

1 State of Arkansas  
2 88th General Assembly  
3 Regular Session, 2011

# A Bill

SENATE BILL 887

4  
5 By: Senator D. Johnson

## For An Act To Be Entitled

8 AN ACT TO CREATE THE UNIFORM POWER OF ATTORNEY ACT;  
9 AND FOR OTHER PURPOSES.

### Subtitle

12 TO CREATE THE UNIFORM POWER OF ATTORNEY  
13 ACT.

10  
11  
16  
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18  
19 SECTION 1. Arkansas Code Title 28, Chapter 68, is amended to read as  
20 follows:

#### 21 22 CHAPTER 68

#### 23 ~~POWERS OF ATTORNEY~~ UNIFORM POWER OF ATTORNEY ACT

#### 24 25 Subchapter 1 – General Provisions

#### 26 27 28-68-101. ~~Revocation~~ Short title.

28 ~~(a)(1) The death of a principal who has executed a written power of~~  
29 ~~attorney, durable or otherwise, does not revoke or terminate the agency as to~~  
30 ~~the attorney in fact or other person, who, without actual knowledge of the~~  
31 ~~death of the principal, acts in good faith under the power.~~

32 ~~(2) Any action so taken, unless otherwise invalid or~~  
33 ~~unenforceable, binds successors in interest of the principal.~~

34 ~~(b)(1) The disability or incapacity of a principal who has previously~~  
35 ~~executed a written power of attorney that is not a durable power does not~~  
36 ~~revoke or terminate the agency as to the attorney in fact or other person,~~



1 ~~who, without actual knowledge of the disability or incapacity of the~~  
2 ~~principal, acts in good faith under the power.~~

3 ~~(2) Any action so taken, unless otherwise invalid or~~  
4 ~~unenforceable, binds the principal and his or her successors in interest.~~

5 This chapter shall be known and may be cited as the Uniform Power of  
6 Attorney Act.

7  
8 28-68-102. Definitions.

9 In this chapter:

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

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

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

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

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

22 (A) has an impairment in the ability to receive and  
23 evaluate information or make or communicate decisions even with the use of  
24 technological assistance; or

25 (B) is:

26 (i) missing;

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

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

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

35 (7) "Power of attorney" means a writing or other record that  
36 grants authority to an agent to act in the place of the principal, whether or

1 not the term power of attorney is used.

2 (8) "Presently exercisable general power of appointment," with  
3 respect to property or a property interest subject to a power of appointment,  
4 means power exercisable at the time in question to vest absolute ownership in  
5 the principal individually, the principal's estate, the principal's  
6 creditors, or the creditors of the principal's estate. The term includes a  
7 power of appointment not exercisable until the occurrence of a specified  
8 event, the satisfaction of an ascertainable standard, or the passage of a  
9 specified period only after the occurrence of the specified event, the  
10 satisfaction of the ascertainable standard, or the passage of the specified  
11 period. The term does not include a power exercisable in a fiduciary  
12 capacity or only by will.

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

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

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

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

23 (A) to execute or adopt a tangible symbol; or

24 (B) to attach to or logically associate with the record an  
25 electronic sound, symbol, or process.

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

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

34  
35 28-68-103. Applicability.

36 This chapter applies to all powers of attorney except:

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

4           (2) a power to make health-care decisions;

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

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

10  
11       28-68-104. Power of attorney is durable.

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

14  
15       28-68-105. Execution of power of attorney.

16       A power of attorney must be signed by the principal or in the  
17 principal's conscious presence by another individual directed by the  
18 principal to sign the principal's name on the power of attorney. A signature  
19 on a power of attorney is presumed to be genuine if the principal  
20 acknowledges the signature before a notary public or other individual  
21 authorized by law to take acknowledgments.

22  
23       28-68-106. Validity of power of attorney.

24       (a) A power of attorney executed in this state on or after January 1,  
25 2012, is valid if its execution complies with § 28-68-105.

26       (b) A power of attorney executed in this state before January 1, 2012,  
27 is valid if its execution complied with the law of this state as it existed  
28 at the time of execution.

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

32           (1) the law of the jurisdiction that determines the meaning and  
33 effect of the power of attorney pursuant to § 28-68-107; or

34           (2) the requirements for a military power of attorney pursuant  
35 to 10 U.S.C. § 1044b, as it existed on January 1, 2011.

36       (d) Except as otherwise provided by statute other than this chapter, a

1 photocopy or electronically transmitted copy of an original power of attorney  
2 has the same effect as the original.

3  
4 28-68-107. Meaning and effect of power of attorney.

5 The meaning and effect of a power of attorney is determined by the law  
6 of the jurisdiction indicated in the power of attorney and, in the absence of  
7 an indication of jurisdiction, by the law of the jurisdiction in which the  
8 power of attorney was executed.

9  
10 28-68-108. Nomination of guardian -- Relation of agent to court-  
11 appointed fiduciary.

12 (a) In a power of attorney, a principal may nominate a gaurdian of the  
13 principal's estate or guardian of the principal's person for consideration by  
14 the court if protective proceedings for the principal's estate or person are  
15 begun after the principal executes the power of attorney. Except for good  
16 cause shown or disqualification, the court shall make its appointment in  
17 accordance with the principal's most recent nomination.

18 (b) If, after a principal executes a power of attorney, a court  
19 appoints a guardian of the principal's estate or other fiduciary charged with  
20 the management of some or all of the principal's property, the agent is  
21 accountable to the fiduciary as well as to the principal. The power of  
22 attorney is not terminated and the agent's authority continues unless  
23 limited, suspended, or terminated by the court.

24  
25 28-68-109. When power of attorney effective.

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

29 (b) If a power of attorney becomes effective upon the occurrence of a  
30 future event or contingency, the principal, in the power of attorney, may  
31 authorize one or more persons to determine in a writing or other record that  
32 the event or contingency has occurred.

33 (c) If a power of attorney becomes effective upon the principal's  
34 incapacity and the principal has not authorized a person to determine whether  
35 the principal is incapacitated, or the person authorized is unable or  
36 unwilling to make the determination, the power of attorney becomes effective

1 upon a determination in a writing or other record by:

2 (1) a physician or licensed psychologist that the principal is  
3 incapacitated within the meaning of § 28-68-102(5)(A); or

4 (2) an attorney at law, a judge, or an appropriate governmental  
5 official that the principal is incapacitated within the meaning of § 28-68-  
6 102(5)(B).

7 (d) A person authorized by the principal in the power of attorney to  
8 determine that the principal is incapacitated may act as the principal's  
9 personal representative pursuant to the Health Insurance Portability and  
10 Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42  
11 U.S.C. § 1320d, as it existed on January 1, 2011, and applicable regulations,  
12 to obtain access to the principal's health-care information and communicate  
13 with the principal's health-care provider.

14  
15 28-68-110. Termination of power of attorney or agent's authority.

16 (a) A power of attorney terminates when:

17 (1) the principal dies;

18 (2) the principal becomes incapacitated, if the power of  
19 attorney is not durable;

20 (3) the principal revokes the power of attorney;

21 (4) the power of attorney provides that it terminates;

22 (5) the purpose of the power of attorney is accomplished; or

23 (6) the principal revokes the agent's authority or the agent  
24 dies, becomes incapacitated, or resigns, and the power of attorney does not  
25 provide for another agent to act under the power of attorney.

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

27 (1) the principal revokes the authority;

28 (2) the agent dies, becomes incapacitated, or resigns;

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

32 (4) the power of attorney terminates.

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

36 (d) Termination of an agent's authority or of a power of attorney is

1 not effective as to the agent or another person that, without actual  
2 knowledge of the termination, acts in good faith under the power of attorney.  
3 An act so performed, unless otherwise invalid or unenforceable, binds the  
4 principal and the principal's successors in interest.

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

11 (f) The execution of a power of attorney does not revoke a power of  
12 attorney previously executed by the principal unless the subsequent power of  
13 attorney provides that the previous power of attorney is revoked or that all  
14 other powers of attorney are revoked.

15  
16 28-68-111. Coagents and successor agents.

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

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

26 (1) has the same authority as that granted to the original  
27 agent; and

28 (2) may not act until all predecessor agents have resigned,  
29 died, become incapacitated, are no longer qualified to serve, or have  
30 declined to serve.

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

35 (d) An agent that has actual knowledge of a breach or imminent breach  
36 of fiduciary duty by another agent shall notify the principal and, if the

1 principal is incapacitated, take any action reasonably appropriate in the  
2 circumstances to safeguard the principal's best interest. An agent that  
3 fails to notify the principal or take action as required by this subsection  
4 is liable for the reasonably foreseeable damages that could have been avoided  
5 if the agent had notified the principal or taken such action.

6  
7 28-68-112. Reimbursement and compensation of agent.

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

11  
12 28-68-113. Agent's acceptance.

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

17  
18 28-68-114. Agent's duties.

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

21 (1) act in accordance with the principal's reasonable  
22 expectations to the extent actually known by the agent and, otherwise, in the  
23 principal's best interest;

24 (2) act in good faith; and

25 (3) act only within the scope of authority granted in the power  
26 of attorney.

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

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

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

32 (3) act with the care, competence, and diligence ordinarily  
33 exercised by agents in similar circumstances;

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

36 (5) cooperate with a person that has authority to make health-



1 care decisions for the principal to carry out the principal's reasonable  
2 expectations to the extent actually known by the agent and, otherwise, act in  
3 the principal's best interest; and

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

7 (A) the value and nature of the principal's property;

8 (B) the principal's foreseeable obligations and need for  
9 maintenance;

10 (C) minimization of taxes, including income, estate,  
11 inheritance, generation-skipping transfer, and gift taxes; and

12 (D) eligibility for a benefit, a program, or assistance  
13 under a statute or regulation.

