

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4390**

5 (By Delegates Doyle, Rodighiero, Ferro,  
6 Frazier, Reynolds, Storch and Walters)

7 [Passed March 10, 2012; in effect ninety days from passage.]

8  
9  
10 AN ACT to repeal §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5,  
11 §39-4-6 and §39-4-7 of the Code of West Virginia, 1931, as  
12 amended; to amend said code by adding thereto a new chapter,  
13 designated §39B-1-101, §39B-1-102, §39B-1-103, §39B-1-104,  
14 §39B-1-105, §39B-1-106, §39B-1-107, §39B-1-108, §39B-1-109,  
15 §39B-1-110, §39B-1-111, §39B-1-112, §39B-1-113, §39B-1-114,  
16 §39B-1-115, §39B-1-116, §39B-1-117, §39B-1-118, §39B-1-119,  
17 §39B-1-120, §39B-1-121, §39B-1-122, §39B-1-123, §39B-2-101,  
18 §39B-2-102, §39B-2-103, §39B-2-104, §39B-2-105, §39B-2-106,  
19 §39B-2-107, §39B-2-108, §39B-2-109, §39B-2-110, §39B-2-111,  
20 §39B-2-112, §39B-2-113, §39B-2-114, §39B-2-115, §39B-2-116,  
21 §39B-2-117, §39B-3-101 §39B-3-102, §39B-4-101, §39B-4-102, and  
22 §39B-4-103; and to amend and reenact §44A-3-3 of said code,  
23 all relating to repealing the Uniform Durable Power of  
24 Attorney Act and adopting the Uniform Power of Attorney Act;  
25 declaring the state law of the state where the power of

1 attorney is executed to be controlling; providing a short  
2 title; providing definitions; setting forth the applicability  
3 of the act; providing that the power of attorney is durable;  
4 requiring the power of attorney to be acknowledged before a  
5 notary public or other individual authorized by law to take  
6 acknowledgments; providing for execution, validity and meaning  
7 and effect of power of attorney; nominating conservator or  
8 guardian and relation of agent to court-appointed fiduciary;  
9 providing when power of attorney effective; terminating power  
10 of attorney or agent's authority; providing for coagents and  
11 successor agents and their liability; reimbursing and  
12 compensating agent, exception; providing for agent's  
13 acceptance of appointment and agent's duties; exonerating  
14 agent in power of attorney, exceptions; providing certain  
15 persons judicial relief to construe a power of attorney or  
16 review an agent's conduct; providing for agent's liability in  
17 certain monetary amounts; providing for resignation of agent;  
18 accepting and relying upon acknowledged power of attorney and  
19 for what a request may be made before accepting the power of  
20 attorney; providing for liability for refusing to accept an  
21 acknowledged statutory form power of attorney; declaring that  
22 principles of law and equity supplement the act; providing  
23 that laws applicable to financial institutions and entities  
24 supercede this act; declaring remedies under the act are not

1 exclusive; granting specific and general authority under the  
2 power of attorney; providing for granting general authority of  
3 the agent under a power of attorney which incorporates by  
4 reference a subject matter involving real property, tangible  
5 personal property, stocks and bonds, commodities and options,  
6 financial institutions, operation of an entity or business,  
7 insurance and annuities, estates, trusts and other beneficial  
8 interests, claims and litigation, personal and family  
9 maintenance, benefits from governmental programs or civil or  
10 military service, retirement plans, taxes and gifts; providing  
11 a statutory form power of attorney form; providing  
12 miscellaneous provisions relating to uniformity of application  
13 and construction and relating to electronic signatures in the  
14 Global and National Commerce Act; providing application of act  
15 on existing powers of attorney; and removing provision in the  
16 West Virginia Guardianship and Conservatorship Act that a  
17 conservator may not revoke or amend a durable power of  
18 attorney without approval of the court to avoid a conflict.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and  
21 §39-4-7 of the Code of West Virginia, 1931, as amended, be  
22 repealed; that said code be amended by adding thereto a new  
23 chapter, designated §39B-1-101, §39B-1-102, §39B-1-103, §39B-1-104,  
24 §39B-1-105, §39B-1-106, §39B-1-107, §39B-1-108, §39B-1-109,

1 §39B-1-110, §39B-1-111, §39B-1-112, §39B-1-113, §39B-1-114,  
2 §39B-1-115, §39B-1-116, §39B-1-117, §39B-1-118, §39B-1-119,  
3 §39B-1-120, §39B-1-121, §39B-1-122 §39B-1-123, §39B-2-101,  
4 §39B-2-102, §39B-2-103, §39B-2-104, §39B-2-105, §39B-2-106,  
5 §39B-2-107, §39B-2-108, §39B-2-109, §39B-2-110, §39B-2-111,  
6 §39B-2-112, §39B-2-113, §39B-2-114, §39B-2-115, §39B-2-116,  
7 §39B-2-117, §39B-3-101, §39B-3-102, §39B-4-101, §39B-4-102, and  
8 §39B-4-103; and that §44A-3-3 of said code be amended and  
9 reenacted, all to read as follows:

10 **CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.**

11 **ARTICLE 1. GENERAL PROVISIONS.**

12 **§39B-1-101. Short title.**

13 This chapter may be cited as the Uniform Power of Attorney  
14 Act, and is cited in this chapter as "this act".

15 **§39B-1-102. Definitions.**

16 In this act:

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

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

24 (3) "Electronic" means relating to technology having

1 electrical, digital, magnetic, wireless, optical, electromagnetic  
2 or similar capabilities.

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

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

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

9 (B) Is:

10 (i) Detained, including incarcerated in a penal system; or

11 (ii) Outside the United States and unable to return.

12 (6) "Person" means an individual, corporation, business trust,  
13 estate, trust, partnership, limited liability company, association,  
14 joint venture, public corporation, government or governmental  
15 subdivision, agency, or instrumentality or any other legal or  
16 commercial entity.

17 (7) "Power of attorney" means a writing or other record that  
18 grants authority to an agent to act in the place of the principal,  
19 whether or not the term power of attorney is used.

