1010 order, or decree;

1011 (4) Make or accept a tender, offer of judgment, or
1012 admission of facts, submit a controversy on an agreed statement
1013 of facts, consent to examination, and bind the principal in
1014 litigation;

1015 (5) Submit to alternative dispute resolution, settle,
1016 and propose or accept a compromise;

1017 (6) Waive the issuance and service of process upon
1018 the principal, accept service of process, appear for the
1019 principal, designate persons upon which process directed to the
1020 principal may be served, execute and file or deliver
1021 stipulations on the principal's behalf, verify pleadings, seek
1022 appellate review, procure and give surety and indemnity bonds,
1023 contract and pay for the preparation and printing of records and
1024 briefs, receive, execute, and file or deliver a consent, waiver,
1025 release, confession of judgment, satisfaction of judgment,
1026 notice, agreement, or other instrument in connection with the
1027 prosecution, settlement, or defense of a claim or litigation;

1028 (7) Act for the principal with respect to bankruptcy
1029 or insolvency, whether voluntary or involuntary, concerning the
1030 principal or some other person, or with respect to a
1031 reorganization, receivership, or application for the
1032 appointment of a receiver or trustee which affects an interest
1033 of the principal in property or other thing of value;

1034 (8) Pay a judgment, award, or order against the
1035 principal or a settlement made in connection with a claim or
1036 litigation; and

1037 (9) Receive money or other thing of value paid in
1038 settlement of or as proceeds of a claim or litigation.

1039 Section 213. Personal and family maintenance.

1040 (a) Unless the power of attorney otherwise provides,
1041 language in a power of attorney granting general authority with
1042 respect to personal and family maintenance authorizes the agent
1043 to:

1044 (1) Perform the acts necessary to maintain the
1045 customary standard of living of the principal, the principal's
1046 spouse, and the following individuals, whether living when the
1047 power of attorney is executed or later born:

1048 (A) The principal's children;

1049 (B) Other individuals legally entitled to be
1050 supported by the principal; and

1051 (C) The individuals whom the principal has
1052 customarily supported or indicated the intent to support;

1053 (2) Make periodic payments of child support and other
1054 family maintenance required by a court or governmental agency or
1055 an agreement to which the principal is a party;

1056 (3) Provide living quarters for the individuals
1057 described in paragraph (1) by:

1058 (A) Purchase, lease, or other contract; or

1059 (B) Paying the operating costs, including
1060 interest, amortization payments, repairs, improvements, and
1061 taxes, for premises owned by the principal or occupied by those
1062 individuals;

1063 (4) Provide normal domestic help, usual vacations and
1064 travel expenses, and funds for shelter, clothing, food,
1065 appropriate education, including postsecondary and vocational
1066 education, and other current living costs for the individuals
1067 described in paragraph (1);

1068 (5) Pay expenses for necessary health care and
1069 custodial care on behalf of the individuals described in
1070 paragraph (1);

1071 (6) Act as the principal's personal representative
1072 pursuant to the Health Insurance Portability and Accountability
1073 Act, Sections 1171 through 1179 of the Social Security Act, 42
1074 USCS Section 1320d, and applicable regulations, in making
1075 decisions related to the past, present, or future payment for
1076 the provision of health care consented to by the principal or
1077 anyone authorized under the law of this state to consent to
1078 health care on behalf of the principal;

1079 (7) Continue any provision made by the principal for
1080 automobiles or other means of transportation, including
1081 registering, licensing, insuring, and replacing them, for the
1082 individuals described in paragraph (1);

1083 (8) Maintain credit and debit accounts for the
1084 convenience of the individuals described in paragraph (1) and
1085 open new accounts; and

1086 (9) Continue payments incidental to the membership or
1087 affiliation of the principal in a religious institution, club,
1088 society, order, or other organization or to continue
1089 contributions to those organizations.

1090 (b) Authority with respect to personal and family
1091 maintenance is neither dependent upon, nor limited by, authority
1092 that an agent may or may not have with respect to gifts under
1093 this act.