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

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

20 (e) If an agent is selected by the principal because of special skills  
21 or expertise possessed by the agent or in reliance on the agent's  
22 representation that the agent has special skills or expertise, the special  
23 skills or expertise must be considered in determining whether the agent has  
24 acted with care, competence, and diligence under the circumstances.

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

27 (g) An agent that exercises authority to delegate to another person  
28 the authority granted by the principal or that engages another person on  
29 behalf of the principal is not liable for an act, error of judgment, or  
30 default of that person if the agent exercises care, competence, and diligence  
31 in selecting and monitoring the person.

32 (h) Except as otherwise provided in the power of attorney, an agent is  
33 not required to disclose receipts, disbursements, or transactions conducted  
34 on behalf of the principal unless ordered by a court or requested by the  
35 principal, a guardian, a conservator, another fiduciary acting for the  
36 principal, a governmental agency having authority to protect the welfare of

1 the principal, or, upon the death of the principal, by the personal  
 2 representative or successor in interest of the principal's estate. If so  
 3 requested, within 30 days the agent shall comply with the request or provide  
 4 a writing or other record substantiating why additional time is needed and  
 5 shall comply with the request within an additional 30 days.

6  
 7 28-68-115. Exoneration of agent.

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

- 11 (1) relieves the agent of liability for breach of duty committed  
 12 dishonestly, with an improper motive, or with reckless indifference to the  
 13 purposes of the power of attorney or the best interest of the principal; or  
 14 (2) was inserted as a result of an abuse of a confidential or  
 15 fiduciary relationship with the principal.

16  
 17 28-68-116. Judicial relief.

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

- 20 (1) the principal or the agent;  
 21 (2) a guardian, conservator, or other fiduciary acting for the  
 22 principal;  
 23 (3) a person authorized to make health-care decisions for the  
 24 principal;  
 25 (4) the principal's spouse, parent, or descendant;  
 26 (5) an individual who would qualify as a presumptive heir of the  
 27 principal;  
 28 (6) a person named as a beneficiary to receive any property,  
 29 benefit, or contractual right on the principal's death or as a beneficiary of  
 30 a trust created by or for the principal that has a financial interest in the  
 31 principal's estate;  
 32 (7) a governmental agency having regulatory authority to protect  
 33 the welfare of the principal;  
 34 (8) the principal's caregiver or another person that  
 35 demonstrates sufficient interest in the principal's welfare; and  
 36 (9) a person asked to accept the power of attorney.

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

4  
5       28-68-117. Agent's liability.

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

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

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

12  
13       28-68-118. Agent's resignation -- Notice.

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

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

19           (2) if there is no person described in paragraph (1), to:

20                   (A) the principal's caregiver;

21                   (B) another person reasonably believed by the agent to  
22 have sufficient interest in the principal's welfare; or

23                   (C) a governmental agency having authority to protect the  
24 welfare of the principal.

25  
26       28-68-119. Acceptance of and reliance upon acknowledged power of  
27 attorney.

28       (a) For purposes of this section and § 28-68-120, "acknowledged" means  
29 purportedly verified before a notary public or other individual authorized to  
30 take acknowledgements.

31       (b) A person that in good faith accepts an acknowledged power of  
32 attorney without actual knowledge that the signature is not genuine may rely  
33 upon the presumption under § 28-68-105 that the signature is genuine.

34       (c) A person that in good faith accepts an acknowledged power of  
35 attorney without actual knowledge that the power of attorney is void,  
36 invalid, or terminated, that the purported agent's authority is void,

1 invalid, or terminated, or that the agent is exceeding or improperly  
2 exercising the agent's authority may rely upon the power of attorney as if  
3 the power of attorney were genuine, valid and still in effect, the agent's  
4 authority were genuine, valid and still in effect, and the agent had not  
5 exceeded and had properly exercised the authority.

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

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

10 (2) an English translation of the power of attorney if the power  
11 of attorney contains, in whole or in part, language other than English; and

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

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

19 (f) For purposes of this section and § 28-68-120, a person that  
20 conducts activities through employees is without actual knowledge of a fact  
21 relating to a power of attorney, a principal, or an agent if the employee  
22 conducting the transaction involving the power of attorney is without actual  
23 knowledge of the fact.

24  
25 28-68-120. Liability for refusal to accept acknowledged statutory form  
26 power of attorney.

27 (a) In this section, "statutory form power of attorney" means a power  
28 of attorney substantially in the form provided in § 28-68-301 or that meets  
29 the requirements for a military power of attorney pursuant to 10 U.S.C. §  
30 1044b, as it existed on January 1, 2011.

31 (b) Except as otherwise provided in subsection (c):

32 (1) a person shall either accept an acknowledged statutory form  
33 power of attorney or request a certification, a translation, or an opinion of  
34 counsel under § 28-68-119(d) no later than seven business days after  
35 presentation of the power of attorney for acceptance;

36 (2) if a person requests a certification, a translation, or an

1 opinion of counsel under § 28-68-119(d), the person shall accept the  
2 statutory form power of attorney no later than five business days after  
3 receipt of the certification, translation, or opinion of counsel; and

4 (3) a person may not require an additional or different form of  
5 power of attorney for authority granted in the statutory form power of  
6 attorney presented.

7 (c) A person is not required to accept an acknowledged statutory form  
8 power of attorney if:

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

11 (2) engaging in a transaction with the agent or the principal in  
12 the same circumstances would be inconsistent with federal law;

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

15 (4) a request for a certification, a translation, or an opinion  
16 of counsel under § 28-68-119(d) is refused;

17 (5) the person in good faith believes that the power is not  
18 valid or that the agent does not have the authority to perform the act  
19 requested, whether or not a certification, a translation, or an opinion of  
20 counsel under § 28-68-119(d) has been requested or provided; or

21 (6) the person makes, or has actual knowledge that another  
22 person has made, a report to the Department of Human Services stating a good  
23 faith belief that the principal may be subject to physical or financial  
24 abuse, neglect, exploitation, or abandonment by the agent or a person acting  
25 for or with the agent.

26 (d) A person that refuses in violation of this section to accept an  
27 acknowledged statutory form power of attorney is subject to:

28 (1) a court order mandating acceptance of the power of attorney;  
29 and

30 (2) liability for reasonable attorney's fees and costs incurred  
31 in any action or proceeding that confirms the validity of the power of  
32 attorney or mandates acceptance of the power of attorney.

33  
34 28-68-121. Principles of law and equity.

35 Unless displaced by a provision of this chapter, the principles of law and  
36 equity supplement this chapter.

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28-68-122. Laws applicable to financial institutions and entities.

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

28-68-123. Remedies under other law.

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

Subchapter 2 – Durable Powers of Attorney Authority

28-68-201. Definition Authority that requires specific grant -- Grant of general authority.

~~As used in this subchapter, unless the context otherwise requires, a durable power of attorney is a power of attorney by which a principal designates another his attorney in fact in writing and the writing contains the words “This power of attorney shall not be affected by subsequent disability or incapacity of the principal” or “This power of attorney shall become effective upon the disability or incapacity of the principal” or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal’s subsequent disability or incapacity.~~

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

- (1) 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;
- (6) waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

1 or

2 (7) exercise fiduciary powers that the principal has authority  
3 to delegate.

4 (b) Notwithstanding a grant of authority to do an act described in  
5 subsection (a), unless the power of attorney otherwise provides, an agent  
6 that is not an ancestor, spouse, or descendant of the principal, may not  
7 exercise authority under a power of attorney to create in the agent, or in an  
8 individual to whom the agent owes a legal obligation of support, an interest  
9 in the principal's property, whether by gift, right of survivorship,  
10 beneficiary designation, disclaimer, or otherwise.

11 (c) Subject to subsections (a), (b), (d), and (e), if a power of  
12 attorney grants to an agent authority to do all acts that a principal could  
13 do, the agent has the general authority described in §§ 28-68-204 -- 28-68-  
14 216.

15 (d) Unless the power of attorney otherwise provides, a grant of  
16 authority to make a gift is subject to § 28-68-217.

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

20 (f) Authority granted in a power of attorney is exercisable with  
21 respect to property that the principal has when the power of attorney is  
22 executed or acquires later, whether or not the property is located in this  
23 state and whether or not the authority is exercised or the power of attorney  
24 is executed in this state.

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

28

29 ~~28-68-202. Disability of principal—Effect~~ Incorporation of  
30 authority.

31 ~~All acts done by an attorney in fact pursuant to a durable power of~~  
32 ~~attorney during any period of disability or incapacity of the principal have~~  
33 ~~the same effect and inure to the benefit of and bind the principal and his~~  
34 ~~successors in interest as if the principal were competent and not disabled.~~

35 (a) An agent has authority described in this subchapter if the power  
36 of attorney refers to general authority with respect to the descriptive term

1 for the subjects stated in §§ 28-68-204 -- 28-68-217 or cites the section in  
2 which the authority is described.

3 (b) A reference in a power of attorney to general authority with  
4 respect to the descriptive term for a subject in §§ 28-68-204 -- 28-68-217 or  
5 a citation to a section of §§ 28-68-204 -- 28-68-217 incorporates the entire  
6 section as if it were set out in full in the power of attorney.