20 (8) "Presently exercisable general power of appointment," with  
21 respect to property or a property interest subject to a power of  
22 appointment, means power exercisable at the time in question to  
23 vest absolute ownership in the principal individually, the  
24 principal's estate, the principal's creditors or the creditors of

1 the principal's estate. The term includes a power of appointment  
2 not exercisable until the occurrence of a specified event, the  
3 satisfaction of an ascertainable standard, or the passage of a  
4 specified period only after the occurrence of the specified event,  
5 the satisfaction of the ascertainable standard or the passage of  
6 the specified period. The term does not include a power exercisable  
7 in a fiduciary capacity or only by will.

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

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

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

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

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

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

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

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

6 **§39B-1-103. Applicability.**

7 This act applies to all powers of attorney except:

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

11 (2) A power to make health-care decisions;

12 (3) A proxy or other delegation to exercise voting rights or  
13 management rights with respect to an entity; and

14 (4) A power created on a form prescribed by a government or  
15 governmental subdivision, agency or instrumentality for a  
16 governmental purpose.

17 **§39B-1-104. Power of attorney is durable.**

18 A power of attorney created under this act is durable unless  
19 it expressly provides that it is terminated by the incapacity of  
20 the principal.

21 **§39B-1-105. Execution of power of attorney.**

22 A power of attorney must be signed by the principal or in the  
23 principal's conscious presence by another individual directed by  
24 the principal to sign the principal's name on the power of attorney

1 and must be acknowledged by the principal before a notary public or  
2 other individual authorized by law to take acknowledgments.

3 **§39B-1-106. Validity of power of attorney.**

4 (a) A power of attorney executed in this state on or after the  
5 effective date of this act, is valid if its execution complies with  
6 section one hundred five of this article.

7 (b) A power of attorney executed in this state before the  
8 effective date of this act, is valid if its execution complied with  
9 the law of this state as it existed at the time of execution.

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

13 (1) The law of the jurisdiction that determines the meaning  
14 and effect of the power of attorney pursuant to section one hundred  
15 seven of this article; or

16 (2) The requirements for a military power of attorney pursuant  
17 to 10 U. S. C. §1044b.

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

21 **§39B-1-107. Meaning and effect of power of attorney.**

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



1 jurisdiction in which the power of attorney was executed.

2 **§39B-1-108. Nomination of conservator or guardian; relation of**  
3 **agent to court-appointed fiduciary.**

4 (a) In a power of attorney, a principal may nominate a  
5 conservator of the principal's estate or guardian of the  
6 principal's person for consideration by the court if protective  
7 proceedings for the principal's estate or person are begun after  
8 the principal executes the power of attorney. In the protective  
9 proceedings the court shall consider the nomination in accordance  
10 with the provisions of section eight, article two, chapter  
11 forty-four-a of this code.

12 (b) If, after a principal executes a power of attorney, a  
13 court appoints a conservator of the principal's estate or other  
14 fiduciary charged with the management of some or all of the  
15 principal's property, the agent is accountable to the fiduciary as  
16 well as to the principal. Unless otherwise ordered by the court  
17 making the appointment, the power of attorney and the agent's  
18 authority thereunder terminates upon the appointment.

19 **§39B-1-109. When power of attorney effective.**

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

24 (b) If a power of attorney becomes effective upon the

1 occurrence of a future event or contingency, the principal, in the  
2 power of attorney, may authorize one or more persons to determine  
3 in a writing or other record that the event or contingency has  
4 occurred.

5 (c) If a power of attorney becomes effective upon the  
6 principal's incapacity and the principal has not authorized a  
7 person to determine whether the principal is incapacitated, or the  
8 person authorized is unable or unwilling to make the determination,  
9 the power of attorney becomes effective upon a determination in a  
10 writing or other record by:

11 (1) A physician or licensed psychologist that the principal is  
12 incapacitated within the meaning of section one hundred two (5) (A)  
13 of this article; or

14 (2) An attorney at law, a judge or an appropriate governmental  
15 official that the principal is incapacitated within the meaning of  
16 section one hundred two (5) (B) of this article.

17 (d) A person authorized by the principal in the power of  
18 attorney to determine that the principal is incapacitated may act  
19 as the principal's personal representative pursuant to the Health  
20 Insurance Portability and Accountability Act, §1171 through §1179  
21 of the Social Security Act, 42 U. S. C. §1320d, and applicable  
22 regulations, to obtain access to the principal's health-care  
23 information and communicate with the principal's health-care  
24 provider.

1 **§39B-1-110. Termination of power of attorney or agent's authority.**

2 (a) A power of attorney terminates when:

3 (1) The principal dies;

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

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

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

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

9 (6) The principal revokes the agent's authority or the agent  
10 dies, becomes incapacitated, or resigns, and the power of attorney  
11 does not provide for another agent to act under the power of  
12 attorney.

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

14 (1) The principal revokes the authority;

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

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

19 (4) The power of attorney terminates.

20 (c) Unless the power of attorney otherwise provides, an  
21 agent's authority is exercisable until the authority terminates  
22 pursuant to this section, notwithstanding a lapse of time since the  
23 execution of the power of attorney.

24 (d) Termination of an agent's authority or of a power of

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

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

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

17 **§39B-1-111. Coagents and successor agents.**

18 (a) A principal may designate two or more persons to act as  
19 coagents. Unless the power of attorney otherwise provides, each  
20 coagent may exercise his or her authority independently and the  
21 consent of all coagents is not necessary for the validity of an act  
22 or transaction.

23 (b) A principal may designate one or more successor agents to  
24 act if an agent resigns, dies, becomes incapacitated, is not

1 qualified to serve, or declines to serve. A principal may grant  
2 authority to designate one or more successor agents to an agent or  
3 other person designated by name, office or function. Unless the  
4 power of attorney otherwise provides, a successor agent:

5 (1) Has the same authority as that granted to the original  
6 agent; and

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

10 (c) Except as otherwise provided in the power of attorney and  
11 this act, an agent who does not participate in or conceal a breach  
12 of fiduciary duty committed by another agent, including a  
13 predecessor agent, is not liable for the actions of the other  
14 agent.