1094 Section 214. **Benefits from governmental programs or civil**
1095 **or military service.**

1096 (a) In this section, "benefits from governmental programs
1097 or civil or military service" means any benefit, program or
1098 assistance provided under a statute or regulation including
1099 social security, Medicare, and Medicaid.

1100 (b) Unless the power of attorney otherwise provides,
1101 language in a power of attorney granting general authority with
1102 respect to benefits from governmental programs or civil or
1103 military service authorizes the agent to:

1104 (1) Execute vouchers in the name of the principal for
1105 allowances and reimbursements payable by the United States or a
1106 foreign government or by a state or subdivision of a state to
1107 the principal, including allowances and reimbursements for
1108 transportation of the individuals described in Section
1109 213(a)(1), and for shipment of their household effects;

1110 (2) Take possession and order the removal and
1111 shipment of property of the principal from a post, warehouse,
1112 depot, dock, or other place of storage or safekeeping, either
1113 governmental or private, and execute and deliver a release,
1114 voucher, receipt, bill of lading, shipping ticket, certificate,
1115 or other instrument for that purpose;

1116 (3) Enroll in, apply for, select, reject, change,
1117 amend, or discontinue, on the principal's behalf, a benefit or
1118 program;

1119 (4) Prepare, file, and maintain a claim of the
1120 principal for a benefit or assistance, financial or otherwise,
1121 to which the principal may be entitled under a statute or
1122 regulation;

1123 (5) Initiate, participate in, submit to alternative
1124 dispute resolution, settle, oppose, or propose or accept a
1125 compromise with respect to litigation concerning any benefit or
1126 assistance the principal may be entitled to receive under a
1127 statute or regulation; and

1128 (6) Receive the financial proceeds of a claim
1129 described in paragraph (4) and conserve, invest, disburse, or
1130 use for a lawful purpose anything so received.

1131 Section 215. Retirement plans.

1132 (a) In this section, "retirement plan" means a plan or
1133 account created by an employer, the principal, or another
1134 individual to provide retirement benefits or deferred
1135 compensation of which the principal is a participant,
1136 beneficiary, or owner, including a plan or account under the
1137 following sections of the Internal Revenue Code:

1138 (1) An individual retirement account under Internal
1139 Revenue Code Section 408, 26 USCS Section 408;

1140 (2) A Roth individual retirement account under
1141 Internal Revenue Code Section 408A, 26 USCS Section 408A;

1142 (3) A deemed individual retirement account under
1143 Internal Revenue Code Section 408(q), 26 USCS Section 408(q);

1144 (4) An annuity or mutual fund custodial account under
1145 Internal Revenue Code Section 403(b), 26 USCS Section 403(b);

1146 (5) A pension, profit-sharing, stock bonus, or other
1147 retirement plan qualified under Internal Revenue Code Section
1148 401(a), 26 USCS Section 401(a);

1149 (6) A plan under Internal Revenue Code Section
1150 457(b), 26 USCS Section 457(b); and

1151 (7) A nonqualified deferred compensation plan under
1152 Internal Revenue Code Section 409A, 26 USCS Section 409A.

1153 (b) Unless the power of attorney otherwise provides,
1154 language in a power of attorney granting general authority with
1155 respect to retirement plans authorizes the agent to:

1156 (1) Select the form and timing of payments under a
1157 retirement plan and withdraw benefits from a plan;

1158 (2) Make a rollover, including a direct trustee-to-
1159 trustee rollover, of benefits from one retirement plan to
1160 another;

1161 (3) Establish a retirement plan in the principal's
1162 name;

1163 (4) Make contributions to a retirement plan;

1164 (5) Exercise investment powers available under a
1165 retirement plan; and

1166 (6) Borrow from, sell assets to, or purchase assets
1167 from a retirement plan.