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

8  
9 28-68-203. ~~Relation of attorney in fact to court-appointed fiduciary~~  
10 Construction of authority generally.

11 ~~(a)(1) If, following execution of a durable power of attorney, a court~~  
12 ~~of the principal's domicile appoints a conservator, guardian of the estate,~~  
13 ~~or other fiduciary charged with the management of all of the principal's~~  
14 ~~property or all of his property except specified exclusions, the attorney in~~  
15 ~~fact is accountable to the fiduciary as well as to the principal.~~

16 ~~(2) The fiduciary has the same power to revoke or amend the~~  
17 ~~power of attorney that the principal would have had if he were not disabled~~  
18 ~~or incapacitated.~~

19 ~~(b)(1) A principal may nominate, by a durable power of attorney, the~~  
20 ~~conservator, guardian of his estate, or guardian of his person for~~  
21 ~~consideration by the court if protective proceedings for the principal's~~  
22 ~~person or estate are thereafter commenced.~~

23 ~~(2) The court shall make its appointment in accordance with the~~  
24 ~~principal's most recent nomination in a durable power of attorney except for~~  
25 ~~good cause or disqualification.~~

26 Except as otherwise provided in the power of attorney, by executing a  
27 power of attorney that incorporates by reference a subject described in §§  
28 28-68-204 -- 28-68-217 or that grants to an agent authority to do all acts  
29 that a principal could do pursuant to § 28-68-201(c), a principal authorizes  
30 the agent, with respect to that subject, to:

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

35 (2) contract in any manner with any person, on terms agreeable  
36 to the agent, to accomplish a purpose of a transaction and perform, rescind,



1 cancel, terminate, reform, restate, release, or modify the contract or  
2 another contract made by or on behalf of the principal;

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

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

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

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

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

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

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

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

28  
29 28-68-204. Real property.

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

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

36 (2) sell; exchange; convey with or without covenants,

1 representations, or warranties; quitclaim; release; surrender; retain title  
2 for security; encumber; partition; consent to partitioning; subject to an  
3 easement or covenant; subdivide; apply for zoning or other governmental  
4 permits; plat or consent to platting; develop; grant an option concerning;  
5 lease; sublease; contribute to an entity in exchange for an interest in that  
6 entity; or otherwise grant or dispose of an interest in real property or a  
7 right incident to real property;

8 (3) pledge or mortgage an interest in real property or right  
9 incident to real property as security to borrow money or pay, renew, or  
10 extend the time of payment of a debt of the principal or a debt guaranteed by  
11 the principal;

12 (4) release, assign, satisfy, or enforce by litigation or  
13 otherwise a mortgage, deed of trust, conditional sale contract, encumbrance,  
14 lien, or other claim to real property which exists or is asserted;

15 (5) manage or conserve an interest in real property or a right  
16 incident to real property owned or claimed to be owned by the principal,  
17 including:

18 (A) insuring against liability or casualty or other loss;

19 (B) obtaining or regaining possession of or protecting the  
20 interest or right by litigation or otherwise;

21 (C) paying, assessing, compromising, or contesting taxes  
22 or assessments or applying for and receiving refunds in connection with them;  
23 and

24 (D) purchasing supplies, hiring assistance or labor, and  
25 making repairs or alterations to the real property;

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

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

33 (A) selling or otherwise disposing of them;

34 (B) exercising or selling an option, right of conversion,  
35 or similar right with respect to them; and

36 (C) exercising any voting rights in person or by proxy;

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

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

6  
7           28-68-205. Tangible personal property.

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

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

14           (2) sell; exchange; convey with or without covenants,  
15 representations, or warranties; quitclaim; release; surrender; create a  
16 security interest in; grant options concerning; lease; sublease; or,  
17 otherwise dispose of tangible personal property or an interest in tangible  
18 personal property;

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

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

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

29                   (A) insuring against liability or casualty or other loss;

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

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

35                   (D) moving the property from place to place;

36                   (E) storing the property for hire or on a gratuitous

1 bailment; and

2 (F) using and making repairs, alterations, or improvements  
3 to the property; and

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

6  
7 28-68-206. Stocks and bonds.

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

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

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

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

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

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

21  
22 28-68-207. Commodities and options.

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

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

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

30  
31 28-68-208. Banks and other financial institutions.

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

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

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

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

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

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

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

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

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

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

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

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

32  
33       28-68-209. Operation of entity or business.

34       Subject to the terms of a document or an agreement governing an entity  
35 or an entity ownership interest, and unless the power of attorney otherwise  
36 provides, language in a power of attorney granting general authority with

1 respect to operation of an entity or business authorizes the agent to:

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

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

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

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

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

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

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

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

23 (B) determine:

24 (i) the location of its operation;

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

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

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

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

32 (C) change the name or form of organization under which  
33 the entity or business is operated and enter into an ownership agreement with  
34 other persons to take over all or part of the operation of the entity or  
35 business; and

36 (D) demand and receive money due or claimed by the

1 principal or on the principal's behalf in the operation of the entity or  
2 business and control and disburse the money in the operation of the entity or  
3 business;

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

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

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

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

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

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

19  
20 28-68-210. Insurance and annuities.

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

24 (1) continue, pay the premium or make a contribution on, modify,  
25 exchange, rescind, release, or terminate a contract procured by or on behalf  
26 of the principal which insures or provides an annuity to either the principal  
27 or another person, whether or not the principal is a beneficiary under the  
28 contract;

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

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

36 (4) apply for and receive a loan secured by a contract of

1 insurance or annuity;

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

4 (6) exercise an election;

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

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

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

12 (10) apply for and procure a benefit or assistance under a  
13 statute or regulation to guarantee or pay premiums of a contract of insurance  
14 on the life of the principal;

15 (11) collect, sell, assign, hypothecate, borrow against, or  
16 pledge the interest of the principal in a contract of insurance or annuity;

17 (12) select the form and timing of the payment of proceeds from  
18 a contract of insurance or annuity; and

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

23  
24 28-68-211. Estates, trusts, and other beneficial interests.

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

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

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

35 (2) demand or obtain money or another thing of value to which  
36 the principal is, may become, or claims to be, entitled by reason of an



1 estate, trust, or other beneficial interest, by litigation or otherwise;

2 (3) exercise for the benefit of the principal a presently  
3 exercisable general power of appointment held by the principal;

4 (4) initiate, participate in, submit to alternative dispute  
5 resolution, settle, oppose, or propose or accept a compromise with respect to  
6 litigation to ascertain the meaning, validity, or effect of a deed, will,  
7 declaration of trust, or other instrument or transaction affecting the  
8 interest of the principal;

9 (5) initiate, participate in, submit to alternative dispute  
10 resolution, settle, oppose, or propose or accept a compromise with respect to  
11 litigation to remove, substitute, or surcharge a fiduciary;

12 (6) conserve, invest, disburse, or use anything received for an  
13 authorized purpose;

14 (7) transfer an interest of the principal in real property,  
15 stocks and bonds, accounts with financial institutions or securities  
16 intermediaries, insurance, annuities, and other property to the trustee of a  
17 revocable trust created by the principal as settlor; and

18 (8) reject, renounce, disclaim, release, or consent to a  
19 reduction in or modification of a share in or payment from an estate, trust,  
20 or other beneficial interest.

21  
22 28-68-212. Claims and litigation.

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

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

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

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

36 (4) make or accept a tender, offer of judgment, or admission of

1 facts, submit a controversy on an agreed statement of facts, consent to  
2 examination, and bind the principal in litigation;

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

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

15 (7) act for the principal with respect to bankruptcy or  
16 insolvency, whether voluntary or involuntary, concerning the principal or  
17 some other person, or with respect to a reorganization, receivership, or  
18 application for the appointment of a receiver or trustee which affects an  
19 interest of the principal in property or other thing of value;

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

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

24  
25 28-68-213. Personal and family maintenance.

26 (a) Unless the power of attorney otherwise provides, language in a  
27 power of attorney granting general authority with respect to personal and  
28 family maintenance authorizes the agent to:

29 (1) perform the acts necessary to maintain the customary  
30 standard of living of the principal, the principal's spouse, and the  
31 following individuals, whether living when the power of attorney is executed  
32 or later born:

33 (A) the principal's children;

34 (B) other individuals legally entitled to be supported by  
35 the principal; and

36 (C) the individuals whom the principal has customarily

1 supported or indicated the intent to support;

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

5 (3) provide living quarters for the individuals described in  
6 paragraph (1) by:

7 (A) purchase, lease, or other contract; or

8 (B) paying the operating costs, including interest,  
9 amortization payments, repairs, improvements, and taxes, for premises owned  
10 by the principal or occupied by those individuals;

11 (4) provide normal domestic help, usual vacations and travel  
12 expenses, and funds for shelter, clothing, food, appropriate education,  
13 including postsecondary and vocational education, and other current living  
14 costs for the individuals described in paragraph (1);

15 (5) pay expenses for necessary health care and custodial care on  
16 behalf of the individuals described in paragraph (1);

17 (6) act as the principal's personal representative pursuant to  
18 the Health Insurance Portability and Accountability Act, Sections 1171  
19 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, as it existed on  
20 January 1, 2011, and applicable regulations, in making decisions related to  
21 the past, present, or future payment for the provision of health care  
22 consented to by the principal or anyone authorized under the law of this  
23 state to consent to health care on behalf of the principal;

24 (7) continue any provision made by the principal for automobiles  
25 or other means of transportation, including registering, licensing, insuring,  
26 and replacing them, for the individuals described in paragraph (1);

27 (8) maintain credit and debit accounts for the convenience of  
28 the individuals described in paragraph (1) and open new accounts; and

29 (9) continue payments incidental to the membership or  
30 affiliation of the principal in a religious institution, club, society,  
31 order, or other organization or to continue contributions to those  
32 organizations.