15 (d) An agent who has actual knowledge of a breach or imminent  
16 breach of fiduciary duty by another agent has a duty to notify the  
17 principal and, if the principal is incapacitated, take any action  
18 reasonably appropriate in the circumstances to safeguard the  
19 principal's best interest. An agent who fails to notify the  
20 principal or take action as required by this article is liable for  
21 the reasonably foreseeable damages that could have been avoided if  
22 the agent had notified the principal or taken such action.

23 **§39B-1-112. Reimbursement and compensation of agent.**

24 Unless the power of attorney otherwise provides, an agent is

1 entitled to reimbursement of expenses reasonably incurred on behalf  
2 of the principal and to compensation that is reasonable under the  
3 circumstances: *Provided*, That an agent who is related to the  
4 principal as an ancestor, spouse or descendent is not entitled to  
5 compensation for services as agent, unless the power of attorney  
6 specifically provides for compensation.

7 **§39B-1-113. Agent's acceptance.**

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

12 **§39B-1-114. Agent's duties.**

13 (a) Notwithstanding provisions in the power of attorney, an  
14 agent who has accepted appointment shall:

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

18 (2) Act in good faith; and

19 (3) Act only within the scope of authority granted in the  
20 power of attorney.

21 (b) Except as otherwise provided in the power of attorney, an  
22 agent who has accepted appointment shall:

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

24 (2) Act so as not to create a conflict of interest that

1 impairs the agent's ability to act impartially in the principal's  
2 best interest;

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

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

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

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

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

16 (B) The principal's foreseeable obligations and need for  
17 maintenance;

18 (C) Minimization of taxes, including income, estate,  
19 inheritance, generation-skipping transfer and gift taxes; and

20 (D) Eligibility for a benefit, a program or assistance under  
21 a statute or regulation.

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

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

6 (e) If an agent is selected by the principal because of  
7 special skills or expertise possessed by the agent or in reliance  
8 on the agent's representation that the agent has special skills or  
9 expertise, the special skills or expertise must be considered in  
10 determining whether the agent has acted with care, competence and  
11 diligence under the circumstances.

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

14 (g) An agent who exercises authority to delegate to another  
15 person the authority granted by the principal or who engages  
16 another person on behalf of the principal is not liable for an act,  
17 error of judgment or default of that person if the agent exercises  
18 care, competence and diligence in selecting and monitoring the  
19 person.

20 (h) Except as otherwise provided in the power of attorney, an  
21 agent is not required to disclose receipts, disbursements or  
22 transactions conducted on behalf of the principal or provide an  
23 accounting unless: ordered by a court or requested by the  
24 principal, a guardian, a conservator, another fiduciary acting for



1 the principal, a governmental agency having authority to protect  
2 the welfare of the principal or, upon the death of the principal,  
3 by the personal representative or successor in interest of the  
4 principal's estate. If so requested, within thirty days the agent  
5 shall comply with the request or provide a writing or other record  
6 substantiating why additional time is needed and shall comply with  
7 the request within an additional thirty days. If an agent fails or  
8 refuses to comply with the provisions of this section, the court  
9 may award the principal or other authorized party requesting the  
10 disclosure reimbursement of reasonable attorneys fees and costs  
11 incurred.

12 **§39B-1-115. Exoneration of agent.**

13 (a) A provision in a power of attorney relieving an agent of  
14 liability for breach of duty is binding on the principal and the  
15 principal's successors in interest except to the extent the  
16 provision:

17 (1) Relieves the agent of liability for breach of duty  
18 committed dishonestly, with an improper motive or with reckless  
19 indifference to the purposes of the power of attorney or the best  
20 interest of the principal; or

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

23 **§39B-1-116. Judicial relief.**

24 (a) The following persons may petition a court to construe a

1 power of attorney or review the agent's conduct and grant  
2 appropriate relief:

3 (1) The principal or the agent;

4 (2) A guardian, conservator or other fiduciary acting for the  
5 principal;

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

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

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

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

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

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

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

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

24 **§39B-1-117. Agent's liability.**

1 (a) An agent that violates this act is liable to the principal  
2 or the principal's successors in interest for the amount required  
3 to:

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

6 (2) Reimburse the principal or the principal's successors in  
7 interest for the attorney's fees and costs paid on the agent's  
8 behalf out of the principal's assets;

9 (3) Reimburse the reasonable attorneys fees and costs incurred  
10 by the principal or the principal's successors in interest in  
11 pursuing rectification of the violation by the agent; and

12 (4) Pay such other amounts, damages, costs or expenses as the  
13 court may award.

14 **§39B-1-118. Agent's resignation; notice.**

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

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

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

21 (A) The principal's caregiver;

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

24 (C) A governmental agency having authority to protect the

1 welfare of the principal.

2 **§39B-1-119. Acceptance of and reliance upon acknowledged power of**  
3 **attorney.**

4 (a) For purposes of this section and section one hundred five  
5 of this article, "acknowledged" means purportedly verified before  
6 a notary public or other individual authorized to take  
7 acknowledgments.

8 (b) A person who in good faith accepts an acknowledged power  
9 of attorney without actual knowledge that the signature is not  
10 genuine may rely upon the presumption under the provisions of  
11 section one hundred five of this article that the signature is  
12 genuine.

13 (c) A person who in good faith accepts an acknowledged power  
14 of attorney without actual knowledge that the power of attorney is  
15 void, invalid or terminated, that the purported agent's authority  
16 is void, invalid or terminated, or that the agent is exceeding or  
17 improperly exercising the agent's authority may rely upon the power  
18 of attorney as if the power of attorney were genuine, valid and  
19 still in effect, the agent's authority were genuine, valid and  
20 still in effect, and the agent had not exceeded and had properly  
21 exercised the authority except as to a conveyance of interests in  
22 real property where the principal has previously filed a notice of  
23 termination of the power of attorney in the office of the clerk of  
24 the county commission in the county in which the property is

1 located.