1168 Section 216. **Taxes.** Unless the power of attorney
1169 otherwise provides, language in a power of attorney granting
1170 general authority with respect to taxes authorizes the agent to:

1171 (1) Prepare, sign, and file federal, state, local,
1172 and foreign income, gift, payroll, property, Federal Insurance
1173 Contributions Act, and other tax returns, claims for refunds,
1174 requests for extension of time, petitions regarding tax matters,
1175 and any other tax-related documents, including receipts, offers,
1176 waivers, consents, including consents and agreements under
1177 Internal Revenue Code Section 2032A, 26 USCS Section
1178 2032A, closing agreements, and any power of attorney required

1179 by the Internal Revenue Service or other taxing authority with
1180 respect to a tax year upon which the statute of limitations has
1181 not run and the following twenty-five (25) tax years;

1182 (2) Pay taxes due, collect refunds, post bonds,
1183 receive confidential information, and contest deficiencies
1184 determined by the Internal Revenue Service or other taxing
1185 authority;

1186 (3) Exercise any election available to the principal
1187 under federal, state, local, or foreign tax law; and

1188 (4) Act for the principal in all tax matters for all
1189 periods before the Internal Revenue Service, or other taxing
1190 authority.

1191 Section 217. **Gifts.**

1192 (a) In this section, a gift "for the benefit of" a person
1193 includes a gift to a trust, an account under the Uniform
1194 Transfers to Minors Act, and a tuition savings account or
1195 prepaid tuition plan as defined under Internal Revenue Code
1196 Section 529, 26 USCS Section 529.

1197 (b) Unless the power of attorney otherwise provides,
1198 language in a power of attorney granting general authority with
1199 respect to gifts authorizes the agent only to:

1200 (1) Make outright to, or for the benefit of, a
1201 person, a gift of any of the principal's property, including by
1202 the exercise of a presently exercisable general power of
1203 appointment held by the principal, in an amount per donee not to
1204 exceed the annual dollar limits of the federal gift tax

1205 exclusion under Internal Revenue Code Section 2503(b), 26 USCS
1206 Section 2503(b), without regard to whether the federal gift tax
1207 exclusion applies to the gift, or if the principal's spouse
1208 agrees to consent to a split gift pursuant to Internal Revenue
1209 Code Section 2513, 26 USCS 2513, in an amount per donee not to
1210 exceed twice the annual federal gift tax exclusion limit; and

1211 (2) Consent, pursuant to Internal Revenue Code
1212 Section 2513, 26 USCS Section 2513, [as amended,] to the
1213 splitting of a gift made by the principal's spouse in an amount
1214 per donee not to exceed the aggregate annual gift tax exclusions
1215 for both spouses.

1216 (c) An agent may make a gift of the principal's property
1217 only as the agent determines is consistent with the principal's
1218 objectives if actually known by the agent and, if unknown, as
1219 the agent determines is consistent with the principal's best
1220 interest based on all relevant factors, including:

1221 (1) The value and nature of the principal's property;

1222 (2) The principal's foreseeable obligations and need
1223 for maintenance;

1224 (3) Minimization of taxes, including income, estate,
1225 inheritance, generation-skipping transfer, and gift taxes;

1226 (4) Eligibility for a benefit, a program, or
1227 assistance under a statute or regulation; and

1228 (5) The principal's personal history of making or
1229 joining in making gifts.

1230 Section 218. Attorney Identification: An attorney at law
1231 who drafts a power of attorney for another person must put his
1232 or her name, address, phone number and bar number at the bottom
1233 of the power of attorney.

1234 Section 219: Homestead: A power of attorney used by an
1235 agent to convey, mortgage, deed or otherwise pledge or encumber
1236 a homestead shall comply with § 89-1-29 and shall designate an
1237 agent other than the spouse of the principal.

1238 ARTICLE 3

1239 STATUTORY FORMS

1240 Section 301. **Statutory form power of attorney.** A document
1241 substantially in the following form may be used to create a
1242 statutory form power of attorney that has the meaning and effect
1243 prescribed by this act.