33 (b) Authority with respect to personal and family maintenance is  
34 neither dependent upon, nor limited by, authority that an agent may or may  
35 not have with respect to gifts under this chapter.

36

1       28-68-214. Benefits from governmental programs or civil or military  
2 service.

3       (a) In this section, "benefits from governmental programs or civil or  
4 military service" means any benefit, program, or assistance provided under a  
5 statute or regulation including Social Security, Medicare, and Medicaid.

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

9           (1) execute vouchers in the name of the principal for allowances  
10 and reimbursements payable by the United States or a foreign government or by  
11 a state or subdivision of a state to the principal, including allowances and  
12 reimbursements for transportation of the individuals described in § 28-68-  
13 213(a)(1), and for shipment of their household effects;

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

19           (3) enroll in, apply for, select, reject, change, amend, or  
20 discontinue, on the principal's behalf, a benefit or program;

21           (4) prepare, file, and maintain a claim of the principal for a  
22 benefit or assistance, financial or otherwise, to which the principal may be  
23 entitled under a statute or regulation;

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

28           (6) receive the financial proceeds of a claim described in  
29 paragraph (4) and conserve, invest, disburse, or use for a lawful purpose  
30 anything so received.

31  
32       28-68-215. Retirement plans.

33       (a) In this section, "retirement plan" means a plan or account created  
34 by an employer, the principal, or another individual to provide retirement  
35 benefits or deferred compensation of which the principal is a participant,  
36 beneficiary, or owner, including a plan or account under the following

1 sections of the Internal Revenue Code:

2 (1) an individual retirement account under Internal Revenue Code  
3 Section 408, 26 U.S.C. § 408, as it existed on January 1, 2011;

4 (2) a Roth individual retirement account under Internal Revenue  
5 Code Section 408A, 26 U.S.C. § 408A, as it existed on January 1, 2011;

6 (3) a deemed individual retirement account under Internal  
7 Revenue Code Section 408(q), 26 U.S.C. § 408(q), as it existed on January 1,  
8 2011;

9 (4) an annuity or mutual fund custodial account under Internal  
10 Revenue Code Section 403(b), 26 U.S.C. § 403(b), as it existed on January 1,  
11 2011;

12 (5) a pension, profit-sharing, stock bonus, or other retirement  
13 plan qualified under Internal Revenue Code Section 401(a), 26 U.S.C. §  
14 401(a), as it existed on January 1, 2011;

15 (6) a plan under Internal Revenue Code Section 457(b), 26 U.S.C.  
16 § 457(b), as it existed on January 1, 2011; and

17 (7) a nonqualified deferred compensation plan under Internal  
18 Revenue Code Section 409A, 26 U.S.C. § 409A, as it existed on January 1,  
19 2011.

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

23 (1) select the form and timing of payments under a retirement  
24 plan and withdraw benefits from a plan;

25 (2) make a rollover, including a direct trustee-to-trustee  
26 rollover, of benefits from one retirement plan to another;

27 (3) establish a retirement plan in the principal's name;

28 (4) make contributions to a retirement plan;

29 (5) exercise investment powers available under a retirement  
30 plan; and

31 (6) borrow from, sell assets to, or purchase assets from a  
32 retirement plan.

33  
34 28-68-216. Taxes.

35 Unless the power of attorney otherwise provides, language in a power of  
36 attorney granting general authority with respect to taxes authorizes the

1 agent to:

2 (1) prepare, sign, and file federal, state, local, and foreign  
3 income, gift, payroll, property, Federal Insurance Contributions Act, and  
4 other tax returns, claims for refunds, requests for extension of time,  
5 petitions regarding tax matters, and any other tax-related documents,  
6 including receipts, offers, waivers, consents, including consents and  
7 agreements under Internal Revenue Code Section 2032A, 26 U.S.C. § 2032A, as  
8 it existed on January 1, 2011, closing agreements, and any power of attorney  
9 required by the Internal Revenue Service or other taxing authority with  
10 respect to a tax year upon which the statute of limitations has not run and  
11 the following 25 tax years;

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

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

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

19  
20 28-68-217. Gifts.

21 (a) In this section, a gift “for the benefit of” a person includes a  
22 gift to a trust, an account under the Uniform Transfers to Minors Act, and a  
23 tuition savings account or prepaid tuition plan as defined under Internal  
24 Revenue Code Section 529, 26 U.S.C. § 529, as it existed on January 1, 2011.

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

28 (1) make outright to, or for the benefit of, a person, a gift of  
29 any of the principal’s property, including by the exercise of a presently  
30 exercisable general power of appointment held by the principal, in an amount  
31 per donee not to exceed the annual dollar limits of the federal gift tax  
32 exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. § 2503(b),  
33 as it existed on January 1, 2011, without regard to whether the federal gift  
34 tax exclusion applies to the gift, or if the principal’s spouse agrees to  
35 consent to a split gift pursuant to Internal Revenue Code Section 2513, 26  
36 U.S.C. § 2513, as it existed on January 1, 2011, in an amount per donee not

1 to exceed twice the annual federal gift tax exclusion limit; and

2 (2) consent, pursuant to Internal Revenue Code Section 2513, 26  
3 U.S.C. § 2513, as it existed on January 1, 2011, to the splitting of a gift  
4 made by the principal's spouse in an amount per donee not to exceed the  
5 aggregate annual gift tax exclusions for both spouses.

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

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

11 (2) the principal's foreseeable obligations and need for  
12 maintenance;

13 (3) minimization of taxes, including income, estate,  
14 inheritance, generation-skipping transfer, and gift taxes;

15 (4) eligibility for a benefit, a program, or assistance under a  
16 statute or regulation; and

17 (5) the principal's personal history of making or joining in  
18 making gifts.

19  
20 Subchapter 3 -- Powers of Attorney for Small Property Interests  
21 Statutory Forms

22  
23 28-68-301. ~~Construction~~ Statutory form power of attorney.

24 The provisions of this subchapter shall be liberally construed so as to  
25 effectuate its purposes.

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

29  
30 ARKANSAS

31 STATUTORY FORM POWER OF ATTORNEY

32  
33 IMPORTANT INFORMATION

34  
35 This power of attorney authorizes another person (your agent) to make  
36 decisions concerning your property for you (the principal). Your agent will

1 be able to make decisions and act with respect to your property (including  
2 your money) whether or not you are able to act for yourself. The meaning of  
3 authority over subjects listed on this form is explained in the Uniform Power  
4 of Attorney Act, Arkansas Code Title 28, Chapter 68.

5  
6 This power of attorney does not authorize the agent to make health-care  
7 decisions for you.

8  
9 You should select someone you trust to serve as your agent. Unless you  
10 specify otherwise, generally the agent’s authority will continue until you  
11 die or revoke the power of attorney or the agent resigns or is unable to act  
12 for you.

13  
14 Your agent is entitled to reasonable compensation unless you state otherwise  
15 in the Special Instructions.

16  
17 This form provides for designation of one agent. If you wish to name more  
18 than one agent you may name a coagent in the Special Instructions. Coagents  
19 are not required to act together unless you include that requirement in the  
20 Special Instructions.

21  
22 If your agent is unable or unwilling to act for you, your power of attorney  
23 will end unless you have named a successor agent. You may also name a second  
24 successor agent.

25  
26 This power of attorney becomes effective immediately unless you state  
27 otherwise in the Special Instructions.

28  
29 If you have questions about the power of attorney or the authority you are  
30 granting to your agent, you should seek legal advice before signing this  
31 form.

32  
33 DESIGNATION OF AGENT

34  
35 I \_\_\_\_\_ name the  
36 (Name of Principal)



1  
2 following person as my agent:

3  
4 Name of Agent: \_\_\_\_\_  
5 Agent's Address: \_\_\_\_\_  
6 Agent's Telephone Number: \_\_\_\_\_

7  
8 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

9  
10 If my agent is unable or unwilling to act for me, I name as my successor  
11 agent:

12  
13 Name of Successor Agent: \_\_\_\_\_  
14 Successor Agent's Address: \_\_\_\_\_  
15 Successor Agent's Telephone Number: \_\_\_\_\_

16  
17 If my successor agent is unable or unwilling to act for me, I name as my  
18 second successor agent:

19  
20 Name of Second Successor Agent: \_\_\_\_\_  
21 Second Successor Agent's Address: \_\_\_\_\_  
22 Second Successor Agent's Telephone Number: \_\_\_\_\_

23  
24 GRANT OF GENERAL AUTHORITY

25  
26 I grant my agent and any successor agent general authority to act for me with  
27 respect to the following subjects as defined in the Uniform Power of Attorney  
28 Act, Arkansas Code Title 28, Chapter 68:

29  
30 (INITIAL each subject you want to include in the agent's general  
31 authority. If you wish to grant general authority over all of the subjects  
32 you may initial "All Preceding Subjects" instead of initialing each subject.)