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

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

7 (2) An English translation of the power of attorney if the  
8 power of attorney contains, in whole or in part, language other  
9 than English; and

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

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

17 (f) For purposes of this section and the act, a person who  
18 conducts activities through employees is without actual knowledge  
19 of a fact relating to a power of attorney, a principal or an agent  
20 if the employee conducting the transaction involving the power of  
21 attorney is without actual knowledge of the fact.

22 **§39B-1-120. Liability for refusal to accept acknowledged statutory**  
23 **form power of attorney.**

24 (a) In this section, "statutory form power of attorney" means

1 a power of attorney substantially in the form provided in this act  
2 or that meets the requirements for a military power of attorney  
3 pursuant to 10 U. S. C. §1044b.

4 (b) Except as otherwise provided in this section:

5 (1) A person shall either accept an acknowledged statutory  
6 form power of attorney or request a certification, a translation or  
7 an opinion of counsel under section one hundred nineteen subsection  
8 (d) of this article no later than seven business days after  
9 presentation of the power of attorney for acceptance;

10 (2) If a person requests a certification, a translation, or an  
11 opinion of counsel under section one hundred nineteen subsection  
12 (d) of this article, the person shall accept the statutory form  
13 power of attorney no later than five business days after receipt of  
14 the certification, translation or opinion of counsel; and

15 (3) A person may not require an additional or different form  
16 of power of attorney for authority granted in the statutory form  
17 power of attorney presented.

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

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

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

24 (3) The person has actual knowledge of the termination of the

1 agent's authority or of the power of attorney before exercise of  
2 the power;

3 (4) A request for a certification, a translation, or an  
4 opinion of counsel under section one hundred nineteen subsection  
5 (d) of this article is not timely provided;

6 (5) The person in good faith believes that the power is not  
7 valid or that the agent does not have the authority to perform the  
8 act requested, whether or not a certification, a translation or an  
9 opinion of counsel under section one hundred nineteen subsection  
10 (d) of this article has been requested or provided; or

11 (6) The person makes, or has actual knowledge that another  
12 person has made, a report to the local adult protective services  
13 agency stating a good faith belief that the principal may be  
14 subject to physical or financial abuse, neglect, exploitation or  
15 abandonment by the agent or a person acting for or with the agent.

16 (d) A person who refuses in violation of this section to  
17 accept an acknowledged statutory form power of attorney is subject  
18 to a court order mandating acceptance of the power of attorney.  
19 The court may at its discretion award to the principal or the  
20 principal's agent reasonable attorney's fees and costs incurred in  
21 any action or proceeding that confirms the validity of the power of  
22 attorney or mandates acceptance of the power of attorney.

23 **§39B-1-121. Principles of law and equity.**

24 Unless displaced by a provision of this act, the principles of

1 law and equity supplement this act.

2 **§39B-1-122. Laws applicable to financial institutions and**  
3 **entities.**

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

7 **§39B-1-123. Remedies under other law.**

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

11 **ARTICLE 2. AUTHORITY.**

12 **§39B-2-101. Authority that requires specific grant; grant of**  
13 **general authority.**

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

- 20 (1) Create, amend, revoke or terminate an inter vivos trust;  
21 (2) Make a gift;  
22 (3) Create or change rights of survivorship;  
23 (4) Create or change a beneficiary designation;  
24 (5) Delegate authority granted under the power of attorney;



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

4           (7) Exercise fiduciary powers that the principal has authority  
5 to delegate; or

6           (8) Disclaim property, including a power of appointment.

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

15           (c) Subject to subsections (a), (b), (d) and (e) of this  
16 section, if a power of attorney grants to an agent authority to do  
17 all acts that a principal could do, the agent has the general  
18 authority described in section one hundred four through section one  
19 hundred sixteen of this article.

20           (d) Unless the power of attorney otherwise provides, a grant  
21 of authority to make a gift is subject to the provisions of section  
22 on hundred seventeen of this article.

23           (e) Subject to subsections (a), (b) and (d) of this section,  
24 if the subjects over which authority is granted in a power of

1 attorney are similar or overlap, the broadest authority controls.

2 (f) Authority granted in a power of attorney is exercisable  
3 with respect to property that the principal has when the power of  
4 attorney is executed or acquires later, whether or not the property  
5 is located in this state and whether or not the authority is  
6 exercised or the power of attorney is executed in this state.

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

11 **§39B-2-102. Incorporation of authority.**

12 (a) An agent has authority described in this article if the  
13 power of attorney refers to general authority with respect to the  
14 descriptive term for the subjects stated in section one hundred  
15 four through section one hundred seventeen of this article or cites  
16 the section in this article in which the authority is described.

17 (b) A reference in a power of attorney to general authority  
18 with respect to the descriptive term for a subject in section one  
19 hundred four through section one hundred seventeen of this article  
20 or a citation to a section of section one hundred four through  
21 section one hundred seventeen of this article incorporates the  
22 entire section as if it were set out in full in the power of  
23 attorney.

24 (c) A principal may modify authority incorporated by

1 reference.

2 **§39B-2-103. Construction of authority generally.**

3 Except as otherwise provided in the power of attorney, by  
4 executing a power of attorney that incorporates by reference a  
5 subject described in sections one hundred four through one hundred  
6 seventeen of this article or that grants to an agent authority to  
7 do all acts that a principal could do pursuant to the provisions of  
8 section one hundred one subsection (c) of this article, a principal  
9 authorizes the agent, with respect to that subject, to:

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

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

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

23 (4) Initiate, participate in, submit to alternative dispute  
24 resolution, settle, oppose or propose or accept a compromise with

1 respect to a claim existing in favor of or against the principal or  
2 intervene in litigation relating to the claim;

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

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

8 (7) Prepare, execute and file a record, report or other  
9 document to safeguard or promote the principal's interest under a  
10 statute or rule;

11 (8) Communicate with any representative or employee of a  
12 government or governmental subdivision, agency or instrumentality,  
13 on behalf of the principal;