1244 INSERT NAME OF JURISDICTION

1245 STATUTORY FORM POWER OF ATTORNEY

1246 IMPORTANT INFORMATION

1247 This power of attorney authorizes another person (your
1248 agent) to make decisions concerning your property for you (the
1249 principal). Your agent will be able to make decisions and act
1250 with respect to your property (including your money) whether or
1251 not you are able to act for yourself. The meaning of authority
1252 over subjects listed on this form is explained in the Uniform
1253 Power of Attorney Act [insert citation].

1254 This power of attorney does not authorize the agent to make
1255 health-care decisions for you.

1256 You should select someone you trust to serve as your
1257 agent. Unless you specify otherwise, generally the agent's
1258 authority will continue until you die or revoke the power of
1259 attorney or the agent resigns or is unable to act for you.

1260 Your agent is entitled to reasonable compensation unless
1261 you state otherwise in the Special Instructions.

1262 This form provides for designation of one agent. If you
1263 wish to name more than one agent you may name a coagent in the
1264 Special Instructions. Coagents are not required to act together
1265 unless you include that requirement in the Special Instructions.

1266 If your agent is unable or unwilling to act for you, your
1267 power of attorney will end unless you have named a successor
1268 agent. You may also name a second successor agent.

1269 This power of attorney becomes effective immediately unless
1270 you state otherwise in the Special Instructions.

1271 **If you have questions about the power of
1272 attorney or the authority you are granting to your
1273 agent, you should seek legal advice before signing
1274 this form.**

1275 **DESIGNATION OF AGENT**

1276 I _____
1277 name the following
1278 (Name of Principal)
1279 person as my agent:
1280 Name of Agent:
1281 _____

1282 Agent's Address:
1283 _____
1284 Agent's Telephone Number: _____

1285 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

1286 If my agent is unable or unwilling to act for me, I name as
1287 my successor agent:

1288 Name of Successor Agent:
1289 _____

1290 Successor Agent's Address:
1291 _____

1292 Successor Agent's Telephone Number:
1293 _____

1294 If my successor agent is unable or unwilling to act for me,
1295 I
1296 name as my second successor agent:

1297 _____
1298 Name of Second Successor Agent:

1299 _____
1300 Second Successor Agent's Address:

1301 _____
1302 Second Successor Agent's Telephone Number:

1303 _____
1304 **GRANT OF GENERAL AUTHORITY**

1305 I grant my agent and any successor agent general authority
1306 to act for me with respect to the following subjects as defined
1307 in the Uniform Power of Attorney Act [insert citation]:

1308 (INITIAL each subject you want to include in the agent's
1309 general authority. If you wish to grant general authority over
1310 all of the subjects you may initial "All Preceding Subjects"
1311 instead of initialing each subject.)

- 1312 (___) Real Property
- 1313 (___) Tangible Personal Property
- 1314 (___) Stocks and Bonds
- 1315 (___) Commodities and Options
- 1316 (___) Banks and Other Financial Institutions
- 1317 (___) Operation of Entity or Business
- 1318 (___) Insurance and Annuities
- 1319 (___) Estates, Trusts, and Other Beneficial Interests
- 1320 (___) Claims and Litigation
- 1321 (___) Personal and Family Maintenance
- 1322 (___) Benefits from Governmental Programs or Civil or Military
1323 Service
- 1324 (___) Retirement Plans
- 1325 (___) Taxes
- 1326 (___) All Preceding Subjects

1327 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

1328 My agent MAY NOT do any of the following specific acts for
1329 me UNLESS I have INITIALED the specific authority listed below:

1330 **(CAUTION: Granting any of the following will**
1331 **give your agent the authority to take actions that**
1332 **could significantly reduce your property or change**
1333 **how your property is distributed at your**