- 33  
34 ( ) Real Property  
35 ( ) Tangible Personal Property  
36 ( ) Stocks and Bonds

- 1 ( ) Commodities and Options
- 2 ( ) Banks and Other Financial Institutions
- 3 ( ) Operation of Entity or Business
- 4 ( ) Insurance and Annuities
- 5 ( ) Estates, Trusts, and Other Beneficial Interests
- 6 ( ) Claims and Litigation
- 7 ( ) Personal and Family Maintenance
- 8 ( ) Benefits from Governmental Programs or Civil or Military Service
- 9 ( ) Retirement Plans
- 10 ( ) Taxes
- 11 ( ) All Preceding Subjects

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.)

- 23 ( ) Amend, revoke, or terminate an inter vivos trust
- 24 ( ) Make a gift, subject to the limitations of § 28-68-217 of the Uniform
- 25 Power of Attorney Act and any special instructions in this power of attorney
- 26 ( ) Create or change rights of survivorship
- 27 ( ) Create or change a beneficiary designation
- 28 ( ) Authorize another person to exercise the authority granted under this
- 29 power of attorney
- 30 ( ) Waive the principal's right to be a beneficiary of a joint and
- 31 survivor annuity, including a survivor benefit under a retirement plan
- 32 ( ) Exercise fiduciary powers that the principal has authority to delegate

LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my

1 property to benefit the agent or a person to whom the agent owes an  
2 obligation of support unless I have included that authority in the Special  
3 Instructions.

4  
5 SPECIAL INSTRUCTIONS (OPTIONAL)

6  
7 You may give special instructions on the following lines:

8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14  
15 EFFECTIVE DATE

16  
17 This power of attorney is effective immediately unless I have stated  
18 otherwise in the Special Instructions.

19  
20 NOMINATION OF GUARDIAN (OPTIONAL)

21  
22 If it becomes necessary for a court to appoint a guardian of my estate or  
23 guardian of my person, I nominate the following person(s) for appointment:

24  
25 Name of Nominee for guardian of my estate: \_\_\_\_\_

26 Nominee's Address: \_\_\_\_\_

27 Nominee's Telephone Number: \_\_\_\_\_

28 Name of Nominee for guardian of my person: \_\_\_\_\_

29 Nominee's Address: \_\_\_\_\_

30 Nominee's Telephone Number: \_\_\_\_\_

31  
32 RELIANCE ON THIS POWER OF ATTORNEY

33  
34 Any person, including my agent, may rely upon the validity of this power of  
35 attorney or a copy of it unless that person knows it has terminated or is  
36 invalid.



1 the power of attorney is terminated or revoked. You must:

2 (1) do what you know the principal reasonably expects you to do  
3 with the principal’s property or, if you do not know the principal’s  
4 expectations, act in the principal’s best interest;

5 (2) act in good faith;

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

8 (4) disclose your identity as an agent whenever you act for the  
9 principal by writing or printing the name of the principal and signing your  
10 own name as “agent” in the following manner:

11  
12 (Principal’s Name) by (Your Signature) as Agent

13  
14 Unless the Special Instructions in this power of attorney state otherwise,  
15 you must also:

16  
17 (1) act loyally for the principal’s benefit;

18 (2) avoid conflicts that would impair your ability to act in the  
19 principal’s best interest;

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

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

23 (5) cooperate with any person that has authority to make health-  
24 care decisions for the principal to do what you know the principal reasonably  
25 expects or, if you do not know the principal’s expectations, to act in the  
26 principal’s best interest; and

27 (6) attempt to preserve the principal’s estate plan if you know  
28 the plan and preserving the plan is consistent with the principal’s best  
29 interest.

30  
31 Termination of Agent’s Authority

32  
33 You must stop acting on behalf of the principal if you learn of any event  
34 that terminates this power of attorney or your authority under this power of  
35 attorney. Events that terminate a power of attorney or your authority to act  
36 under a power of attorney include:

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

Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68. If you violate the Uniform Power of Attorney Act, Arkansas Code Title 28, Chapter 68, or act outside the authority granted, you may be liable for any damages caused by your violation.

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

~~28-68-302. Applicability of subchapter~~ Agent's certification.

~~This subchapter governs only powers of attorney executed under it. It does not affect powers of attorney executed under other statutes or the common law of this state.~~

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

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

State of \_\_\_\_\_  
County of \_\_\_\_\_

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36

I, \_\_\_\_\_ (Name of Agent), certify  
under penalty of perjury that \_\_\_\_\_  
(Name of Principal) granted me authority as an agent or successor agent in a  
power of attorney dated \_\_\_\_\_.

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of  
Attorney or my authority to act under the Power of Attorney and the Power of  
Attorney and my authority to act under the Power of Attorney have not  
terminated;

(2) if the Power of Attorney was drafted to become effective  
upon the happening of an event or contingency, the event or contingency has  
occurred;

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

(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

\_\_\_\_\_  
Agent's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Agent's Name Printed

\_\_\_\_\_  
Agent's Address

\_\_\_\_\_

1 Agent's Telephone Number

2

3

4 This document was acknowledged before me on \_\_\_\_\_,

5 (Date)

6 by \_\_\_\_\_.

7 (Name of Agent)

8

9

10 \_\_\_\_\_ (Seal, if any)

11 Signature of Notary

12

13 My commission expires: \_\_\_\_\_

14

15 ~~28-68-304. Execution and approval.~~

16 ~~(a) If a resident of this state desires to execute a power of attorney~~  
17 ~~in anticipation of or because of infirmity resulting from injury, old age,~~  
18 ~~senility, blindness, disease, or other related or similar cause as a means of~~  
19 ~~providing for the care of his or her person or property, or both, the~~  
20 ~~resident shall execute the instrument in one (1) of the following three (3)~~  
21 ~~methods:~~

22 ~~(1) In the presence of and with the approval of a judge of the~~  
23 ~~circuit court of the county of the principal's domicile;~~

24 ~~(2) In the presence of at least two (2) witnesses who shall~~  
25 ~~attest and prove the execution by affidavit to be filed with the instrument,~~  
26 ~~to be approved by a judge of the circuit court of the county of the~~  
27 ~~principal's domicile; or~~

28 ~~(3)(A) In the presence of a notary public who shall acknowledge~~  
29 ~~the instrument.~~

30 ~~(B) The instrument, with the certificate of a notary~~  
31 ~~public, shall be filed with and approved by the circuit court of the county~~  
32 ~~of the principal's domicile.~~

33 ~~(b)(1) The approval of the judge may be given only if:~~

34 ~~(A) The principal requests approval;~~

35 ~~(B) The attorney in fact consents to serve;~~

36 ~~(C) The judge is satisfied, after any examination and~~



1 investigation he or she deems appropriate, that the principal is a person  
2 covered by this subchapter and reasonably understands the nature and purpose  
3 of the power and that the attorney in fact is a suitable person to carry out  
4 the obligations imposed upon him or her; and

5 (D) ~~The provisions of this subchapter have been observed.~~

6 (2) ~~Approval may be given informally in chambers or another  
7 convenient place without the necessity of service of summons or other notice  
8 and shall be endorsed upon the face of the original of the instrument.~~

9  
10 ~~28-68-305. — Contents.~~

11 (a) ~~The power of attorney shall show or state:~~

12 (1) ~~The fact of execution under the provisions of this  
13 subchapter;~~

14 (2) ~~The time and conditions under which the power is to become  
15 effective;~~

16 (3) ~~The extent and scope of the power conferred;~~

17 (4) ~~Who is to exercise the power; and~~

18 (5) ~~The annual income covered by the instrument and the nature  
19 or description and estimated value of the property, if any, to be affected.~~

20 (b) ~~The power of attorney may state the conditions and circumstances  
21 under which the power terminates.~~

22  
23 ~~28-68-306. — Scope of power.~~

24 (a) ~~The power may be restricted, or it may grant complete authority to  
25 provide for the care of the principal's person and property.~~

26 (b) ~~Except to the extent limited by the instrument creating the power  
27 or to the extent that court approval is required by the instrument, the  
28 attorney in fact without prior court approval may:~~

29 (1) ~~Endorse checks and other instruments made payable to the  
30 principal;~~

31 (2) ~~Sell, encumber, lease, or otherwise manage the principal's  
32 property; and~~

33 (3) ~~Execute and deliver deeds, conveyances, stock and bond  
34 transfers, contracts, and other instruments necessary to carry out the power.~~

35 (c) ~~The power remains valid until terminated as provided in this  
36 subchapter.~~

1           ~~(d) The power is not invalidated by reason of any subsequent change in~~  
2 ~~the mental or physical condition of the principal, including, but not~~  
3 ~~restricted to, incompetency.~~

4  
5           ~~28-68-307. Filing of power.~~

6           ~~(a) The original power of attorney shall be filed in the office of the~~  
7 ~~probate clerk of the circuit court of the county of the domicile of the~~  
8 ~~principal.~~

9           ~~(b) A certified copy of the original power of attorney, together with~~  
10 ~~the record of judicial approval, shall be recorded in the office of the~~  
11 ~~recorder of each county in which real property to be affected by an exercise~~  
12 ~~of the power is located.~~

13  
14           ~~28-68-308. Attorney in fact — Qualifications — Liability.~~

15           ~~(a) The attorney in fact may be an individual, a corporation~~  
16 ~~authorized by law to act in a fiduciary capacity, an agency of government, a~~  
17 ~~Community Fund or United Fund participating agency, or the American Red~~  
18 ~~Cross.~~

19           ~~(b) Unless otherwise provided in the power of attorney, an attorney in~~  
20 ~~fact is bound by standards of conduct and liability applicable to other~~  
21 ~~fiduciaries.~~

22           ~~(c) A performance bond shall not be filed unless required by a~~  
23 ~~provision of the power.~~

24  
25           ~~28-68-309. Attorney in fact — Accounting and delivery of property.~~

26           ~~(a) An attorney in fact shall account to the principal or his or her~~  
27 ~~legal representative at times specified in the power of attorney, at any time~~  
28 ~~directed by a judge of the approving court, and upon termination of the power~~  
29 ~~or his or her authority.~~

30           ~~(b) He or she shall deliver promptly to the principal, his or her~~  
31 ~~legal representative, or a successor attorney in fact all property held by~~  
32 ~~him or her as attorney in fact upon termination of the power or his or her~~  
33 ~~authority.~~

34  
35           ~~28-68-310. Reimbursement for expenses — Compensation.~~

36           ~~An attorney in fact is entitled to reimbursement for his or her~~

1 reasonable expenses incurred in the performance of his or her duties and,  
 2 unless precluded by the power of attorney, to reasonable compensation for his  
 3 or her services, payable out of the income and assets subject to the power.  
 4 The amount of compensation and time of payment may be fixed in the power.