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

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

19 **§39B-2-104. Real property.**

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

23 (1) Demand, buy, lease, receive, accept as a gift or as  
24 security for an extension of credit, or otherwise acquire or reject

1 an interest in real property or a right incident to real property;

2       (2) Sell, exchange, convey with or without covenants,  
3 representations, or warranties, quitclaim, release, surrender,  
4 retain title for security, encumber, partition, consent to  
5 partitioning, subject to an easement or covenant, subdivide, apply  
6 for zoning or other governmental permits, plat or consent to  
7 platting; develop, grant an option concerning, lease, sublease,  
8 contribute to an entity in exchange for an interest in that entity  
9 or otherwise grant or dispose of an interest in real property or a  
10 right incident to real property;

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

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

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

22       (A) Insuring against liability or casualty or other loss;

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

1 (C) Paying, assessing, compromising or contesting taxes or  
2 assessments or applying for and receiving refunds in connection  
3 with them; and

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

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

10 (7) Participate in a reorganization with respect to real  
11 property or an entity that owns an interest in or right incident to  
12 real property and receive, hold and act with respect to stocks and  
13 bonds or other property received in a plan of reorganization,  
14 including:

15 (A) Selling or otherwise disposing of them;

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

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

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

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

24 (b) In order to exercise the powers provided in subdivisions

1 (2), (3), (8) and (9), subsection (a) of this section, or to  
2 release or assign an interest in real property as described in  
3 subdivision (4), subsection (a) of this section, the power of  
4 attorney must first be recorded in the office of the clerk of the  
5 county commission in the county in which the property is located.

6 **§39B-2-105. Tangible personal property.**

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

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

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

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

1 the principal, with respect to tangible personal property or an  
2 interest in tangible personal property;

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

6 (A) Insuring against liability or casualty or other loss;

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

9 (C) Paying, assessing, compromising or contesting taxes or  
10 assessments or applying for and receiving refunds in connection  
11 with taxes or assessments;

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

13 (E) Storing the property for hire or on a gratuitous bailment;

14 and

15 (F) Using and making repairs, alterations or improvements to  
16 the property; and

17 (6) Change the form of title of an interest in tangible  
18 personal property.

19 **§39B-2-106. Stocks and bonds.**

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

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

24 (2) Establish, continue, modify or terminate an account with



1 respect to stocks and bonds;

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

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

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

9 **§39B-2-107. Commodities and options.**

10 (a) Unless the power of attorney otherwise provides, language  
11 in a power of attorney granting general authority with respect to  
12 commodities and options authorizes the agent to:

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

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

17 **§39B-2-108. Banks and other financial institutions.**

18 (a) Unless the power of attorney otherwise provides, language  
19 in a power of attorney granting general authority with respect to  
20 banks and other financial institutions authorizes the agent to:

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

23 (2) Establish, modify and terminate an account or other  
24 banking arrangement with a bank, trust company, savings and loan

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

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

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

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

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

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

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

24 (9) Receive for the principal and act upon a sight draft,

1 warehouse receipt or other document of title whether tangible or  
2 electronic or other negotiable or nonnegotiable instrument;

3 (10) Apply for, receive and use letters of credit, credit and  
4 debit cards, electronic transaction authorizations and traveler's  
5 checks from a financial institution and give an indemnity or other  
6 agreement in connection with letters of credit; and

7 (11) Consent to an extension of the time of payment with  
8 respect to commercial paper or a financial transaction with a  
9 financial institution.

10 **§39B-2-109. Operation of entity or business.**

11 (a) Subject to the terms of a document or an agreement  
12 governing an entity or an entity ownership interest, and unless the  
13 power of attorney otherwise provides, language in a power of  
14 attorney granting general authority with respect to operation of an  
15 entity or business authorizes the agent to:

16 (1) Operate, buy, sell, enlarge, reduce or terminate an  
17 ownership interest;

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

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

22 (4) Initiate, participate in, submit to alternative dispute  
23 resolution, settle, oppose or propose or accept a compromise with  
24 respect to litigation to which the principal is a party because of

1 an ownership interest;

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

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

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

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

14 (B) Determine:

15 (i) The location of its operation;

16 (ii) The nature and extent of its business;

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

19 (iv) The amount and types of insurance carried; and

20 (v) The mode of engaging, compensating and dealing with its  
21 employees and accountants, attorneys or other advisors;

22 (C) Change the name or form of organization under which the  
23 entity or business is operated and enter into an ownership  
24 agreement with other persons to take over all or part of the

1 operation of the entity or business; and

2 (D) Demand and receive money due or claimed by the principal  
3 or on the principal's behalf in the operation of the entity or  
4 business and control and disburse the money in the operation of the  
5 entity or business;

6 (8) Put additional capital into an entity or business in which  
7 the principal has an interest;

8 (9) Join in a plan of reorganization, consolidation,  
9 conversion, domestication, or merger of the entity or business;

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

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

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

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

22 **§39B-2-110. Insurance and annuities.**

23 (a) Unless the power of attorney otherwise provides, language  
24 in a power of attorney granting general authority with respect to

1 insurance and annuities authorizes the agent to:

2       (1) Continue, pay the premium or make a contribution on,  
3 modify, exchange, rescind, release or terminate a contract procured  
4 by or on behalf of the principal which insures or provides an  
5 annuity to either the principal or another person, whether or not  
6 the principal is a beneficiary under the contract;

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

11       (3) Pay the premium or make a contribution on, modify,  
12 exchange, rescind, release or terminate a contract of insurance or  
13 annuity procured by the agent;

14       (4) Apply for and receive a loan secured by a contract of  
15 insurance or annuity;

16       (5) Surrender and receive the cash surrender value on a  
17 contract of insurance or annuity;

18       (6) Exercise an election;

19       (7) Exercise investment powers available under a contract of  
20 insurance or annuity;

21       (8) Change the manner of paying premiums on a contract of  
22 insurance or annuity;

23       (9) Change or convert the type of insurance or annuity with  
24 respect to which the principal has or claims to have authority

1 described in this section;

2 (10) Apply for and procure a benefit or assistance under a  
3 statute or regulation to guarantee or pay premiums of a contract of  
4 insurance on the life of the principal;

5 (11) Collect, sell, assign, hypothecate, borrow against or  
6 pledge the interest of the principal in a contract of insurance or  
7 annuity;

8 (12) Select the form and timing of the payment of proceeds  
9 from a contract of insurance or annuity; and

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

15 **§39B-2-111. Estates, trusts and other beneficial interests.**

16 (a) In this section, "estate, trust, or other beneficial  
17 interest" means a trust, probate estate, guardianship,  
18 conservatorship, escrow, custodianship, or a fund from which the  
19 principal is, may become, or claims to be, entitled to a share or  
20 payment.

