

BILL ANALYSIS

C.S.H.B. 3095
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As part of its ongoing review of Texas probate, guardianship, and trust law, the Real Estate, Probate, and Trust Law Section of the State Bar of Texas has proposed several updates to the law regarding durable powers of attorney and advanced directives. C.S.H.B. 3095 seeks to adopt these updates.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

Durable Powers of Attorney

C.S.H.B. 3095 amends the Estates Code to establish that the Durable Power of Attorney Act applies to all durable powers of attorney except the following: a power of attorney to the extent it is coupled with an interest in the subject of that power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction; a proxy or other delegation to exercise voting rights or management rights with respect to an entity; or a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

C.S.H.B. 3095 expands the definition of "durable power of attorney" (DPA) to add as an alternative to the instrument being signed by an adult principal that the instrument is signed in the adult principal's conscious presence by another individual directed by the principal to sign the principal's name on the DPA. The bill considers a power of attorney a DPA under the Durable Power of Attorney Act if the law of the jurisdiction that determines the meaning and effect of the power of attorney provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity. The bill establishes that the term "agent" under the Durable Power of Attorney Act includes an "attorney in fact."

C.S.H.B. 3095 establishes that a signature that purports to be the signature of the principal on a DPA is presumed to be genuine and that the DPA is presumed to be properly executed if the officer taking the acknowledgment has complied with certain requirements of the Civil Practice and Remedies Code regarding the method of acknowledgement of a written instrument for recording. The bill makes a DPA executed in Texas valid if the execution of the instrument

complies with statutory requirements defining a DPA and makes a DPA executed in a jurisdiction other than Texas valid in Texas if, when executed, the execution of the DPA complied with the law of the jurisdiction that determines the meaning and effect of the DPA, as provided by the bill, or complied with the requirements for a military power of attorney as provided by federal law. The bill gives a photocopy or electronically transmitted copy of an original DPA the same effect as the original instrument and establishes that such copy may be relied on by a person who is requested to accept the DPA, without liability, to the same extent as the original instrument, except as otherwise provided by statute other than the Durable Power of Attorney Act. The bill establishes that the meaning and effect of a DPA is determined by the law of the jurisdiction indicated in the DPA and, in the absence of an indication of jurisdiction, by the law of the jurisdiction of the principal's domicile if the principal's domicile is indicated in the DPA, or by the law of the jurisdiction in which the DPA was executed if the principal's domicile is not indicated in the DPA.

C.S.H.B. 3095 sets out the entities authorized to bring an action in which a court is requested to construe a DPA or review the agent's conduct and grant appropriate relief. The bill authorizes a person who is requested to accept a DPA to bring an action in a court for declaratory relief to construe the DPA. The bill requires the court, on motion by the principal, to dismiss such a filed action unless the court finds that the principal lacks capacity to revoke the agent's authority or the DPA. The bill establishes that, except as otherwise provided in a DPA, a person accepts appointment as an agent under a DPA by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

C.S.H.B. 3095 sets out provisions relating to the designation and authority of co-agents and successor agents. The bill, with certain exceptions, grants an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, immunity from liability for the actions of the other agent. The bill requires an agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent to notify the principal and, if the principal is incapacitated, to take any action reasonably appropriate under the circumstances to safeguard the principal's best interest. The bill makes an agent who fails to notify the principal or take required action liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken the action. The bill entitles an agent, unless the DPA provides otherwise or is in conflict with another agreement or instrument, to reimbursement of reasonable expenses incurred on the principal's behalf and to compensation that is reasonable under the circumstances.

C.S.H.B. 3095 establishes the conditions under which a DPA or an agent's authority under a DPA terminates and the effect of such a termination on certain persons and on a previous DPA. The bill sets out the conditions under which a person who accepts a DPA is authorized to rely on the power of attorney. The bill sets out the items a person who is requested to accept a DPA is authorized to request, and rely on, without further investigation, including an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney, and sets out an authorized form for such certification. The bill requires, with a certain exception, a requested English translation of the power of attorney or opinion of counsel to be provided by the agent at the agent's own expense. The bill establishes that, for purposes of its provisions relating to the acceptance of and reliance on a power of attorney, a person who conducts activities through employees is without actual knowledge of a fact relating to a DPA, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

C.S.H.B. 3095 specifies that an agent who accepts appointment as an agent under a DPA as provided by the bill's provisions is a fiduciary and has a duty to inform and to account for actions taken under the power of attorney and establishes that Durable Power of Attorney Act provisions relating to an agent's duty to inform and account for actions taken under the DPA does not limit the right of the principal to expressly modify the duties or obligations of the agent. The bill includes a home equity lien and a reverse mortgage among the instruments for which a DPA for

a real property transaction requiring the execution and delivery of such instruments must be recorded in the office of the county clerk of the county in which the property is located.

C.S.H.B. 3095 sets out the activity the agent under the DPA, if the authority is expressly granted by the DPA and the exercise of the authority is not prohibited by another agreement or instrument to which the authority or property is subject, is authorized to take on behalf of the principal or with respect to the principal's property and sets out the authority under the DPA that an agent who is not an ancestor, spouse, or descendant of the principal, unless the DPA provides otherwise, is prohibited from exercising. The bill grants an agent, if the agent is granted in the DPA the authority to perform all acts that a principal could perform, the general authority conferred by statutory provisions regarding the construction of powers of a statutory DPA, subject to specified bill provisions. The bill subjects a grant of authority to make a gift to the bill's provisions relating to gifts unless the DPA provides otherwise. The bill establishes, if the subjects over which authority is granted in a DPA are similar or overlap, that the broadest authority controls, subject to specified bill provisions. The bill makes authority granted in a DPA exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether the property is located in Texas, the authority is exercised in Texas, or the power of attorney is executed in Texas. The bill requires an agent who is expressly granted authority under the bill to take certain actions on behalf of the principal or with respect to the principal's property to attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors.

C.S.H.B. 3095 establishes that, for purposes of its provisions regarding gifts, a gift for the benefit of a person includes a gift to a trust, an account under the Texas Uniform Transfers to Minors Act or a similar law of any other state, and a tuition savings account or prepaid tuition plan as described by the applicable provision of the federal Internal Revenue Code of 1986. The bill sets out provisions relating to the authority of an agent relating to making or consenting to a gift of any of the principal's property and limits the authority to that which the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors.

C.S.H.B. 3095 sets out provisions specifying activity an agent is authorized to take relating to beneficiary designations and certain limitations on the authority. The bill sets out the nature of an agent's authority that is incorporated by a reference to certain provisions of law, of the bill, or of the DPA. The bill authorizes a principal to modify authority incorporated by reference.

C.S.H.B. 3095 revises the form for a statutory DPA to add certain specifications and statements. The bill authorizes the form for a statutory DPA to be modified to allow the principal to grant the agent certain specific authority described by the bill's provisions by including specified language and sets out that language. The bill revises the powers that the language conferring authority with respect to real property transactions in a statutory DPA empowers the agent to exercise to include the power to enter into mineral transactions and the power to designate the property that constitutes the principal's homestead. The bill specifies that the power to mortgage and encumber real property includes the power to execute documents necessary to create a lien against the principal's homestead as provided by the Texas Constitution and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest. The bill specifies that the matters for which language in a statutory DPA conferring estate, trust, and other beneficiary transactions authority empowers certain action include all matters that affect a life estate and specifies that the matters for which language in a statutory DPA conferring authority with respect to personal and family maintenance empowers certain action include the power to provide for the reasonable care of the principal's pets, subject to the needs of the principal, the principal's spouse and children, and other individuals customarily or legally entitled to be supported by the principal. The bill provides that the language in a statutory DPA conferring authority with respect to retirement plan transactions that empowers the performance of certain action the principal may perform with respect to a transaction relating to

a retirement plan includes the power to waive the principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan providing those payments and removes the provision conditioning that waiver on the principal being a spouse who is not employed. The bill specifies that, for purposes of the statutory provision authorizing, unless the principal has expressly granted the authority to create or change a beneficiary designation as provided by the bill's provisions, the naming of an attorney in fact or an agent as a beneficiary under a retirement plan only to the extent that the attorney in fact or the agent was a named beneficiary under the retirement plan before the DPA was executed, this statutory provision, to the same extent and under the same condition, also applies if the attorney in fact or agent was a named beneficiary, in the case of a rollover or trustee-to-trustee transfer, under the predecessor retirement plan.