5  
 6 ~~28-68-311. Third parties.~~

7 (a) ~~A person dealing with the attorney in fact is not required to~~  
 8 ~~inquire into the validity or adequacy of proceedings involving an approval or~~  
 9 ~~filing and recording of the power of attorney to determine if the principal~~  
 10 ~~or attorney in fact is qualified or to determine whether the power may have~~  
 11 ~~been terminated, if not yet shown by filing and recording under § 28-68-~~  
 12 ~~312(b).~~

13 (b) ~~He or she is not required to inquire into the validity or~~  
 14 ~~propriety of any act of an attorney in fact apparently authorized by his or~~  
 15 ~~her approved power or to assure the proper application by the attorney in~~  
 16 ~~fact of any money or property paid or delivered to him or her.~~

17  
 18 ~~28-68-312. Termination of power.~~

19 (a) ~~A power of attorney terminates on:~~

20 (1) ~~Written revocation by the principal;~~

21 (2) ~~Death of the principal;~~

22 (3) ~~Order of a court appointing a guardian of the person or~~  
 23 ~~property, or both, of the principal, unless the order provides otherwise;~~

24 (4) ~~Expiration or termination as specified in the power of~~  
 25 ~~attorney; or~~

26 (5) ~~A determination by a judge of the approving court that the~~  
 27 ~~value of the property or the amount of the annual money income covered by the~~  
 28 ~~instrument has so increased that this subchapter is no longer appropriately~~  
 29 ~~applicable.~~

30 (b) ~~The original resignation of an attorney in fact, a written~~  
 31 ~~revocation of the power of attorney by a principal, or a certified copy of~~  
 32 ~~the death certificate of the principal or of the attorney in fact, or a~~  
 33 ~~certified copy of any court judgment or order terminating the power of~~  
 34 ~~attorney or removing the attorney in fact for cause shall be filed promptly~~  
 35 ~~in the office of the clerk of the court whose judge approved the power, and~~  
 36 ~~certified copies shall be recorded promptly in all offices in which a~~

1 ~~certified copy of the original power of attorney is recorded. A notation of~~  
2 ~~the terminating event shall be made by the clerk on the face of the original~~  
3 ~~power of attorney.~~

4 ~~(c)(1) The attorney in fact is liable to the principal and the~~  
5 ~~principal's estate for all damage and loss the principal suffers because of~~  
6 ~~the attorney's acts done after the attorney receives notice of the~~  
7 ~~termination of his or her authority or after termination by provision of the~~  
8 ~~power itself.~~

9 ~~(2) After the power is terminated, other than by death of the~~  
10 ~~principal, he or she may perform ministerial acts reasonably necessary to~~  
11 ~~complete and conclude his or her duties.~~

12  
13 ~~28-68-313. Appointment of successor attorney.~~

14 ~~(a) If the attorney in fact or any successor dies, ceases to act,~~  
15 ~~refuses or is unable to serve, resigns, fails to maintain or replace a bond,~~  
16 ~~or is removed for cause by a court, a successor attorney in fact may be~~  
17 ~~appointed by the principal.~~

18 ~~(b) If the principal, without having revoked the power of attorney,~~  
19 ~~fails or is unable to appoint a successor within a reasonable time, a judge~~  
20 ~~of the court which approved the power may appoint a successor unless~~  
21 ~~precluded from doing so by provisions of the original power of attorney.~~

22 ~~(c) The appointment of a successor attorney in fact shall be in~~  
23 ~~writing.~~

24 ~~(d) If the appointment is by the principal, it is subject to approval~~  
25 ~~by a judge of the court which approved the original power.~~

26 ~~(e) The original and certified copies of the appointment of the~~  
27 ~~successor shall be filed and recorded as required for an original power of~~  
28 ~~attorney.~~

29  
30  
31 ~~Subchapter 4 -- Uniform Statutory Form Power of Attorney Act~~  
32 ~~Miscellaneous Provisions~~

33  
34 ~~28-68-401. Statutory form of power of attorney Uniformity of~~  
35 ~~application and construction.~~

36 ~~(a) Form. The following statutory form of power of attorney is~~

1 ~~legally sufficient.~~

2

3 ~~STATUTORY POWER OF ATTORNEY~~

4 ~~NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE~~  
5 ~~EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT. IF YOU HAVE~~  
6 ~~ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS~~  
7 ~~DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE~~  
8 ~~DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO~~  
9 ~~DO SO.~~

10 ~~I \_\_\_\_\_ (insert your~~  
11 ~~name and address) appoint \_\_\_\_\_ (insert the name and~~  
12 ~~address of the person appointed) as my agent (attorney in fact) to act for me~~  
13 ~~in any lawful way with respect to the following initialed subjects:~~

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

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

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

20 ~~INITIAL~~

21 ~~\_\_\_\_\_ (A) Real property transactions.~~

22 ~~\_\_\_\_\_ (B) Tangible personal property transactions.~~

23 ~~\_\_\_\_\_ (C) Stock and bond transactions.~~

24 ~~\_\_\_\_\_ (D) Commodity and option transactions.~~

25 ~~\_\_\_\_\_ (E) Banking and other financial institution transactions.~~

26 ~~\_\_\_\_\_ (F) Business operating transactions.~~

27 ~~\_\_\_\_\_ (G) Insurance and annuity transactions.~~

28 ~~\_\_\_\_\_ (H) Estate, trust, and other beneficiary transactions.~~

29 ~~\_\_\_\_\_ (I) Claims and litigation.~~

30 ~~\_\_\_\_\_ (J) Personal and family maintenance.~~

31 ~~\_\_\_\_\_ (K) Benefits from social security, medicare, medicaid, or other~~  
32 ~~governmental programs, or military service.~~

33 ~~\_\_\_\_\_ (L) Retirement plan transactions.~~

34 ~~\_\_\_\_\_ (M) Tax matters.~~

35 ~~\_\_\_\_\_ (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER~~  
36 ~~LINES IF YOU INITIAL LINE (N).~~

1 ~~SPECIAL INSTRUCTIONS.~~  
2 ~~ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR SPECIAL~~  
3 ~~INSTRUCTIONS.~~

4  
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6  
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12

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

15 ~~This power of attorney will continue to be effective even though I become~~  
16 ~~disabled, incapacitated, or incompetent.~~

17 ~~STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO~~  
18 ~~CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.~~

19 ~~I agree that any third party who receives a copy of this document may act~~  
20 ~~under it. Revocation of the power of attorney is not effective as to a third~~  
21 ~~party until the third party learns of the revocation. I agree to indemnify~~  
22 ~~the third party for any claims that arise against the third party because of~~  
23 ~~reliance on this power of attorney.~~

24 ~~Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_~~

25 ~~\_\_\_\_\_ (Your Signature) \_\_\_\_\_~~

26 ~~\_\_\_\_\_ (Your Social Security Number) \_\_\_\_\_~~

27 ~~State of \_\_\_\_\_~~

28 ~~(County) of \_\_\_\_\_~~

29 ~~This document was acknowledged before me on \_\_\_\_\_ (Date) by~~

30 ~~\_\_\_\_\_ (Name of principal)~~

31 ~~\_\_\_\_\_ (Signature of notarial officer) \_\_\_\_\_~~

32 ~~(Seal, if any)~~

33 ~~\_\_\_\_\_ (Title (and Rank)) \_\_\_\_\_~~

34 ~~{My commission expires: \_\_\_\_\_ }~~

35 ~~BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY~~  
36 ~~AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.~~

1  
2       ~~(b) Requirements. A statutory power of attorney is legally sufficient~~  
3 ~~under this subchapter, if the wording of the form complies substantially with~~  
4 ~~subsection (a), the form is properly completed, and the signature of the~~  
5 ~~principal is acknowledged.~~

6       ~~(c) Grant of All Listed Powers. If the line in front of (N) of the~~  
7 ~~form under subsection (a) is initialed, an initial on the line in front of~~  
8 ~~any other power does not limit the powers granted by line (N).~~

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

12  
13       28-68-402. ~~Durable power of attorney~~ Relation to Electronic Signatures  
14 in Global and National Commerce Act.