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

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

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

8           (3) Exercise for the benefit of the principal a presently  
9 exercisable general power of appointment held by the principal;

10          (4) Initiate, participate in, submit to alternative dispute  
11 resolution, settle, oppose or propose or accept a compromise with  
12 respect to litigation to ascertain the meaning, validity or effect  
13 of a deed, will, declaration of trust or other instrument or  
14 transaction affecting the interest of the principal;

15          (5) Initiate, participate in, submit to alternative dispute  
16 resolution, settle, oppose or propose or accept a compromise with  
17 respect to litigation to remove, substitute or surcharge a  
18 fiduciary;

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

21          (7) Transfer an interest of the principal in real property,  
22 stocks and bonds, accounts with financial institutions or  
23 securities intermediaries, insurance, annuities and other property  
24 to the trustee of a revocable trust created by the principal as



1 settler; and

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

5 **§39B-2-112. Claims and litigation.**

6 (a) Unless the power of attorney otherwise provides, language  
7 in a power of attorney granting general authority with respect to  
8 claims and litigation authorizes the agent to:

9 (1) Assert and maintain before a court or administrative  
10 agency a claim, claim for relief, cause of action, counterclaim,  
11 offset, recoupment or defense, including an action to recover  
12 property or other thing of value, recover damages sustained by the  
13 principal, eliminate or modify tax liability, or seek an  
14 injunction, specific performance or other relief;

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

17 (3) Seek an attachment, garnishment, order of arrest or other  
18 preliminary, provisional or intermediate relief and use an  
19 available procedure to effect or satisfy a judgment, order or  
20 decree;

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

24 (5) Submit to alternative dispute resolution, settle and

1 propose or accept a compromise;

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

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

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

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

23 **§39B-2-113. Personal and family maintenance.**

24       (a) Unless the power of attorney otherwise provides, language

1 in a power of attorney granting general authority with respect to  
2 personal and family maintenance authorizes the agent to:

3 (1) Perform the acts necessary to maintain the customary  
4 standard of living of the principal, the principal's spouse and the  
5 following individuals, whether living when the power of attorney is  
6 executed or later born:

7 (A) The principal's children;

8 (B) Other individuals legally entitled to be supported by the  
9 principal; and

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

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

15 (3) Provide living quarters for the individuals described in  
16 subsection (1) of this section by:

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

18 (B) Paying the operating costs, including interest,  
19 amortization payments, repairs, improvements and taxes, for  
20 premises owned by the principal or occupied by those individuals;

21 (4) Provide normal domestic help, usual vacations and travel  
22 expenses, and funds for shelter, clothing, food, appropriate  
23 education, including postsecondary and vocational education and  
24 other current living costs for the individuals described in

1 subsection (1) of this section;

2 (5) Pay expenses for necessary health care and custodial care  
3 on behalf of the individuals described in subdivision (1) of this  
4 section;

5 (6) Act as the principal's personal representative pursuant to  
6 the Health Insurance Portability and Accountability Act, §1171  
7 through §1179 of the Social Security Act, §42 U. S. C. 1320d, and  
8 applicable regulations, in making decisions related to the past,  
9 present or future payment for the provision of health care  
10 consented to by the principal or anyone authorized under the law of  
11 this state to consent to health care on behalf of the principal;

12 (7) Continue any provision made by the principal for  
13 automobiles or other means of transportation, including  
14 registering, licensing, insuring and replacing them, for the  
15 individuals described in subsection (1) of this section;

16 (8) Maintain credit and debit accounts for the convenience of  
17 the individuals described in subsection (1) of this section and  
18 open new accounts; and

19 (9) Continue payments incidental to the membership or  
20 affiliation of the principal in a religious institution, club,  
21 society, order or other organization or to continue contributions  
22 to those organizations.

23 (b) Authority with respect to personal and family maintenance  
24 is neither dependent upon, nor limited by, authority that an agent

1 may or may not have with respect to gifts under this article.

2 **§39B-2-114. Benefits from governmental programs or civil or**  
3 **military service.**

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

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

12 (1) Execute vouchers in the name of the principal for  
13 allowances and reimbursements payable by the United States or a  
14 foreign government or by a state or subdivision of a state to the  
15 principal, including allowances and reimbursements for  
16 transportation of the individuals described in section one hundred  
17 thirteen, subsection (a)(1) of this article, and for shipment of  
18 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  
21 other place of storage or safekeeping, either governmental or  
22 private, and execute and deliver a release, voucher, receipt, bill  
23 of lading, shipping ticket, certificate or other instrument for  
24 that purpose;

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

3 (4) Prepare, file and maintain a claim of the principal for a  
4 benefit or assistance, financial or otherwise, to which the  
5 principal may be entitled under a statute or rule;

6 (5) Initiate, participate in, submit to alternative dispute  
7 resolution, settle, oppose or propose or accept a compromise with  
8 respect to litigation concerning any benefit or assistance the  
9 principal may be entitled to receive under a statute or rule; and

10 (6) Receive the financial proceeds of a claim described in  
11 subdivision(4) of this section and conserve, invest, disburse or  
12 use for a lawful purpose anything so received.