- 1334 **death. INITIAL ONLY the specific authority you WANT**
1335 **to give your agent.)**
- 1336 (___) Create, amend, revoke, or terminate an inter vivos
1337 trust
- 1338 (___) Make a gift, subject to the limitations of the Uniform
1339 Power of Attorney Act [insert citation to Section 217 of the
1340 act] and any special instructions in this power of attorney
- 1341 (___) Create or change rights of survivorship
- 1342 (___) Create or change a beneficiary designation
- 1343 (___) Authorize another person to exercise the authority
1344 granted under this power of attorney
- 1345 (___) Waive the principal's right to be a beneficiary of a
1346 joint and survivor annuity, including a survivor benefit under a
1347 retirement plan
- 1348 (___) Exercise fiduciary powers that the principal has
1349 authority to delegate
- 1350 (___) Disclaim or refuse an interest in property, including
1351 a power of appointment]
- 1352 (___) *Make the agent an owner or joint owner of a deposit*
1353 *account.*

1354

1355 **LIMITATION ON AGENT'S AUTHORITY**

1356 An agent that is not my ancestor, spouse, or descendant MAY
1357 NOT use my property to benefit the agent or a person to whom the
1358 agent owes an obligation of support unless I have included that
1359 authority in the Special Instructions.

1360 **SPECIAL INSTRUCTIONS (OPTIONAL)**

1361 You may give special instructions on the following lines:

1362 _____
1363 _____
1364 _____
1365 _____
1366 _____
1367 _____
1368 _____
1369 _____
1370 _____

1371 **EFFECTIVE DATE**

1372 This power of attorney is effective immediately unless I
1373 have stated otherwise in the Special Instructions.

1374 **NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)**

1375 If it becomes necessary for a court to appoint a
1376 [conservator or guardian] of my estate or [guardian] of my
1377 person, I nominate the following person(s) for appointment:

1378 Name of Nominee for [conservator or guardian] of my
1379 estate:

1380 _____

1381 _

1382 Nominee's

1383 Address: _____

1384 Nominee's Telephone

1385 Number: _____

1386 Name of Nominee for [guardian] of my person:
1387 _____

1388 Nominee's Address:_____

1389 Nominee's Telephone Number:_____

1390 **RELIANCE ON THIS POWER OF ATTORNEY**

1391 Any person, including my agent, may rely upon the validity
1392 of this power of attorney or a copy of it unless that person
1393 knows it has terminated or is invalid.

1394 **SIGNATURE AND ACKNOWLEDGMENT**

1395 _____
1396 Your Signature

1397 _____
1398 Date

1399 _____
1400 Your Name Printed

1401 _____
1402 _____

1403 Your Address
1404 _____

1405 Your Telephone Number

1406 State of _____

1407 County of_____

1408 This document was acknowledged before me on

1409 _____,by_____

1410 (Date) (Name of Principal)

1411 _____(Seal, if any)

1412 _____
1413 Signature of Notary
1414 My commission expires: _____
1415 This document prepared by: _____

1416 **IMPORTANT INFORMATION FOR AGENT**

1417 **Agent's Duties**

1418 When you accept the authority granted under this power of
1419 attorney, a special legal relationship is created between you
1420 and the principal. This relationship imposes upon you legal
1421 duties that continue until you resign or the power of attorney
1422 is terminated or revoked. You must:

1423 (1) Do what you know the principal reasonably expects you
1424 to do with the principal's property or, if you do not know the
1425 principal's expectations, act in the principal's best interest;

1426 (2) Act in good faith;

1427 (3) Do nothing beyond the authority granted in this power
1428 of attorney; and

1429 (4) Disclose your identity as an agent whenever you act
1430 for the principal by writing or printing the name of the
1431 principal and signing your own name as "agent" in the following
1432 manner:

1433 _____
1434 (Principal's Name) by (Your Signature) as Agent

1435 Unless the special instructions in this power of attorney
1436 state otherwise, you must also:

1437 (1) Act loyally for the principal's benefit;

1438 (2) Avoid conflicts that would impair your ability to act
1439 in the principal's best interest;

1440 (3) Act with care, competence, and diligence;

1441 (4) Keep a record of all receipts, disbursements, and
1442 transactions made on behalf of the principal;

1443 (5) Cooperate with any person that has authority to make
1444 health care decisions for the principal to do what you know the
1445 principal reasonably expects or, if you do not know the
1446 principal's expectations, to act in the principal's best
1447 interest; and

1448 (6) Attempt to preserve the principal's estate plan if you
1449 know the plan and preserving the plan is consistent with the
1450 principal's best interest.