Advance Directives

C.S.H.B. 3095 amends the Health and Safety Code to revise the provision of the Advance Directives Act establishing that at least one of the witnesses to an advance directive must be a person who is not an employee of a health care facility in which the declarant is a patient if the employee is providing direct patient care to the declarant or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility to instead specify that at least one of the witnesses must be a person who is not an owner, operator, or employee of a health care facility in which the declarant is a patient. The bill makes certain changes to the authorized form for written advance directives to physicians to provide for an alternative method of properly executing the form using the signature of a notary public and to provide for the bill's revisions relating to authorized witnesses to the directive.

C.S.H.B. 3095 replaces a limitation on an agent's ability to exercise authority under a medical power of attorney (MPA) based on a specified written certification by the principal's attending physician with a limitation on the agent's ability based on the principal's attending physician's opinion regarding the principal's incompetency or inability to make and communicate a choice about a specific health care decision. The bill specifies that an agent's authority under an MPA terminates if the agent's marriage to the principal is dissolved, annulled, or declared void unless the MPA specifically provides otherwise but establishes that the authority of other agents under the MPA is not terminated. The bill requires such termination of the agent's authority to be immediately recorded by the principal's licensed or certified health or residential care provider who is informed of the termination.

C.S.H.B. 3095 authorizes an MPA to be in the form as prescribed by statute and as revised and updated by the bill or to be in another form that meets the requirements of statutory provisions governing an MPA under the Advance Directives Act or that is authorized under statutory provisions relating to the enforceability of advance directives executed in other jurisdictions. The bill specifies that the health care power of attorney form produced by the Commission on Law and Aging, American Bar Association, is an example alternative form. The bill makes a DPA or similar document executed by a veteran of the U.S. military that is in compliance with the advance directive requirements of the U.S. Department of Veterans Affairs valid and enforceable in Texas and establishes that this provision does not authorize the administration, withholding, or withdrawal of health care otherwise prohibited by Texas law. The bill revises and updates the authorized form for MPA designations to make conforming changes and to incorporate specified disclosure language.

C.S.H.B. 3095 applies, except as otherwise provided, to a DPA created before, on, or after the bill's effective date, a judicial proceeding concerning a DPA commenced on or after the bill's effective date, and a judicial proceeding concerning a DPA commenced before the bill's effective date that is pending on the effective date. The bill establishes that if the court finds that application of a bill provision would substantially interfere with the effective conduct of a judicial proceeding concerning a DPA commenced before the bill's effective date or would prejudice the rights of a party to the proceeding, the provision does not apply and the former law

applies in those circumstances.

C.S.H.B. 3095 applies, except as otherwise provided, to an MPA created before, on, or after the bill's effective date and to a judicial proceeding concerning an MPA that commences on or after the bill's effective date or that is pending on the bill's effective date. The bill establishes that if the court finds that application of a bill provision would substantially interfere with the effective conduct of a judicial proceeding concerning an MPA pending on the bill's effective date or would prejudice the rights of a party to the proceeding, the provision does not apply and the former law applies in those circumstances.

C.S.H.B. 3095 repeals the following provisions of the Estates Code:

- Section 751.004
- Section 751.053
- Section 751.054
- Section 751.055
- Section 751.056
- Section 751.058

C.S.H.B. 3095 repeals the following provisions of the Health and Safety Code:

- Section 166.162
- Section 166.163

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3095 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
ARTICLE 1. DURABLE POWERS OF ATTORNEY	ARTICLE 1. DURABLE POWERS OF ATTORNEY
No equivalent provision.	SECTION 1.01. Subchapter A, Chapter 751, Estates Code, is amended by adding Section 751.0015 to read as follows: <u>Sec. 751.0015. APPLICABILITY. This subtitle applies to all durable powers of attorney except:</u> <u>(1) a power of attorney to the extent it is coupled with an interest in the subject of that power, including a power of attorney given to or for the benefit of a creditor in connection with a credit transaction;</u> <u>(2) a proxy or other delegation to exercise voting rights or management rights with</u>

SECTION 1.01. Section 751.002, Estates Code, is amended to read as follows:

Sec. 751.002. DEFINITIONS ~~[DEFINITION]~~ OF DURABLE POWER OF ATTORNEY AND AGENT. (a) 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 or in the adult principal's conscious presence by another individual directed by the principal to sign the principal's name on the durable power of attorney;
- (3) contains:
 - (A) the words:
 - (i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or
 - (ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or
 - (B) words similar to those of Paragraph (A) that show 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 under the laws of this state or another state to:
 - (A) take acknowledgments to deeds of conveyance; and
 - (B) administer oaths.
- (b) If the law of the jurisdiction that determines the meaning and effect of a power of attorney under Section 751.009 provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity, the power of attorney is considered a durable power of attorney under this subtitle.
- (c) In this subtitle, the term "agent" includes an "attorney in fact."

SECTION 1.02. Subchapter A, Chapter 751, Estates Code, is amended by adding Sections 751.007, 751.008, 751.009,

respect to an entity; or

(3) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

SECTION 1.02. Section 751.002, Estates Code, is amended to read as follows:

Sec. 751.002. DEFINITIONS ~~[DEFINITION]~~ OF DURABLE POWER OF ATTORNEY AND AGENT. (a) 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 or in the adult principal's conscious presence by another individual directed by the principal to sign the principal's name on the durable power of attorney;
- (3) contains:
 - (A) the words:
 - (i) "This power of attorney is not affected by subsequent disability or incapacity of the principal"; or
 - (ii) "This power of attorney becomes effective on the disability or incapacity of the principal"; or
 - (B) words similar to those of Paragraph (A) that show 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 under the laws of this state or another state to:
 - (A) take acknowledgments to deeds of conveyance; and
 - (B) administer oaths.
- (b) If the law of the jurisdiction that determines the meaning and effect of a power of attorney under Section 751.009 provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity, the power of attorney is considered a durable power of attorney under this subtitle.
- (c) In this subtitle, the term "agent" includes an "attorney in fact."

SECTION 1.03. Subchapter A, Chapter 751, Estates Code, is amended by adding Sections 751.007, 751.008, 751.009,

751.010, 751.011, and 751.012 to read as follows:

Sec. 751.007. PRESUMPTION OF GENUINE SIGNATURE.

Sec. 751.008. VALIDITY OF POWER OF ATTORNEY. (a) A durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.002.

(b) A durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.009; or

(2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

(c) Except as otherwise provided by statute other than this subtitle, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument.

Sec. 751.009. MEANING AND EFFECT OF DURABLE POWER OF ATTORNEY.

The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by

the law of the jurisdiction in which the durable power of attorney was executed.

Sec. 751.010. JUDICIAL RELIEF. (a) The following may bring an action in which a court is requested to construe a durable power of attorney or review the agent's conduct and grant appropriate relief:

(1) the principal or the agent;

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

751.010, 751.011, 751.012, and 751.013 to read as follows:

Sec. 751.007. PRESUMPTION OF GENUINE SIGNATURE.

Sec. 751.008. VALIDITY OF POWER OF ATTORNEY. (a) A durable power of attorney executed in this state is valid if the execution of the instrument complies with Section 751.002.