13 **§39B-2-115. Retirement plans.**

14 (a) In this section, "retirement plan" means a plan or account  
15 created by an employer, the principal or another individual to  
16 provide retirement benefits or deferred compensation of which the  
17 principal is a participant, beneficiary or owner, including a plan  
18 or account under the following sections of the Internal Revenue  
19 Code:

20 (1) An individual retirement account under Internal Revenue  
21 Code, 26 U. S. C. §408;

22 (2) A Roth individual retirement account under Internal  
23 Revenue Code, 26 U. S. C. §408A;

24 (3) A deemed individual retirement account under Internal

1 Revenue Code, 26 U. S. C. §408(q);

2 (4) An annuity or mutual fund custodial account under Internal  
3 Revenue Code, 26 U. S. C. §403(b);

4 (5) A pension, profit-sharing, stock bonus or other retirement  
5 plan qualified under Internal Revenue Code, 26 U. S. C. §401(a);

6 (6) A plan under Internal Revenue Code, 26 U. S. C. §457(b);  
7 and

8 (7) A nonqualified deferred compensation plan under Internal  
9 Revenue Code, 26 U. S. C. §409A.

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

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

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

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

18 (4) Make contributions to a retirement plan;

19 (5) Exercise investment powers available under a retirement  
20 plan; and

21 (6) Borrow from, sell assets to or purchase assets from a  
22 retirement plan.

23 **§39B-2-116. Taxes.**

24 Unless the power of attorney otherwise provides, language in

1 a power of attorney granting general authority with respect to  
2 taxes authorizes the agent to:

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

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

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

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

20 **§39B-2-117. Gifts.**

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



1 amended.

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

5 (1) Make outright to, or for the benefit of, a person, a gift  
6 of any of the principal's property, including by the exercise of a  
7 presently exercisable general power of appointment held by the  
8 principal, in an amount per donee not to exceed the annual dollar  
9 limits of the federal gift tax exclusion under Internal Revenue  
10 Code, 26 U. S. C. §2503(b), without regard to whether the federal  
11 gift tax exclusion applies to the gift or if the principal's spouse  
12 agrees to consent to a split gift pursuant to Internal Revenue  
13 Code, 26 U. S. C. §2513, as amended, in an amount per donee not to  
14 exceed twice the annual federal gift tax exclusion limit; and

15 (2) Consent, pursuant to Internal Revenue Code, 26 U. S. C.  
16 §2513, to the splitting of a gift made by the principal's spouse in  
17 an amount per donee not to exceed the aggregate annual gift tax  
18 exclusions for both spouses.

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

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

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

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

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

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

9 **ARTICLE 3. STATUTORY FORMS.**

10 **§39B-3-101. Statutory form power of attorney.**

11 A document substantially in the following form may be used to  
12 create a statutory form power of attorney that has the meaning and  
13 effect prescribed by this act.

14 **State of West Virginia**

15 **STATUTORY FORM POWER OF ATTORNEY**

16 **IMPORTANT INFORMATION**

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

24 This power of attorney does not authorize the agent to make

1 health-care decisions for you.

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

6 Your agent is entitled to reasonable compensation unless you  
7 state otherwise in the special instructions. This form provides for  
8 designation of one agent. If you wish to name more than one agent  
9 you may name a coagent in the Special Instructions. Coagents are  
10 not required to act together unless you include that requirement in  
11 the Special Instructions. If your agent is unable or unwilling to  
12 act for you, your power of attorney will end unless you have named  
13 a successor agent. You may also name a second successor agent.

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

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

19 **DESIGNATION OF AGENT**

20 I \_\_\_\_\_ name the following person as my agent:

21 (Name of Principal)

22 Name of Agent: \_\_\_\_\_

23 Agent's Address: \_\_\_\_\_

24 Agent's Telephone Number: \_\_\_\_\_

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

3 Name of Successor Agent: \_\_\_\_\_

4 Successor Agent's Address: \_\_\_\_\_

5 Successor Agent's Telephone Number: \_\_\_\_\_

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

8 Name of Second Successor Agent: \_\_\_\_\_

9 Second Successor Agent's Address: \_\_\_\_\_

10 Second Successor Agent's Telephone Number: \_\_\_\_\_

11 **GRANT OF GENERAL AUTHORITY**

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

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

19 (\_\_\_) Real Property

20 (\_\_\_) Tangible Personal Property

21 (\_\_\_) Stocks and Bonds

22 (\_\_\_) Commodities and Options

23 (\_\_\_) Banks and Other Financial Institutions

24 (\_\_\_) Operation of Entity or Business

- 1 (\_\_\_) Insurance and Annuities
- 2 (\_\_\_) Estates, Trusts, and Other Beneficial Interests
- 3 (\_\_\_) Claims and Litigation
- 4 (\_\_\_) Personal and Family Maintenance
- 5 (\_\_\_) Benefits from Governmental Programs or Civil or Military
- 6 Service
- 7 (\_\_\_) Retirement Plans
- 8 (\_\_\_) Taxes
- 9 (\_\_\_) All Preceding Subjects

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

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

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

- 17 (\_\_\_) Create, amend, revoke, or terminate an inter vivos trust
- 18 (\_\_\_) Make a gift, subject to the limitations of the West Virginia
- 19 Uniform Power of Attorney Act and any special instructions
- 20 in this power of attorney
- 21 (\_\_\_) Create or change rights of survivorship
- 22 (\_\_\_) Create or change a beneficiary designation
- 23 (\_\_\_) Authorize another person to exercise the authority granted
- 24 under this power of attorney

1 (\_\_\_) Waive the principal's right to be a beneficiary of a joint  
2 and survivor annuity, including a survivor benefit under a  
3 retirement plan

4 (\_\_\_) Exercise fiduciary powers that the principal has authority to  
5 delegate

6 [(\_\_\_) Disclaim or refuse an interest in property, including a  
7 power of appointment]