1451 **Termination of Agent's Authority**

1452 You must stop acting on behalf of the principal if you
1453 learn of any event that terminates this power of attorney or
1454 your authority under this power of attorney. Events that
1455 terminate a power of attorney or your authority to act under a
1456 power of attorney include:

1457 (1) Death of the principal;

1458 (2) The principal's revocation of the power of attorney or
1459 your authority;

1460 (3) The occurrence of a termination event stated in the
1461 power of attorney;

1462 (4) The purpose of the power of attorney is fully
1463 accomplished; or

1464 (5) If you are married to the principal, a legal action is
1465 filed with a court to end your marriage, or for your legal
1466 separation, unless the special instructions in this power of
1467 attorney state that such an action will not terminate your
1468 authority.

1469 **Liability of Agent**

1470 The meaning of the authority granted to you is defined in
1471 the Uniform Power of Attorney Act. If you violate the Uniform
1472 Power of Attorney Act or act outside the authority granted, you
1473 may be liable for any damages caused by your violation.

1474 **If there is anything about this document or your**
1475 **duties that you do not understand, you should seek**
1476 **legal advice.**

1477 Section 302. **Agent's certification.** The following
1478 optional form may be used by an agent to certify facts
1479 concerning a power of attorney.

1480 **AGENT'S CERTIFICATION AS TO THE VALIDITY**
1481 **OF POWER OF ATTORNEY AND AGENT'S AUTHORITY**

1482 State of _____

1483 County of _____

1484 I, _____ (Name of

1485 Agent), certify under penalty of perjury that

1486 _____

1487 _____(Name of Principal)

1488 granted me authority as an agent or successor agent in a power

1489 of attorney dated _____.

1516 _____

1517 Agent's Telephone Number_____

1518 This document was acknowledged before me on

1519 _____, (Date)

1520 by_____.

1521 (Name of Agent)

1522 _____ (Seal, if

1523 any)

1524 Signature of Notary

1525 My commission expires: _____

1526 This document prepared by_____

1527 **ARTICLE 4**

1528 **MISCELLANEOUS PROVISIONS**

1529 Section 401. Uniformity of application and
1530 construction. In applying and construing this uniform act,
1531 consideration must be given to the need to promote uniformity of
1532 the law with respect to its subject matter among the states that
1533 enact it.

1534 Section 402. **Relation to Electronic Signatures in Global**
1535 **and National Commerce Act.** This act modifies, limits, and
1536 supersedes the federal Electronic Signatures in Global and
1537 National Commerce Act, 15 USCS Section 7001 et seq., but does
1538 not modify, limit, or supersede Section 101(c) of that act, 15
1539 USCS Section 7001(c), or authorize electronic delivery of any of
1540 the notices described in Section 103(b) of that act, 15 USCS
1541 Section 7003(b).

1542 Section 403. **Effect of existing powers of**
1543 **attorney.** Except as otherwise provided in this act, on July 1,
1544 2014:

1545 (1) This act applies to a power of attorney created
1546 on or after July 1, 2014;

1547 (2) This act applies to a judicial proceeding
1548 concerning a power of attorney commenced on or after July 1,
1549 2014;

1550 (3) This act applies to a judicial proceeding
1551 concerning a power of attorney commenced before July 1, 2014,
1552 unless the court finds that application of a provision of this
1553 act would substantially interfere with the effective conduct of
1554 the judicial proceeding or prejudice the rights of a party, in
1555 which case that provision does not apply and the superseded law
1556 applies; and

1557 (4) An act done before July 1, 2014, is not affected
1558 by this act.

1559 **SECTION 2.** Sections 87-3-101 through 87-3-113, which
1560 constitute the Uniform Durable Power of Attorney Act, are
1561 repealed.

1562 **SECTION 3.** This act shall take effect and be in force from
1563 and after July 1, 2014.
1564

1565