(b) A durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.009; or

(2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

(c) Except as otherwise provided by statute other than this subtitle, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and may be relied on by a person who is requested to accept the durable power of attorney, without liability, to the same extent as the original instrument.

Sec. 751.009. MEANING AND EFFECT OF DURABLE POWER OF ATTORNEY.

The meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by:

(1) the law of the jurisdiction of the principal's domicile, if the principal's domicile is indicated in the power of attorney; or

(2) the law of the jurisdiction in which the durable power of attorney was executed, if the principal's domicile is not indicated in the power of attorney.

Sec. 751.010. JUDICIAL RELIEF. (a) The following may bring an action in which a court is requested to construe a durable power of attorney or review the agent's conduct and grant appropriate relief:

(1) the principal or the agent;

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

(3) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death;

(4) a governmental agency having regulatory authority to protect the welfare of the principal; and

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

(b) A person who is requested to accept a durable power of attorney may bring an action in a court to construe the durable power of attorney.

(c) On motion by the principal, the court shall dismiss an action filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

No equivalent provision.

Sec. 751.011. CO-AGENTS AND SUCCESSOR AGENTS. (a) A principal may designate two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, each co-agent may exercise authority independently of the other co-agent.

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

(1) has the same authority as the authority granted to the predecessor agent; and

(2) is not considered an agent under this subtitle and may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

No equivalent provision.

(3) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death;

(4) a governmental agency having regulatory authority to protect the welfare of the principal; and

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

(b) A person who is requested to accept a durable power of attorney may bring an action in a court for declaratory relief to construe the durable power of attorney.

(c) On motion by the principal, the court shall dismiss an action filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the durable power of attorney.

Sec. 751.011. ACCEPTANCE OF APPOINTMENT AS AGENT. Except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

Sec. 751.012. CO-AGENTS AND SUCCESSOR AGENTS. (a) A principal may designate two or more persons to act as co-agents. Unless the durable power of attorney otherwise provides, the co-agents must act jointly.

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

(1) has the same authority as the authority granted to the predecessor agent; and

(2) is not considered an agent under this subtitle and may not act until all predecessor agents to the successor agent have resigned, died, or become incapacitated, are not or are no longer qualified to serve, or have declined to serve.

(c) If the principal has designated co-agents

(c) Except as otherwise provided by Subsection (d) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

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

Sec. 751.012. REIMBURSEMENT AND COMPENSATION OF AGENT. Unless the durable power of attorney otherwise provides, an agent is entitled to reimbursement of reasonable expenses incurred on the principal's behalf and to compensation that is reasonable under the circumstances.

SECTION 1.03. The heading to Subchapter B, Chapter 751, Estates Code, is amended.

SECTION 1.04. Section 751.051, Estates Code, is amended to read as follows:

Sec. 751.051. EFFECT OF ACTS PERFORMED BY [ATTORNEY IN FACT OR] AGENT [DURING PRINCIPAL'S DISABILITY OR INCAPACITY]. (a) An [Each] act performed by an [attorney in fact or] agent under a durable power of attorney

and one or more successor agents for a specified co-agent:

(1) the authority granted to a successor agent is the same as the authority granted to the predecessor co-agent whom the successor agent is designated to succeed; and

(2) the specified co-agent is considered an agent under this subtitle and may act in that capacity only when the predecessor co-agent whom the successor agent is designated to succeed has died, becomes incapacitated, resigns, is not or is no longer qualified to serve, or has declined to serve.

(d) Except as otherwise provided by Subsection (e) or the durable power of attorney, an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

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

Sec. 751.013. REIMBURSEMENT AND COMPENSATION OF AGENT. Unless the durable power of attorney otherwise provides or is in conflict with another agreement or instrument, an agent is entitled to reimbursement of reasonable expenses incurred on the principal's behalf and to compensation that is reasonable under the circumstances.

SECTION 1.04. Same as introduced version.

SECTION 1.05. Section 751.051, Estates Code, is amended to read as follows:

Sec. 751.051. EFFECT OF ACTS PERFORMED BY [ATTORNEY IN FACT OR] AGENT [DURING PRINCIPAL'S DISABILITY OR INCAPACITY]. An [Each] act performed by an [attorney in fact or] agent under a durable power of attorney

~~[during a period of the principal's disability or incapacity]~~ has the same effect[;] and inures to the benefit of and binds the principal and the principal's successors in interest[;] as if the principal had performed the act ~~[were not disabled or incapacitated]~~.

(b) If a durable power of attorney grants an agent appropriate authority with respect to a transaction, an agent may execute and deliver the documents necessary for the transaction, including documents creating a lien against the principal's homestead under Section 50, Article XVI, Texas Constitution, regardless of the fact that the durable power of attorney was signed before the transaction.

SECTION 1.05. Section 751.052, Estates Code, is amended.

SECTION 1.06. Section 751.057, Estates Code, is amended.

SECTION 1.07. Chapter 751, Estates Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. DURATION OF DURABLE POWER OF ATTORNEY; ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

Sec. 751.061. TERMINATION OF DURABLE POWER OF ATTORNEY. A durable power of attorney terminates when:

- (1) the principal dies;
- (2) the principal revokes the durable power of attorney;
- (3) the durable power of attorney provides that it terminates;
- (4) the purpose of the durable power of attorney is accomplished;
- (5) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the durable power of attorney does not provide for another agent to act under the durable power of attorney; or
- (6) a permanent guardian of the estate of the principal has qualified to serve in that capacity as provided by Section 751.052.

~~[during a period of the principal's disability or incapacity]~~ has the same effect[;] and inures to the benefit of and binds the principal and the principal's successors in interest[;] as if the principal had performed the act ~~[were not disabled or incapacitated]~~.

No equivalent provision.

SECTION 1.06. Same as introduced version.

SECTION 1.07. Same as introduced version.

SECTION 1.08. Chapter 751, Estates Code, is amended by adding Subchapter B-1 to read as follows:

SUBCHAPTER B-1. DURATION OF DURABLE POWER OF ATTORNEY; ACCEPTANCE OF AND RELIANCE ON DURABLE POWER OF ATTORNEY

Sec. 751.061. TERMINATION OF DURABLE POWER OF ATTORNEY. A durable power of attorney terminates when:

- (1) the principal dies;
- (2) the principal revokes the durable power of attorney;
- (3) the durable power of attorney provides that it terminates;
- (4) the purpose of the durable power of attorney is accomplished;
- (5) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the durable power of attorney does not provide for another agent to act under the durable power of attorney;
- (6) a permanent guardian of the estate of the principal has qualified to serve in that capacity as provided by Section 751.052; or
- (7) the agent's authority is otherwise terminated under Section 751.062 and the durable power of attorney does not provide for another agent to act under the durable power of attorney.

Sec. 751.062. TERMINATION OF AGENT'S AUTHORITY. (a) An agent's authority under a durable power of attorney terminates when:

- (1) the principal revokes the authority;
- (2) the agent dies, becomes incapacitated, or resigns;
- (3) an action is filed for the dissolution or annulment of the agent's marriage to the principal or to declare the marriage of the agent and principal void, unless the durable power of attorney otherwise provides; or
- (4) the durable power of attorney terminates.

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

Sec. 751.063. EFFECT OF TERMINATION OF DURABLE POWER OF ATTORNEY OR AGENT'S AUTHORITY ON CERTAIN PERSONS.

Sec. 751.064. EFFECT ON PREVIOUS DURABLE POWER OF ATTORNEY.

Sec. 751.065. ACCEPTANCE OF AND RELIANCE ON POWER OF ATTORNEY.

(a) A person who in good faith accepts a durable power of attorney without actual knowledge that the signature of the principal is not genuine may rely on the presumption under Section 751.007 that the signature is genuine and that the durable power of attorney was properly executed.