8 **LIMITATION ON AGENT'S AUTHORITY**

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

13 **SPECIAL INSTRUCTIONS (OPTIONAL)**

14 You may give special instructions on the following lines:

15 \_\_\_\_\_  
16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_

22 **EFFECTIVE DATE**

23 This power of attorney is effective immediately unless I have  
24 stated otherwise in the special instructions.

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

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

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

6 \_\_\_\_\_

7 Nominee's Address: \_\_\_\_\_

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

9 Name of Nominee for [guardian] of my person: \_\_\_\_\_

10 Nominee's Address: \_\_\_\_\_

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

12                           **RELIANCE ON THIS POWER OF ATTORNEY**

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

16                           **SIGNATURE AND ACKNOWLEDGMENT**

17 \_\_\_\_\_

18 Your Signature

Date

19 Your Name Printed \_\_\_\_\_

20 Your Address \_\_\_\_\_

21 Your Telephone Number \_\_\_\_\_

22 State of \_\_\_\_\_

23 [County] of \_\_\_\_\_

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

(Date)

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

(Name of Principal)

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

Signature of Notary

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

[This document prepared by: \_\_\_\_\_]

**IMPORTANT INFORMATION FOR AGENT**

**Agent's Duties**

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

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

(2) Do nothing beyond the authority granted in this power of attorney; and

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

\_\_\_\_\_ by \_\_\_\_\_



1 (Principal's Name) (Your Signature) as Agent

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

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

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

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

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

10 (5) Cooperate with any person that has authority to make  
11 health-care decisions for the principal to do what you know the  
12 principal reasonably expects or, if you do not know the principal's  
13 expectations, to act in the principal's best interest; and  
14 attempt to preserve the principal's estate plan if you know the  
15 plan and preserving the plan is consistent with the principal's  
16 best interest.

17 **Termination of Agent's Authority**

18 You must stop acting on behalf of the principal if you learn  
19 of any event that terminates this power of attorney or your  
20 authority under this power of attorney. Events that terminate a  
21 power of attorney or your authority to act under a power of  
22 attorney include:

23 (1) Death of the principal;

24 (2) The principal's revocation of the power of attorney or

1 your authority;

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

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

6 (5) If you are married to the principal, a legal action is  
7 filed with a court to end your marriage or for your legal  
8 separation, unless the Special Instructions in this power of  
9 attorney state that such an action will not terminate your  
10 authority.

11 **Liability of Agent**

12 The meaning of the authority granted to you is defined in the  
13 Uniform Power of Attorney Act [insert citation]. If you violate  
14 the Uniform Power of Attorney Act [insert citation] or act outside  
15 the authority granted, you may be liable for any damages caused by  
16 your violation.

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

19 **§39B-3-102. Agent's certification**

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

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

23 **AGENT'S AUTHORITY**

24 State of \_\_\_\_\_

1 [County] of \_\_\_\_\_]

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

7 I, further [certify] that to my knowledge:

8 (1) The Principal is alive and has not revoked the power of  
9 attorney or my authority to act under the power of attorney and the  
10 power of attorney and my authority to act under the power of  
11 attorney have not terminated;

12 (2) If the power of attorney was drafted to become effective  
13 upon the happening of an event or contingency, the event or  
14 contingency has occurred;

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

17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_

20 (Insert other relevant statements)

21 **SIGNATURE AND ACKNOWLEDGMENT**

22 \_\_\_\_\_

23 Agent's Signature Date

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

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

2 Agent's Telephone Number \_\_\_\_\_

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

4 (Date)

5 by \_\_\_\_\_.

6 (Name of Agent)

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

8 Signature of Notary

9 My commission expires: \_\_\_\_\_

10 [This document prepared by: \_\_\_\_\_]

11 **ARTICLE 4. MISCELLANEOUS PROVISIONS.**

12 **§39B-4-101. Uniformity of application and construction.**

13 In applying and construing the provisions of this chapter,  
14 consideration must be given to the need to promote uniformity of  
15 the law with respect to its subject matter among the states that  
16 enact it.

17 **§39B-4-102. Relation to electronic signatures in Global and  
18 National Commerce Act.**

19 This act modifies, limits and supersedes the federal  
20 Electronic Signatures in Global and National Commerce Act, 15 U. S.  
21 C. §7001 et seq., but does not modify, limit or supersede 15 U. S.  
22 C. Section 7001(c), of that act, or authorize electronic delivery  
23 of any of the notices described in 15 U. S. C. Section §7003(b), of  
24 that act.

1 **§39B-4-103. Effect on existing powers of attorney.**

2 (a) Except as otherwise provided in this act, on the effective  
3 date of this act its provisions apply to:

4 (1) A power of attorney created before, on, or after the  
5 effective date of this act;

6 (2) A judicial proceeding concerning a power of attorney  
7 commenced on or after the effective date of this act; and

8 (3) A judicial proceeding concerning a power of attorney  
9 commenced before the effective date of this act unless the court  
10 finds that application of a provision of this chapter would  
11 substantially interfere with the effective conduct of the judicial  
12 proceeding or prejudice the rights of a party, in which case that  
13 provision does not apply and the superseded law applies.

14 (b) An act done before the effective date of this act is not  
15 affected by this act.

16 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.**

17 **ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.**

18 **§44A-3-3. Distributive duties and powers of the conservator of a**  
19 **protected person.**

20 (a) A conservator of a protected person, without the necessity  
21 of seeking prior court authorization, shall apply the income and  
22 principal of the estate as needed for the protected person's  
23 support, care, health, and if applicable, habilitation, education  
24 or therapeutic needs. A conservator shall also apply the income

1 and principal as needed for the support of any legal dependents who  
2 are unable to support themselves and who are in need of support.

3       (b) A conservator, when making distributions, shall exercise  
4 authority only to the extent necessitated by the protected person's  
5 limitations, and shall, where feasible, encourage the protected  
6 person to participate in decisions, to act on his or her own  
7 behalf, and to develop or regain the capacity to manage the estate  
8 and his or her financial affairs. A conservator shall also  
9 consider the size of the estate, the probable duration of the  
10 conservatorship, the protected person's accustomed manner of  
11 living, other resources known to the conservator to be available,  
12 and the recommendations of the guardian.

13       (c) A conservator shall, to the extent known, consider the  
14 express desires and personal values of the protected person when  
15 making decisions, and shall otherwise act in the protected person's  
16 best interests and exercise reasonable care, diligence and  
17 prudence.