15       ~~A power of attorney legally sufficient under this subchapter is durable~~  
16 ~~to the extent that durable powers are permitted by other law of this State~~  
17 ~~and the power of attorney contains language, such as “This power of attorney~~  
18 ~~will continue to be effective if I become disabled, incapacitated, or~~  
19 ~~incompetent,” showing the intent of the principal that the power granted may~~  
20 ~~be exercised notwithstanding later disability, incapacity, or incompetency.~~

21       This chapter modifies, limits, and supersedes the federal Electronic  
22 Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., as  
23 it existed on January 1, 2011, but does not modify, limit, or supersede  
24 Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic  
25 delivery of any of the notices described in Section 103(b) of that act, 15  
26 U.S.C. § 7003(b).

27  
28       28-68-403. ~~Construction of power relating to real property~~  
29 ~~transactions~~ Effect on existing powers of attorney.

30       ~~By executing a statutory power of attorney with respect to a subject~~  
31 ~~listed in § 28-68-401(a), the principal, except as limited or extended by the~~  
32 ~~principal in the power of attorney, empowers the agent, for that subject to:~~

33       ~~(1) demand, receive, and obtain by litigation or otherwise,~~  
34 ~~money or other thing of value to which the principal is, may become, or~~  
35 ~~claims to be entitled; and conserve, invest, disburse, or use anything so~~  
36 ~~received for the purposes intended;~~

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

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

8           ~~(4) prosecute, defend, submit to arbitration, settle, and~~  
9 ~~propose or accept a compromise with respect to, a claim existing in favor of~~  
10 ~~or against the principal or intervene in litigation relating to the claim;~~

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

13           ~~(6) engage, compensate, and discharge an attorney, accountant,~~  
14 ~~expert witness, or other assistant;~~

15           ~~(7) keep appropriate records of each transaction, including an~~  
16 ~~accounting of receipts and disbursements;~~

17           ~~(8) prepare, execute, and file a record, report, or other~~  
18 ~~document the agent considers desirable to safeguard or promote the~~  
19 ~~principal's interest under a statute or governmental regulation;~~

20           ~~(9) reimburse the agent for expenditures properly made by the~~  
21 ~~agent in exercising the powers granted by the power of attorney; and~~

22           ~~(10) in general, do any other lawful act with respect to the~~  
23 ~~subject.~~

24           Except as otherwise provided in this chapter, on January 1, 2012:

25           (1) this chapter applies to a power of attorney created before,  
26 on, or after January 1, 2012;

27           (2) this chapter applies to a judicial proceeding concerning a  
28 power of attorney commenced on or after January 1, 2012;

29           (3) this chapter applies to a judicial proceeding concerning a  
30 power of attorney commenced before January 1, 2012, unless the court finds  
31 that application of a provision of this chapter would substantially interfere  
32 with the effective conduct of the judicial proceeding or prejudice the rights  
33 of a party, in which case that provision does not apply and the superseded  
34 law applies; and

35           (4) an act done before January 1, 2012, is not affected by this  
36 chapter.



1  
2 28-68-404. Construction of power relating to real property  
3 transactions. [Reserved.]

4 (a) ~~In a statutory power of attorney, the language granting power with~~  
5 ~~respect to real property transactions empowers the agent to:~~

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

9 (2) ~~sell, exchange, convey with or without covenants, quitclaim,~~  
10 ~~release, surrender, mortgage, encumber, partition, consent to partitioning,~~  
11 ~~subdivide, apply for zoning, rezoning, or other governmental permits, plat or~~  
12 ~~consent to platting, develop, grant options concerning, lease, sublease, or~~  
13 ~~otherwise dispose of, an interest in real property, a right incident to real~~  
14 ~~property, or a principal's dower, curtesy, or homestead rights in real~~  
15 ~~property;~~

16 (3) ~~release, assign, satisfy, and enforce by litigation or~~  
17 ~~otherwise, a mortgage, deed of trust, encumbrance, lien, or other claim to~~  
18 ~~real property which exists or is asserted;~~

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

22 (i) ~~insuring against a casualty, liability, or loss;~~

23 (ii) ~~obtaining or regaining possession, or protecting the~~  
24 ~~interest or right, by litigation or otherwise;~~

25 (iii) ~~paying, compromising, or contesting taxes or~~  
26 ~~assessments, or applying for and receiving refunds in connection with them;~~  
27 ~~and~~

28 (iv) ~~purchasing supplies, hiring assistance or labor, and~~  
29 ~~making repairs or alterations in the real property;~~

30 (5) ~~use, develop, alter, replace, remove, erect, or install~~  
31 ~~structures or other improvements upon real property in or incident to which~~  
32 ~~the principal has, or claims to have, an interest or right;~~

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

- 1                   ~~(i) — selling or otherwise disposing of them;~~
- 2                   ~~(ii) — exercising or selling an option, conversion, or~~
- 3 ~~similar right with respect to them; and~~
- 4                   ~~(iii) — voting them in person or by proxy;~~
- 5                   ~~(7) — change the form of title of an interest in or right incident~~
- 6 ~~to real property;~~
- 7                   ~~(8) — dedicate to public use, with or without consideration,~~
- 8 ~~easements or other real property in which the principal has, or claims to~~
- 9 ~~have, an interest.~~

10           ~~(b) — Unless specifically limited, the foregoing powers concerning real~~  
 11 ~~property shall include the foregoing acts involving the principal's~~  
 12 ~~homestead.~~

14           28-68-405. ~~Construction of power relating to tangible personal~~  
 15 ~~property transactions~~ Effective date.

16           ~~In a statutory power of attorney, the language granting power with~~  
 17 ~~respect to tangible personal property transactions empowers the agent to:~~

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

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

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

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

- 33                   ~~(i) — insuring against casualty, liability, or loss;~~
- 34                   ~~(ii) — obtaining or regaining possession, or protecting the~~
- 35 ~~property or interest, by litigation or otherwise;~~
- 36                   ~~(iii) — paying, compromising, or contesting taxes or~~

1 ~~assessments or applying for and receiving refunds in connection with taxes or~~  
2 ~~assessments;~~

3 ~~(iv) moving from place to place;~~

4 ~~(v) storing for hire or on a gratuitous bailment; and~~

5 ~~(vi) using, altering, and making repairs or alterations.~~

6 This chapter takes effect January 1, 2012.

7  
8 ~~28-68-406. Construction of power relating to stock and bond~~  
9 ~~transactions.~~

10 ~~In a statutory power of attorney, the language granting power with~~  
11 ~~respect to stock and bond transactions empowers the agent to buy, sell, and~~  
12 ~~exchange stocks, bonds, mutual funds, and all other types of securities and~~  
13 ~~financial instruments except commodity futures contracts and call and put~~  
14 ~~options on stocks and stock indexes, receive certificates and other evidences~~  
15 ~~of ownership with respect to securities, exercise voting rights with respect~~  
16 ~~to securities in person or by proxy, enter into voting trusts, and consent to~~  
17 ~~limitations on the right to vote.~~

18  
19 ~~28-68-407. Construction of power relating to commodity and option~~  
20 ~~transactions.~~

21 ~~In a statutory power of attorney, the language granting power with~~  
22 ~~respect to commodity and option transactions empowers the agent to buy, sell,~~  
23 ~~exchange, assign, settle, and exercise commodity futures contracts and call~~  
24 ~~and put options on stocks and stock indexes traded on a regulated option~~  
25 ~~exchange, and establish, continue, modify, and terminate option accounts with~~  
26 ~~a broker.~~

27  
28 ~~28-68-408. Construction of power relating to banking and other~~  
29 ~~financial institution transactions.~~

30 ~~In a statutory power of attorney, the language granting power with~~  
31 ~~respect to banking and other financial institution transactions empowers the~~  
32 ~~agent to:~~

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

35 ~~(2) establish, modify, and terminate an account or other banking~~  
36 ~~arrangement with a bank, trust company, savings and loan association, credit~~

1 union, thrift company, brokerage firm, or other financial institution  
2 selected by the agent;

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

4 (4) ~~contract to procure other services available from a  
5 financial institution as the agent considers desirable;~~

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

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

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

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

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

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

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

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

28  
29 ~~28-68-409. Construction of power relating to business operating  
30 transactions.~~

31 ~~In a statutory power of attorney, the language granting power with  
32 respect to business operating transactions empowers the agent to:~~

33 (1) ~~operate, buy, sell, enlarge, reduce, and terminate a  
34 business interest;~~

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

1                   ~~(i) perform a duty or discharge a liability and exercise a~~  
2 ~~right, power, privilege, or option that the principal has, may have, or~~  
3 ~~claims to have, under a partnership agreement, whether or not the principal~~  
4 ~~is a partner;~~

5                   ~~(ii) enforce the terms of a partnership agreement by~~  
6 ~~litigation or otherwise; and~~

7                   ~~(iii) defend, submit to arbitration, settle, or compromise~~  
8 ~~litigation to which the principal is a party because of membership in the~~  
9 ~~partnership;~~

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

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

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

21                   ~~(ii) determine:~~

22                   ~~(A) the location of its operation;~~

23                   ~~(B) the nature and extent of its business;~~

24                   ~~(C) the methods of manufacturing, selling,~~  
25 ~~merchandising, financing, accounting, and advertising employed in its~~  
26 ~~operation;~~

27                   ~~(D) the amount and types of insurance carried;~~

28                   ~~(E) the mode of engaging, compensating, and dealing~~  
29 ~~with its accountants, attorneys, and other agents and employees;~~

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

34                   ~~(iv) demand and receive money due or claimed by the~~  
35 ~~principal or on the principal's behalf in the operation of the business, and~~  
36 ~~control and disburse the money in the operation of the business;~~

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

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

5           ~~(7) sell or liquidate a business or part of it at the time and~~  
6 ~~upon the terms the agent considers desirable;~~