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

- (1) the power of attorney were genuine, valid, and still in effect;
 - (2) the agent's authority were genuine, valid, and still in effect; and
 - (3) the agent had not exceeded and had properly exercised the authority.
- (c) A person who is requested to accept a

Sec. 751.062. TERMINATION OF AGENT'S AUTHORITY. (a) An agent's authority under a durable power of attorney terminates when:

- (1) the principal revokes the authority;
- (2) the agent dies, becomes incapacitated, or resigns;
- (3) the agent's marriage to the principal is dissolved by court decree of divorce or annulment or is declared void by a court, unless the durable power of attorney otherwise provides; or
- (4) the durable power of attorney terminates.

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

Sec. 751.063. EFFECT OF TERMINATION OF DURABLE POWER OF ATTORNEY OR AGENT'S AUTHORITY ON CERTAIN PERSONS.

Sec. 751.064. EFFECT ON PREVIOUS DURABLE POWER OF ATTORNEY.

Sec. 751.065. ACCEPTANCE OF AND RELIANCE ON POWER OF ATTORNEY.

(a) A person who accepts a durable power of attorney without actual knowledge that the signature of the principal is not genuine may rely on the presumption under Section 751.007 that the signature is genuine and that the durable power of attorney was properly executed.

(b) A person who accepts a durable power of attorney without actual knowledge that the durable power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on the power of attorney as if:

- (1) the power of attorney were genuine, valid, and still in effect;
 - (2) the agent's authority were genuine, valid, and still in effect; and
 - (3) the agent had not exceeded and had properly exercised the authority.
- (c) A person who is requested to accept a

durable power of attorney may request, and rely on, without further investigation:

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

(2) an English translation of the power of attorney if the power of attorney contains, wholly or partly, language other than English; and

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

(d) An English translation or an opinion of counsel requested under this section must be provided to the principal at the principal's own expense unless the request is made not earlier than the seventh business day after the date the power of attorney is presented for acceptance.

(e) For purposes of this section and Section 751.066, a person who conducts activities through employees is without actual knowledge of a fact relating to a durable power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

No equivalent provision.

durable power of attorney may request, and rely on, without further investigation:

(1) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney, which is conclusive proof of the matter;

(2) an English translation of the power of attorney if the power of attorney contains, wholly or partly, language other than English; and

(3) an opinion of counsel containing no material qualifications as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

(d) An English translation or an opinion of counsel requested under this section must be provided by the agent at the agent's own expense unless the request is made not earlier than the 10th business day after the date the power of attorney is presented for acceptance.

(e) For purposes of this section, a person who conducts activities through employees is without actual knowledge of a fact relating to a durable power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

(f) A certification described by Subsection (c) may be in the following form:

CERTIFICATION OF POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

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

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

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or partially or completely terminated by the occurrence of any event, whether or not referenced in the power of attorney;

b. A permanent or temporary guardian of the estate of the principal has not qualified

to serve in that capacity;

c. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court (or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal is dissolved by court decree of divorce or annulment or is declared void by a court);

d. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

e. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal is now disabled or incapacitated or the specified future time or contingency has occurred.

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

6. If applicable, I am the successor to _____ (predecessor agent), who has resigned, died, or become incapacitated, is not or is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act. There is no prior agent remaining under the power of attorney that precludes my acting as successor agent.

7. I agree not to exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or partially or completely terminated.

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

9. If applicable, the power of attorney was executed in the law office of

Date: _____, 20 ____.

(signature of agent)

No equivalent provision.

Sec. 751.066. LIABILITY FOR REFUSAL TO ACCEPT POWER OF ATTORNEY.

(a) Except as otherwise provided by Subsection (d), a person shall either accept a

durable power of attorney or request a certification, a translation, or an opinion of counsel under Section 751.065 not later than the seventh business day after the date the durable power of attorney is presented for acceptance.

(b) A person who requests a certification, a translation, or an opinion of counsel under Section 751.065 must accept the durable power of attorney not later than the fifth business day after the date on which the certification, translation, or opinion of counsel is received.

(c) Except as provided by Subsection (d), a person may not:

(1) require an additional or different form of durable power of attorney for authority granted in the durable power of attorney presented; or

(2) require that the durable power of attorney be recorded in the official public records of a county clerk unless the recordation is required by Section 751.151.

(d) A person is not required to accept a durable power of attorney if:

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

(2) the person's engagement in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law other than this chapter;

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

(4) a request for a certification, a translation, or an opinion of counsel under Section 751.065 is refused;

(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, regardless of whether a certification, a translation, or an opinion of counsel under Section 751.065 has been requested or provided;

(6) the person makes, or has actual knowledge that another person has made, a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting

on behalf of or with the agent; or
(7) the person has received conflicting instructions or communications from co-agents regarding a matter, or in good faith believes that co-agents do not agree regarding a matter, but the person may refuse to accept the durable power of attorney only with respect to that matter.

(e) A person who refuses to accept a durable power of attorney in violation of this section is subject to:

(1) a judgment for damages to the same extent as if the person had refused to allow the principal to act on the principal's own behalf;

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

(3) liability for reasonable attorney's fees and costs incurred in any proceeding that:

(A) confirms the validity of the durable power of attorney;

(B) results in the award of damages against the person; or

(C) mandates acceptance of the durable power of attorney.

SECTION 1.08. Sections 751.101, 751.102, 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended to read as follows:

Sec. 751.101. FIDUCIARY DUTIES. An ~~[attorney in fact or]~~ agent

is a fiduciary and has a duty to inform and to account for actions taken under the power of attorney.

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL.

Sec. 751.103. MAINTENANCE OF RECORDS.

Sec. 751.104. ACCOUNTING.

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT.

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS. This subchapter does not limit the right of the principal to terminate the power of attorney or to make additional requirements of or to give additional instructions to the ~~[attorney~~

SECTION 1.09. Sections 751.101, 751.102, 751.103, 751.104, 751.105, and 751.106, Estates Code, are amended to read as follows:

Sec. 751.101. FIDUCIARY DUTIES. An ~~[attorney in fact or]~~ agent who accepts appointment as an agent under a durable power of attorney as provided by Section 751.011 is a fiduciary and has a duty to inform and to account for actions taken under the power of attorney.

Sec. 751.102. DUTY TO TIMELY INFORM PRINCIPAL.

Sec. 751.103. MAINTENANCE OF RECORDS.

Sec. 751.104. ACCOUNTING.

Sec. 751.105. EFFECT OF FAILURE TO COMPLY; SUIT.

Sec. 751.106. EFFECT OF SUBCHAPTER ON PRINCIPAL'S RIGHTS. This subchapter does not limit the right of the principal to terminate the power of attorney or to make additional requirements of, ~~[or to]~~ give additional instructions to, or

~~in fact or~~] agent.

SECTION 1.09. Section 751.151, Estates Code, is amended.

SECTION 1.10. Chapter 751, Estates Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. AUTHORITY OF AGENT UNDER POWER OF ATTORNEY

Sec. 751.201. GRANT OF GENERAL AUTHORITY; AUTHORITY REQUIRING SPECIFIC GRANT. (a) Only if the power of attorney expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject, an agent under a durable power of attorney, on behalf of the principal or with respect to the principal's property, may:

- (1) create, amend, revoke, or terminate an inter vivos trust;
- (2) make a gift;
- (3) create or change rights of survivorship;
- (4) create or change a beneficiary designation;
- (5) delegate authority granted under the power of attorney; or
- (6) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.

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

(c) Subject to Subsections (a), (b), (d), and (e), if a durable power of attorney grants to an agent the authority to perform all acts that a principal could perform, the agent has the general authority conferred by Subchapter C, Chapter 752.

(d) Unless the durable power of attorney otherwise provides, a grant of authority to

expressly modify the duties or obligations of the [attorney in fact or] agent.

SECTION 1.10. Same as introduced version.

SECTION 1.11. Chapter 751, Estates Code, is amended by adding Subchapter E to read as follows:

SUBCHAPTER E. AUTHORITY OF AGENT UNDER POWER OF ATTORNEY

Sec. 751.201. GRANT OF GENERAL AUTHORITY; AUTHORITY REQUIRING SPECIFIC GRANT. (a) Only if the power of attorney expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject, an agent under a durable power of attorney, on behalf of the principal or with respect to the principal's property, may:

- (1) create, amend, revoke, or terminate an inter vivos trust;
- (2) make a gift;
- (3) create or change rights of survivorship;
- (4) create or change a beneficiary designation; or
- (5) delegate authority granted under the power of attorney.

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

(c) Subject to Subsections (a), (b), (d), and (e), if a durable power of attorney grants to an agent the authority to perform all acts that a principal could perform, the agent has the general authority conferred by Subchapter C, Chapter 752.

(d) Unless the durable power of attorney otherwise provides, a grant of authority to

make a gift is subject to Section 751.202.

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

(f) Authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether:

- (1) the property is located in this state; and
- (2) the authority is exercised in this state or the power of attorney is executed in this state.

(g) An agent who is expressly granted any of the authority under Subsection (a) shall attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

- (1) the value and nature of the principal's property;
- (2) the principal's foreseeable obligations and need for maintenance;
- (3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
- (4) eligibility for a benefit, a program, or assistance under a statute or regulation.

Sec. 751.202. GIFTS. (a) In this section, a gift for the benefit of a person includes:

- (1) a gift to a trust;
- (2) an account under the Texas Uniform Transfers to Minors Act or a similar law of any other state; and
- (3) a tuition savings account or prepaid tuition plan as described by Section 529, Internal Revenue Code of 1986.

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

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

(A) the annual dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue Code of 1986, without regard to whether the federal gift tax

make a gift is subject to Section 751.202.

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

(f) Authority granted in a durable power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, regardless of whether:

- (1) the property is located in this state; and
- (2) the authority is exercised in this state or the power of attorney is executed in this state.

(g) An agent who is expressly granted any of the authority under Subsection (a) shall attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

- (1) the value and nature of the principal's property;
- (2) the principal's foreseeable obligations and need for maintenance;
- (3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
- (4) eligibility for a benefit, a program, or assistance under a statute or regulation.

Sec. 751.202. GIFTS. (a) In this section, a gift for the benefit of a person includes:

- (1) a gift to a trust;
- (2) an account under the Texas Uniform Transfers to Minors Act or a similar law of any other state; and
- (3) a tuition savings account or prepaid tuition plan as described by Section 529, Internal Revenue Code of 1986.

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

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

(A) the annual dollar limits of the federal gift tax exclusion under Section 2503(b), Internal Revenue Code of 1986, without regard to whether the federal gift tax

exclusion applies to the gift; or
(B) if the principal's spouse agrees to consent to a split gift as provided by Section 2513, Internal Revenue Code of 1986, twice the annual federal gift tax exclusion limit; and
(2) consent, as provided by Section 2513, Internal Revenue Code of 1986, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.
(c) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:
(1) the value and nature of the principal's property;
(2) the principal's foreseeable obligations and need for maintenance;
(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
(4) eligibility for a benefit, a program, or assistance under a statute or regulation; and
(5) the principal's personal history of making or joining in making gifts.

Sec. 751.203. BENEFICIARY DESIGNATIONS. (a) Unless the durable power of attorney otherwise provides, authority granted to an agent under Section 751.201(a)(4) includes the power to:

(1) create or change a beneficiary designation under an account, a contract, or another arrangement that authorizes the principal to designate a beneficiary, including insurance and annuity contracts, qualified and nonqualified retirement plans, including those retirement plans defined by Section 752.113, employment agreements, including deferred compensation agreements, and residency agreements;
(2) enter into or change a P.O.D. account or trust account under Chapter 113; or
(3) create or change a nontestamentary payment or transfer under Chapter 111.
(b) If an agent is granted authority under Section 751.201(a)(4) and if the durable power of attorney grants the authority to the agent in Section 752.108 or 752.113, then,

exclusion applies to the gift; or
(B) if the principal's spouse agrees to consent to a split gift as provided by Section 2513, Internal Revenue Code of 1986, twice the annual federal gift tax exclusion limit; and
(2) consent, as provided by Section 2513, Internal Revenue Code of 1986, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual federal gift tax exclusions for both spouses.
(c) An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:
(1) the value and nature of the principal's property;
(2) the principal's foreseeable obligations and need for maintenance;
(3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
(4) eligibility for a benefit, a program, or assistance under a statute or regulation; and
(5) the principal's personal history of making or joining in making gifts.

Sec. 751.203. BENEFICIARY DESIGNATIONS. (a) Unless the durable power of attorney otherwise provides, and except as provided by Section 751.201(b), authority granted to an agent under Section 751.201(a)(4) includes the power to:

(1) create or change a beneficiary designation under an account, a contract, or another arrangement that authorizes the principal to designate a beneficiary, including insurance and annuity contracts, qualified and nonqualified retirement plans, including those retirement plans defined by Section 752.113, employment agreements, including deferred compensation agreements, and residency agreements;
(2) enter into or change a P.O.D. account or trust account under Chapter 113; or
(3) create or change a nontestamentary payment or transfer under Chapter 111.
(b) If an agent is granted authority under Section 751.201(a)(4) and if the durable power of attorney grants the authority to the agent in Section 752.108 or 752.113, then,

unless the durable power of attorney otherwise provides, the authority of the agent to designate the agent as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

(c) If an agent is not granted authority under Section 751.201(a)(4) and if the durable power of attorney grants the authority to the agent in Section 752.108 or 752.113, then, unless the durable power of attorney otherwise provides and notwithstanding Section 751.201, the agent's authority to designate the agent as a beneficiary is subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

Sec. 751.204. INCORPORATION OF AUTHORITY.

SECTION 1.11. Section 752.051, Estates Code, is amended to read as follows:

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

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, SUBTITLE P, TITLE 2, ESTATES 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.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), 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 all of the

unless the durable power of attorney otherwise provides, the authority of the agent to designate the agent as a beneficiary is not subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

(c) If an agent is not granted authority under Section 751.201(a)(4) and if the durable power of attorney grants the authority to the agent in Section 752.108 or 752.113, then, unless the durable power of attorney otherwise provides and notwithstanding Section 751.201, the agent's authority to designate the agent as a beneficiary is subject to the limitations prescribed by Sections 752.108(b) and 752.113(c).

Sec. 751.204. INCORPORATION OF AUTHORITY.

SECTION 1.12. Section 752.051, Estates Code, is amended to read as follows:

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

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, SUBTITLE P, TITLE 2, ESTATES 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.

You should select someone you trust to serve as your agent (attorney in fact). Unless you specify otherwise, generally the agent's (attorney in fact's) authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent (attorney in fact) resigns or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), 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 all of the

following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

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

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

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

- (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 DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

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

I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the

following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MUST ACT JOINTLY.)

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

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

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

- (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 DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:

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

I grant my agent (attorney in fact) the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the

federal gift tax for the calendar year of the gift.

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

UNLESS YOU DIRECT OTHERWISE BELOW [~~ABOVE~~], THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES [~~IS REVOKED~~]. CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

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

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

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

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

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

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

federal gift tax for the calendar year of the gift.