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

9           ~~(9) prepare, sign, file, and deliver reports, compilations of~~  
10 ~~information, returns, or other papers with respect to a business which are~~  
11 ~~required by a governmental agency or instrumentality or which the agent~~  
12 ~~considers desirable, and make related payments; and~~

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

18  
19       ~~28-68-410. Construction of power relating to insurance transactions.~~

20       ~~In a statutory power of attorney, the language granting power with~~  
21 ~~respect to insurance and annuity transactions empowers the agent to:~~

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

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

30           ~~(3) pay the premium or assessment on, modify, rescind, release,~~  
31 ~~or terminate a contract of insurance or annuity procured by the agent;~~

32           ~~(4) designate the beneficiary of the contract, but an agent may~~  
33 ~~be named a beneficiary of the contract, or an extension, renewal, or~~  
34 ~~substitute for it, only to the extent the agent was named as a beneficiary~~  
35 ~~under a contract procured by the principal before executing the power of~~  
36 ~~attorney;~~

- 1           ~~(5) apply for and receive a loan on the security of the contract~~
- 2 ~~of insurance or annuity;~~
- 3           ~~(6) surrender and receive the cash surrender value;~~
- 4           ~~(7) exercise an election;~~
- 5           ~~(8) change the manner of paying premiums;~~
- 6           ~~(9) change or convert the type of insurance contract or annuity,~~
- 7 ~~with respect to which the principal has or claims to have a power described~~
- 8 ~~in this section;~~
- 9           ~~(10) change the beneficiary of a contract of insurance or~~
- 10 ~~annuity, but the agent may not be designated a beneficiary except to the~~
- 11 ~~extent permitted by paragraph (4);~~
- 12           ~~(11) apply for and procure government aid to guarantee or pay~~
- 13 ~~premiums of a contract of insurance on the life of the principal;~~
- 14           ~~(12) collect, sell, assign, hypothecate, borrow upon, or pledge~~
- 15 ~~the interest of the principal in a contract of insurance or annuity; and~~
- 16           ~~(13) pay from proceeds or otherwise, compromise or contest, and~~
- 17 ~~apply for refunds in connection with, a tax or assessment levied by a taxing~~
- 18 ~~authority with respect to a contract of insurance or annuity or its proceeds~~
- 19 ~~or liability accruing by reason of the tax or assessment.~~

20

21       ~~28-68-411. Construction of power relating to estate, trust, and other~~

22 ~~beneficiary transactions.~~

23       ~~In a statutory power of attorney, the language granting power with~~

24 ~~respect to estate, trust, and other beneficiary transactions, empowers the~~

25 ~~agent to act for the principal in all matters that affect a trust, probate~~

26 ~~estate, guardianship, conservatorship, escrow, custodianship, or other fund~~

27 ~~from which the principal is, may become, or claims to be entitled, as a~~

28 ~~beneficiary, to a share or payment, including to:~~

- 29           ~~(1) accept, reject, disclaim, receive, receipt for, sell,~~
- 30 ~~assign, release, pledge, exchange, or consent to a reduction in or~~
- 31 ~~modification of a share in or payment from the fund;~~
- 32           ~~(2) demand or obtain by litigation or otherwise money or other~~
- 33 ~~thing of value to which the principal is, may become, or claims to be~~
- 34 ~~entitled by reason of the fund;~~
- 35           ~~(3) initiate, participate in, and oppose litigation to ascertain~~
- 36 ~~the meaning, validity, or effect of a deed, will, declaration of trust, or~~

1 other instrument or transaction affecting the interest of the principal;

2           (4) initiate, participate in, and oppose litigation to remove,  
3 substitute, or surcharge a fiduciary;

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

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

10  
11       ~~28-68-412. Construction of power relating to claims and litigation.~~

12       ~~In a statutory power of attorney, the language with respect to claims  
13 and litigation empowers the agent to:~~

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

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

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

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

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

32           (6) waive the issuance and service of process upon the  
33 principal, accept service of process, appear for the principal, designate  
34 persons upon whom process directed to the principal may be served, execute  
35 and file or deliver stipulations on the principal's behalf, verify pleadings,  
36 seek appellate review, procure and give surety and indemnity bonds, contract



1 and pay for the preparation and printing of records and briefs, receive and  
 2 execute and file or deliver a consent, waiver, release, confession of  
 3 judgment, satisfaction of judgment, notice, agreement, or other instrument in  
 4 connection with the prosecution, settlement, or defense of a claim or  
 5 litigation;

6 (7) act for the principal with respect to bankruptcy or  
 7 insolvency proceedings, whether voluntary or involuntary, concerning the  
 8 principal or some other person, with respect to a reorganization proceeding,  
 9 or a receivership or application for the appointment of a receiver or trustee  
 10 which affects an interest of the principal in property or other thing of  
 11 value; and

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

15  
 16 ~~28-68-413.~~ Construction of power relating to personal and family  
 17 maintenance.

18 In a statutory power of attorney, the language granting power with  
 19 respect to personal and family maintenance empowers the agent to:

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

27 (2) provide for the individuals described in paragraph (1)  
 28 normal domestic help; usual vacations and travel expenses; and funds for  
 29 shelter, clothing, food, appropriate education, and other current living  
 30 costs;

31 (3) pay for the individuals described in paragraph (1) necessary  
 32 medical, dental, and surgical care, hospitalization, and custodial care;

33 (4) continue any provision made by the principal, for the  
 34 individuals described in paragraph (1), for automobiles or other means of  
 35 transportation, including registering, licensing, insuring, and replacing  
 36 them;

1           ~~(5) maintain or open charge accounts for the convenience of the~~  
 2 ~~individuals described in paragraph (1) and open new accounts the agent~~  
 3 ~~considers desirable to accomplish a lawful purpose; and~~

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

7  
 8           ~~28-68-414. Construction of power relating to benefits from social~~  
 9 ~~security, medicare, medicaid, or other governmental programs or military~~  
 10 ~~service.~~

11           ~~In a statutory power of attorney, the language granting power with~~  
 12 ~~respect to benefits from social security, medicare, medicaid or other~~  
 13 ~~governmental programs, or civil or military service empowers the agent to:~~

14           ~~(1) execute vouchers in the name of the principal for allowances~~  
 15 ~~and reimbursements payable by the United States or a foreign government or by~~  
 16 ~~a state or subdivision of a state to the principal, including allowances and~~  
 17 ~~reimbursements for transportation of the individuals described in § 28-68-~~  
 18 ~~413(1), and for shipment of their household effects;~~

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

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

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

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

33  
 34           ~~28-68-415. Construction of power relating to retirement plan~~  
 35 ~~transactions.~~

36           ~~In a statutory power of attorney, the language granting power with~~

1 ~~respect to retirement plan transactions empowers the agent to:~~

2 ~~(1) select payment options under any retirement plan in which~~  
 3 ~~the principal participates, including plans for self-employed individuals;~~

4 ~~(2) designate beneficiaries under those plans and change~~  
 5 ~~existing designations;~~

6 ~~(3) make voluntary contributions to those plans;~~

7 ~~(4) exercise the investment powers available under any self-~~  
 8 ~~directed retirement plan;~~

9 ~~(5) make "rollovers" of plan benefits into other retirement~~  
 10 ~~plans;~~

11 ~~(6) if authorized by the plan, borrow from, sell assets to, and~~  
 12 ~~purchase assets from the plan; and~~

13 ~~(7) waive the right of the principal to be a beneficiary of a~~  
 14 ~~joint or survivor annuity if the principal is a spouse who is not employed.~~

15  
 16 ~~28-68-416. Construction of power relating to tax matters.~~

17 ~~In a statutory power of attorney, the language granting power with~~  
 18 ~~respect to tax matters empowers the agent to:~~

19 ~~(1) prepare, sign, and file federal, state, local, and foreign~~  
 20 ~~income, gift, payroll, Federal Insurance Contributions Act returns, and other~~  
 21 ~~tax returns, claims for refunds, requests for extension of time, petitions~~  
 22 ~~regarding tax matters, and any other tax-related documents, including~~  
 23 ~~receipts, offers, waivers, consents (including consents and agreements under~~  
 24 ~~Internal Revenue Code section 2032A or any successor section), closing~~  
 25 ~~agreements, and any power of attorney required by the Internal Revenue~~  
 26 ~~Service or other taxing authority with respect to a tax year upon which the~~  
 27 ~~statute of limitations has not run and the following twenty-five (25) tax~~  
 28 ~~years;~~

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

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

34 ~~(4) act for the principal in all tax matters for all periods~~  
 35 ~~before the Internal Revenue Service, and any other taxing authority.~~

36

1           ~~28-68-417. Existing interests—Foreign interests.~~

2           ~~The powers described in §§ 28-68-403—28-68-416 are exercisable~~  
3 ~~equally with respect to an interest the principal has when the power of~~  
4 ~~attorney is executed or acquires later, whether or not the property is~~  
5 ~~located in this state, and whether or not the powers are exercised or the~~  
6 ~~power of attorney is executed in this state.~~

7  
8           ~~28-68-418. Uniformity of application and construction.~~

9           ~~This subchapter shall be applied and construed to effectuate its~~  
10 ~~general purpose to make uniform the law with respect to the subject of this~~  
11 ~~subchapter among states enacting it.~~

12  
13           ~~28-68-419. Short title.~~

14           ~~This subchapter may be cited as the “Uniform Statutory Form Power of~~  
15 ~~Attorney Act.”~~