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

UNLESS YOU DIRECT OTHERWISE BELOW [~~ABOVE~~], THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES [~~IS REVOKED~~]. CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

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

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

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

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

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

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

because of reliance on this power of attorney.
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 _____,

(your signature)
State of _____
County of _____
This document was acknowledged before me on _____(date) by _____
(name of principal)

(signature of notarial officer)
(Seal, if any, of notary)

(printed name)
My commission expires: _____

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

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

because of reliance on this power of attorney.

If any agent named by me dies, becomes legally disabled, resigns, or refuses to act, or if my marriage to an agent named by me is dissolved by court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney).

I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.
Signed this _____ day of _____,

(your signature)
State of _____
County of _____
This document was acknowledged before me on _____(date) by _____
(name of principal)

(signature of notarial officer)
(Seal, if any, of notary)

(printed name)
My commission expires: _____

IMPORTANT INFORMATION FOR AGENT (ATTORNEY IN FACT)

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

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

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

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

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

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

(B) each action taken or decision made by you as agent or attorney in fact;

(C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

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

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

(F) each known liability;

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

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

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

(1) the principal's death;

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

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

(4) if you are married to the principal, the dissolution of your marriage by court decree

(Principal's Name) by (Your Signature) as Agent (or as Attorney in Fact)

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

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

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

(B) each action taken or decision made by you as agent or attorney in fact;

(C) a complete account of receipts, disbursements, and other actions of you as agent or attorney in fact that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;

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

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

(F) each known liability;

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

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

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

(1) the principal's death;

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

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

(4) if you are married to the principal, the dissolution of your marriage by court decree

of divorce or annulment;

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

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

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

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

SECTION 1.12. Subchapter B, Chapter 752, Estates Code, is amended by adding Section 752.052 to read as follows:

Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC AUTHORITY. The statutory durable power of attorney may be modified to allow the principal to grant the agent the specific authority described by Section 751.201 by including the following language:

"GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

() Create, amend, revoke, or terminate an

of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;

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

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

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

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

SECTION 1.13. Subchapter B, Chapter 752, Estates Code, is amended by adding Section 752.052 to read as follows:

Sec. 752.052. MODIFYING STATUTORY FORM TO GRANT SPECIFIC AUTHORITY. The statutory durable power of attorney may be modified to allow the principal to grant the agent the specific authority described by Section 751.201 by including the following language:

"GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

() Create, amend, revoke, or terminate an

inter vivos trust

() Make a gift, subject to the limitations of Section 751.202, the Durable Power of Attorney Act, and any special instructions in this power of attorney

() Create or change rights of survivorship

() Create or change a beneficiary designation

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

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

SECTION 1.13. Section 752.102, Estates Code, is amended to read as follows:

Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney 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 or 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) perform 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 the authority 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

inter vivos trust

() Make a gift, subject to the limitations of Section 751.202, the Durable Power of Attorney Act, and any special instructions in this power of attorney

() Create or change rights of survivorship

() Create or change a beneficiary designation

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

SECTION 1.14. Section 752.102, Estates Code, is amended to read as follows:

Sec. 752.102. REAL PROPERTY TRANSACTIONS. (a) The language conferring authority with respect to real property transactions in a statutory durable power of attorney 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 or 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) perform 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 the authority 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 the taxes or assessments;

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

(E) manage and supervise an interest in real property, including the mineral estate~~[, by, for example:~~

~~[(i) entering into a lease for oil, gas, and mineral purposes;~~

~~[(ii) making contracts for development of the mineral estate; or~~

~~[(iii) making pooling and unitization agreements];~~

(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;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of

assessments or apply for and receive refunds in connection with the taxes or assessments;

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

(E) manage and supervise an interest in real property, including the mineral estate~~[, by, for example:~~

~~[(i) entering into a lease for oil, gas, and mineral purposes;~~

~~[(ii) making contracts for development of the mineral estate; or~~

~~[(iii) making pooling and unitization agreements];~~

(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;

(9) enter into mineral transactions, including:

(A) negotiating and making oil, gas, and other mineral leases covering any land, mineral, or royalty interest in which the principal has or claims to have an interest;

(B) pooling and unitizing all or part of the principal's land, mineral leasehold, mineral, royalty, or other interest with land, mineral leasehold, mineral, royalty, or other interest of one or more persons for the purpose of developing and producing oil, gas, or other minerals, and making leases or assignments granting the right to pool and unitize;

(C) entering into contracts and agreements concerning the installation and operation of

plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;
(D) conducting or contracting for the conducting of seismic evaluation operations;
(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;
(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests towards the drilling of wells;
(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;
(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation therein;
(I) entering into farmout agreements committing the principal to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;
(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests; and
(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, regardless of whether the action is now or subsequently recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds thereof on behalf of the principal; and
(10) designate the property that constitutes the principal's homestead.
(b) The power to mortgage and encumber

plants or other facilities for the cycling, repressuring, processing, or other treating or handling of oil, gas, or other minerals;
(D) conducting or contracting for the conducting of seismic evaluation operations;
(E) drilling or contracting for the drilling of wells for oil, gas, or other minerals;
(F) contracting for and making "dry hole" and "bottom hole" contributions of cash, leasehold interests, or other interests toward the drilling of wells;
(G) using or contracting for the use of any method of secondary or tertiary recovery of any mineral, including the injection of water, gas, air, or other substances;
(H) purchasing oil, gas, or other mineral leases, leasehold interests, or other interests for any type of consideration, including farmout agreements requiring the drilling or reworking of wells or participation therein;
(I) entering into farmout agreements committing the principal to assign oil, gas, or other mineral leases or interests in consideration for the drilling of wells or other oil, gas, or mineral operations;
(J) negotiating the transfer of and transferring oil, gas, or other mineral leases or interests for any consideration, such as retained overriding royalty interests of any nature, drilling or reworking commitments, or production interests; and
(K) executing and entering into contracts, conveyances, and other agreements or transfers considered necessary or desirable to carry out the powers granted in this section, regardless of whether the action is now or subsequently recognized or considered as a common or proper practice by those engaged in the business of prospecting for, developing, producing, processing, transporting, or marketing minerals, including entering into and executing division orders, oil, gas, or other mineral sales contracts, exploration agreements, processing agreements, and other contracts relating to the processing, handling, treating, transporting, and marketing of oil, gas, or other mineral production from or accruing to the principal and receiving and receipting for the proceeds thereof on behalf of the principal; and
(10) designate the property that constitutes the principal's homestead.
(b) The power to mortgage and encumber

real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against the principal's spouse's homestead.

SECTION 1.14. Section 752.108(b), Estates Code, is amended.

SECTION 1.15. Sections 752.109 and 752.111, Estates Code, are amended.

SECTION 1.16. Section 752.113(c), Estates Code, is amended to read as follows:

No equivalent provision.

real property provided by this section includes the power to execute documents necessary to create a lien against the principal's homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal's spouse in which the principal has a homestead interest.

SECTION 1.15. Same as introduced version.

SECTION 1.16. Same as introduced version.

SECTION 1.17. Sections 752.113(b) and (c), Estates Code, are amended to read as follows:

(b) The language conferring authority with respect to retirement plan transactions in a statutory durable power of attorney empowers the attorney in fact or agent to perform any lawful act the principal may perform 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 as provided by Subsection (c);

(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 principal's right to be a beneficiary of a joint or survivor annuity if the principal is not the participant in the retirement plan providing those payments [a spouse who is not employed];

(9) receive, endorse, and cash payments from a retirement plan;

(10) waive the principal's right to receive all or a portion of benefits payable by a

(c) Unless the principal has expressly granted the authority to create or change a beneficiary designation under Section 751.201(a)(4), an [Aa] attorney in fact or agent may be named a beneficiary under a retirement plan 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.

SECTION 1.17. The changes in law made by this Act to Subchapters B, C, and D, Chapter 751, Estates Code, and by Subchapter E, Chapter 751, Estates Code, as added by this Act, apply to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act. A durable power of attorney, including a statutory durable power of attorney executed before the effective date of this Act, is governed by the law as it existed on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose.

SECTION 1.18. (a) Except as otherwise provided by this Act, this Act applies to:

- (1) a durable power of attorney created before, on, or after the effective date of this Act;
 - (2) a judicial proceeding concerning a durable power of attorney commenced on or after the effective date of this Act; and
 - (3) a judicial proceeding concerning a durable power of attorney commenced before the effective date of this Act that is pending.
- (b) If the court finds that application of a provision of this Act would substantially interfere with the effective conduct of a judicial proceeding concerning a durable power of attorney commenced before the effective date of this Act or would prejudice the rights of a party to the proceeding, the provision of this Act does not apply and the former law applies in those circumstances.
- (c) An act performed before the effective

retirement plan; and

(11) request and receive information relating to the principal from retirement plan records.

(c) Unless the principal has expressly granted the authority to create or change a beneficiary designation under Section 751.201(a)(4), an [Aa] attorney in fact or agent may be named a beneficiary under a retirement plan only to the extent the attorney in fact or agent was a named beneficiary under the retirement plan, or in the case of a rollover or trustee-to-trustee transfer, the predecessor retirement plan, before the durable power of attorney was executed.

SECTION 1.18. The changes in law made by this Act to Subchapters B, C, and D, Chapter 751, Estates Code, and by Subchapters B-1 and E, Chapter 751, Estates Code, as added by this Act, apply to a durable power of attorney, including a statutory durable power of attorney, executed on or after the effective date of this Act. A durable power of attorney, including a statutory durable power of attorney, executed before the effective date of this Act is governed by the law as it existed on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose.

SECTION 1.19. Same as introduced version.

date of this Act is not affected by this Act.
(d) Section 751.012, Estates Code, as added by this Act, applies to a durable power of attorney executed on or after the effective date of this Act.

SECTION 1.19. The following sections of Title 2, Estates Code, are repealed:

- (1) Section 751.004;
- (2) Section 751.053;
- (3) Section 751.054;
- (4) Section 751.055;
- (5) Section 751.056; and
- (6) Section 751.058.

ARTICLE 2. ADVANCE DIRECTIVES

SECTION 2.01. Sections 166.002(4) and (8), Health and Safety Code, are amended to read as follows:

(4) "Competent" means possessing the ability, based on the attending physician's opinion [~~reasonable medical judgment~~], to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

(8) "Incompetent" means lacking the ability, based on the attending physician's opinion [~~reasonable medical judgment~~], to understand and appreciate the nature and consequences of a treatment decision, including the significant benefits and harms of and reasonable alternatives to a proposed treatment decision.

SECTION 2.02. Section 166.003, Health and Safety Code, is amended.

SECTION 2.03. Section 166.033, Health and Safety Code, is amended to read as follows:

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These

SECTION 1.20. Same as introduced version.

ARTICLE 2. ADVANCE DIRECTIVES

No equivalent provision.

SECTION 2.01. Same as introduced version.

SECTION 2.02. Section 166.033, Health and Safety Code, is amended to read as follows:

Sec. 166.033. FORM OF WRITTEN DIRECTIVE. A written directive may be in the following form:

DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

Instructions for completing this document:

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These

wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill. You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

DIRECTIVE

I, _____, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored: If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive

wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill. You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

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_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive

in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

_____ I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

_____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If I do not have a Medical Power of Attorney, and I am unable to make my wishes known, I designate the following person(s) to make treatment decisions with my physician compatible with my personal values:

1. _____

2. _____

(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of

in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

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1. _____

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(If a Medical Power of Attorney has been executed, then an agent already has been named and you should not list additional names in this document.)

If the above persons are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of

my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

Signed _____ Date _____ City, County, State of Residence _____

Either a notary public or two ~~[Two]~~ competent adult witnesses must sign below, acknowledging the signature of the declarant. If this instrument is acknowledged before two witnesses, the ~~[The]~~ witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. ~~[If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient.]~~ This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

SIGNATURE ACKNOWLEDGED
BEFORE NOTARY

State of Texas

County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

NOTARY PUBLIC, State of
Texas

Notary's printed name:

My commission expires:

OR
SIGNATURE IN PRESENCE OF TWO

my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

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Either a notary public or two ~~[Two]~~ competent adult witnesses must sign below, acknowledging the signature of the declarant. If this instrument is acknowledged before two witnesses, the ~~[The]~~ witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. ~~[If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient.]~~ This witness may not be an owner, operator, [officer, director, partner,] or [business office] employee of a health care facility in which you as the declarant are a [the] patient [is being cared for or of any parent organization of the health care facility].

SIGNATURE ACKNOWLEDGED
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NOTARY PUBLIC, State of
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Notary's printed name:

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COMPETENT ADULT WITNESSES

Witness 1 _____
Witness 2 _____

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"Irreversible condition" means a condition, injury, or illness:

- (1) that may be treated, but is never cured or eliminated;
- (2) that leaves a person unable to care for or make decisions for the person's own self; and
- (3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"Life-sustaining treatment" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six

COMPETENT ADULT WITNESSES

Witness 1 _____
Witness 2 _____

Definitions:

"Artificial nutrition and hydration" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

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"Terminal condition" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six

months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

SECTION 2.04. Sections 166.152(b) and (g), Health and Safety Code, are amended.

SECTION 2.05. Subchapter D, Chapter 166, Health and Safety Code, is amended by adding Section 166.1525 to read as follows:
Sec. 166.1525. DESIGNATION OF CO-AGENTS. A medical power of attorney may provide for co-agents. Unless the medical power of attorney provides otherwise, each co-agent is authorized by the principal to act independently, and third parties may rely on the decisions of any co-agent.

SECTION 2.06. Section 166.155, Health and Safety Code, is amended to read as follows:

Sec. 166.155. REVOCATION; EFFECT OF DIVORCE. (a) A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state; or

(2) execution by the principal of a subsequent medical power of attorney. ~~[;or]~~

(b) Divorce

~~[(3) the divorcee]~~ of the principal and spouse revokes any designation in a medical power of attorney of the divorced [; if the] spouse as an agent [is the principal's agent,] unless the medical power of attorney specifically provides otherwise. Divorce does not revoke the designation of other agents listed in the medical power of attorney.

months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

SECTION 2.03. Same as introduced version.

No equivalent provision.

SECTION 2.04. Section 166.155, Health and Safety Code, is amended to read as follows:

Sec. 166.155. REVOCATION; EFFECT OF TERMINATION OF MARRIAGE. (a)

A medical power of attorney is revoked by:

(1) oral or written notification at any time by the principal to the agent or a licensed or certified health or residential care provider or by any other act evidencing a specific intent to revoke the power, without regard to whether the principal is competent or the principal's mental state; or

(2) execution by the principal of a subsequent medical power of attorney. ~~[;or]~~

(b) An agent's authority under a medical power of attorney terminates if the agent's marriage to [

(3) the divorcee of] the principal is dissolved, annulled, or declared void [and spouse, if the spouse is the principal's agent,] unless the medical power of attorney specifically provides otherwise. The authority of other agents under the medical power of attorney is not terminated.

(c) [(b)] A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney or revocation of the designation of a divorced spouse as an agent shall immediately record the revocation in the principal's medical record and give notice of the revocation to the agent and any known health and residential care providers currently responsible for the principal's care.

SECTION 2.07. Subchapter D, Chapter 166, Health and Safety Code, is amended.

SECTION 2.08. Section 166.164, Health and Safety Code, is amended to read as follows:

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney may [~~must~~] be in [~~substantially~~] the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney is effective only when, in the opinion of my attending physician, I am incompetent or I am unable to make and communicate a choice about a particular health care decision [~~takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician~~].

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE _____ AS FOLLOWS: _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation of that spouse is automatically revoked by law if your

(c) [(b)] A principal's licensed or certified health or residential care provider who is informed of or provided with a revocation of a medical power of attorney or is informed of the termination of an agent's authority under Subsection (b) shall immediately record the revocation or termination in the principal's medical record and give notice of the revocation or termination to the agent and any known health and residential care providers currently responsible for the principal's care.

SECTION 2.05. Same as introduced version.

SECTION 2.06. Section 166.164, Health and Safety Code, is amended to read as follows:

Sec. 166.164. FORM OF MEDICAL POWER OF ATTORNEY. The medical power of attorney may [~~must~~] be in [~~substantially~~] the following form:

MEDICAL POWER OF ATTORNEY DESIGNATION OF HEALTH CARE AGENT.

I, _____ (insert your name) appoint:

Name: _____

Address: _____

Phone _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney is effective only when, in the opinion of my attending physician, I am incompetent or I am unable to make and communicate a choice about a particular health care decision [~~takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician~~].

LIMITATIONS ON THE DECISION-MAKING AUTHORITY OF MY AGENT ARE _____ AS FOLLOWS: _____

DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation of that spouse is automatically terminated [~~revoked~~] by

marriage is dissolved unless this document provides otherwise, but the remainder of this document is valid.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

A. First Alternate Agent
Name: _____
Address: _____
Phone _____

B. Second Alternate Agent
Name: _____
Address: _____
Phone _____

I intend to keep the [The] original of this document [is kept] at:

I intend for the [The] following individuals or institutions to have signed copies:

Name: _____
Address: _____
Name: _____
Address: _____

DURATION.

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney.

(IF A SPECIFIC TERMINATION DATE IS SELECTED) This power of attorney ends on the following date: _____.

If I am incompetent or unable to make and communicate health care decisions for myself when this power of attorney expires, the authority I have granted my agent continues to exist until the time I become able to make and communicate health care decisions for myself.

[(IF APPLICABLE) This power of attorney ends on the following date: _____]

PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

The medical power of attorney is an important legal document. Before signing this document, you should know these important facts:

law if your marriage is dissolved, annulled, or declared void unless this document provides otherwise, but the remainder of this document is valid and the authority of other agents under the document is not terminated.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent to make health care decisions for me as authorized by this document, who serve in the following order:

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Name: _____
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Phone _____

B. Second Alternate Agent
Name: _____
Address: _____
Phone _____

I intend to keep the [The] original of this document [is kept] at:

I intend for the [The] following individuals or institutions to have signed copies:

Name: _____
Address: _____
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I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney.

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PRIOR DESIGNATIONS REVOKED.

I revoke any prior medical power of attorney.

INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

The medical power of attorney is an important legal document. Before signing this document, you should know these important facts:

Except to the extent you state otherwise or as provided by Texas law, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself.

Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion.

A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority is effective when, in your doctor's opinion, you are incompetent or you are unable to make and communicate a choice about a particular health care decision.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent, when making decisions about your health care, has the same authority to make those decisions as you would have if you were competent or able to communicate.

It is important that you discuss your medical power of attorney with your physician or other health care provider. Before you sign any medical power of attorney, make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care

Except to the extent you state otherwise or as provided by Texas law, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself.

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The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care

provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss your medical power of attorney with your agent and your physician and give each a signed copy. You may indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

After you have signed your medical power of attorney, you retain the right to make health care decisions for yourself as long as you are competent and can communicate your health care decisions, and treatment cannot be given to you or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

A signed medical power of attorney may not be changed or modified. If you want to make changes in a medical power of attorney, you must execute a new medical power of attorney.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority as the agent to make health care decisions for you.

You may wish to provide for co-agents to serve. Unless your medical power of attorney states differently, each co-agent is authorized to act independently and third parties may rely on the decisions of either co-agent.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;

provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss your medical power of attorney with your agent and your physician and give each a signed copy. You may indicate on the document itself the people and institutions that you intend to have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

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You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority as the agent to make health care decisions for you.

THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:

- (1) the person you have designated as your agent;
- (2) a person related to you by blood or marriage;

- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an owner, operator, or employee of a health care facility in which you are a patient; or
- (7) a person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

~~[ACKNOWLEDGMENT _____ OF DISCLOSURE STATEMENT.~~

~~[I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.]~~

(YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. YOU MAY SIGN IT AND HAVE YOUR SIGNATURE ACKNOWLEDGED BEFORE A NOTARY PUBLIC OR YOU MAY SIGN IT IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES.)

SIGNATURE _____ ACKNOWLEDGED BEFORE NOTARY

I sign my name to this medical power of attorney on _____ day of _____ (month, year) at

(City and State)

(Signature)

(Print Name)

State of Texas
County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

NOTARY PUBLIC, State of Texas
Notary's printed name:

My commission expires:

OR
SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES
I sign my name to this medical power of

- (3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;
- (4) your attending physician;
- (5) an employee of your attending physician;
- (6) an owner, operator, or employee of a health care facility in which you are a patient; or
- (7) a person who, at the time this medical power of attorney is executed, has a claim against any part of your estate after your death.

~~[ACKNOWLEDGMENT _____ OF DISCLOSURE STATEMENT.~~

~~[I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.]~~

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(City and State)

(Signature)

(Print Name)

State of Texas
County of _____

This instrument was acknowledged before me on _____ (date) by _____ (name of person acknowledging).

NOTARY PUBLIC, State of Texas
Notary's printed name:

My commission expires:

OR
SIGNATURE IN PRESENCE OF TWO COMPETENT ADULT WITNESSES
I sign my name to this medical power of

attorney on _____ day of _____
(month, year) at

(City and State)

(Signature)

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. ~~[Furthermore, if]~~ I am not an owner, operator, or employee of a health care facility in which the principal is a patient~~[-I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility].~~

Signature: _____

Print Name: _____

Name: _____

Date: _____

Address: _____

SIGNATURE OF SECOND WITNESS.

Signature: _____

Print Name: _____

Date: _____

Address: _____

SECTION 2.09. Sections 166.162 and 166.163, Health and Safety Code, are repealed.

SECTION 2.10. The changes in law made by this article apply only to the validity of a document executed on or after the effective date of this Act. The validity of a document executed before the effective date of this Act is governed by the law in effect on the date the document was executed, and that law continues in effect for that purpose.

SECTION 2.11. (a) Except as otherwise provided in this section, the changes in law made by this article to the Health and Safety Code apply to:

attorney on _____ day of _____
(month, year) at

(City and State)

(Signature)

(Print Name)

STATEMENT OF FIRST WITNESS.

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. ~~[Furthermore, if]~~ I am not an owner, operator, or employee of a health care facility in which the principal is a patient~~[-I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility].~~

Signature: _____

Print Name: _____

Name: _____

Date: _____

Address: _____

SIGNATURE OF SECOND WITNESS.

Signature: _____

Print Name: _____

Date: _____

Address: _____

SECTION 2.07. Same as introduced version.

SECTION 2.08. Same as introduced version.

SECTION 2.09. Same as introduced version.

(1) a medical power of attorney created before, on, or after the effective date of this Act; and

(2) a judicial proceeding concerning a medical power of attorney that:

(A) commences on or after the effective date of this Act; or

(B) is pending on the effective date of this Act.

(b) If the court finds that application of a provision of this article would substantially interfere with the effective conduct of a judicial proceeding concerning a medical power of attorney that is pending on the effective date of this Act or prejudice the rights of a party to the proceeding, the provision of this article does not apply, and the law in effect immediately before the effective date of this Act applies in those circumstances.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. This Act takes effect September 1, 2015.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Same as introduced version.