

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4390**

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

6 (Introduced February 1, 2012;

7 referred to the Committee on the Judiciary)

8 [February 10, 2012]

9
10 A BILL 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,
22 and §39B-4-103; and to amend and reenact §44A-3-3 of said
23 code, all relating to repealing the Uniform Durable Power of
24 Attorney Act; enactment of the Uniform Power of Attorney Act;
25 providing a short title; providing definitions; setting forth

1 the applicability of the act; providing that the power of
2 attorney is durable; providing for execution, validity and
3 meaning and effect of power of attorney; nominating
4 conservator or guardian and relation of agent to
5 court-appointed fiduciary; providing when power of attorney
6 effective; terminating power of attorney or agent's authority;
7 providing for coagents and successor agents and their
8 liability; reimbursing and compensating agent, exception;
9 providing for agent's acceptance of appointment and agent's
10 duties; exonerating agent in power of attorney, exceptions;
11 providing certain persons judicial relief to construe a power
12 of attorney or review an agent's conduct; providing for
13 agent's liability in certain monetary amounts; providing for
14 resignation of agent; accepting and relying upon acknowledged
15 power of attorney and for what a request may be made before
16 accepting the power of attorney; providing for liability for
17 refusing to accept an acknowledged statutory form power of
18 attorney; providing that laws applicable to financial
19 institutions and entities supercede this act; granting
20 specific and general authority under the power of attorney;
21 providing for granting general authority of the agent under a
22 power of attorney which incorporates by reference a subject
23 matter involving real property, tangible personal property,
24 stocks and bonds, commodities and options, financial

1 institutions, operation of an entity or business, insurance
2 and annuities, estates, trusts and other beneficial interests,
3 claims and litigation, personal and family maintenance,
4 benefits from governmental programs or civil or military
5 service, retirement plans, taxes and gifts; providing a
6 statutory form power of attorney form; providing miscellaneous
7 provisions relating to uniformity of application and
8 construction and relating to electronic signatures in the
9 Global and National Commerce Act; providing application of act
10 on existing powers of attorney; and removing provision in the
11 West Virginia Guardianship and Conservatorship Act that a
12 conservator may not revoke or amend a durable power of
13 attorney without approval of the court.

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

15 That §39-4-1, §39-4-2, §39-4-3, §39-4-4, §39-4-5, §39-4-6 and
16 §39-4-7 of the Code of West Virginia, 1931, as amended, be
17 repealed; that said code be amended by adding thereto a new
18 chapter, designated §39B-1-101, §39B-1-102, §39B-1-103, §39B-1-104,
19 §39B-1-105, §39B-1-106, §39B-1-107, §39B-1-108, §39B-1-109,
20 §39B-1-110, §39B-1-111, §39B-1-112, §39B-1-113, §39B-1-114,
21 §39B-1-115, §39B-1-116, §39B-1-117, §39B-1-118, §39B-1-119,
22 §39B-1-120, §39B-1-121, §39B-1-122 §39B-1-123, §39B-2-101,
23 §39B-2-102, §39B-2-103, §39B-2-104, §39B-2-105, §39B-2-106,
24 §39B-2-107, §39B-2-108, §39B-2-109, §39B-2-110, §39B-2-111,

1 §39B-2-112, §39B-2-113, §39B-2-114, §39B-2-115, §39B-2-116,
2 §39B-2-117, §39B-3-101, §39B-3-102, §39B-4-101, §39B-4-102, and
3 §39B-4-103; and that §44A-3-3 of said code be amended and
4 reenacted, all to read as follows:

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

6 **ARTICLE 1. GENERAL PROVISIONS.**

7 **§39B-1-101. Short title.**

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

10 **§39B-1-102. Definitions.**

11 In this act:

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

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

19 (3) "Electronic" means relating to technology having
20 electrical, digital, magnetic, wireless, optical, electromagnetic
21 or similar capabilities.

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

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

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

4 (B) Is:

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

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

7 (6) "Person" means an individual, corporation, business trust,
8 estate, trust, partnership, limited liability company, association,
9 joint venture, public corporation, government or governmental
10 subdivision, agency, or instrumentality or any other legal or
11 commercial entity.

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

15 (8) "Presently exercisable general power of appointment," with
16 respect to property or a property interest subject to a power of
17 appointment, means power exercisable at the time in question to
18 vest absolute ownership in the principal individually, the
19 principal's estate, the principal's creditors or the creditors of
20 the principal's estate. The term includes a power of appointment
21 not exercisable until the occurrence of a specified event, the
22 satisfaction of an ascertainable standard, or the passage of a
23 specified period only after the occurrence of the specified event,
24 the satisfaction of the ascertainable standard or the passage of

1 the specified period. The term does not include a power exercisable
2 in a fiduciary capacity or only by will.

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

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

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

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

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

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

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

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

1 **§39B-1-103. Applicability.**

2 This act applies to all powers of attorney except:

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

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

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

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

12 **§39B-1-104. Power of attorney is durable.**

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

16 **§39B-1-105. Execution of power of attorney.**

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

24 **§39B-1-106. Validity of power of attorney.**

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

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

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

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

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

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

18 **§39B-1-107. Meaning and effect of power of attorney.**

19 The meaning and effect of a power of attorney is determined by
20 the law of the jurisdiction indicated in the power of attorney and,
21 in the absence of an indication of jurisdiction, by the law of the
22 jurisdiction in which the power of attorney was executed.

23 **§39B-1-108. Nomination of conservator or guardian; relation of**
24 **agent to court-appointed fiduciary.**

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

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

16 **§39B-1-109. When power of attorney effective.**

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

21 (b) If a power of attorney becomes effective upon the
22 occurrence of a future event or contingency, the principal, in the
23 power of attorney, may authorize one or more persons to determine
24 in a writing or other record that the event or contingency has

1 occurred.

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

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

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

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

22 **§39B-1-110. Termination of power of attorney or agent's authority.**

23 (a) A power of attorney terminates when:

24 (1) The principal dies;

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

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

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

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

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

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

11 (1) The principal revokes the authority;

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

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

16 (4) The power of attorney terminates.

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

21 (d) Termination of an agent's authority or of a power of
22 attorney is not effective as to the agent or another person that,
23 without actual knowledge of the termination, acts in good faith
24 under the power of attorney. An act so performed, unless otherwise

1 invalid or unenforceable, binds the principal and the principal's
2 successors in interest.

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

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

14 **§39B-1-111. Coagents and successor agents.**

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

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

1 power of attorney otherwise provides, a successor agent:

2 (1) Has the same authority as that granted to the original
3 agent; and

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

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

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

20 **§39B-1-112. Reimbursement and compensation of agent.**

21 Unless the power of attorney otherwise provides, an agent is
22 entitled to reimbursement of expenses reasonably incurred on behalf
23 of the principal and to compensation that is reasonable under the
24 circumstances: *Provided*, That an agent who is related to the

1 principal as an ancestor, spouse or descendent is not entitled to
2 compensation for services as agent, unless the power of attorney
3 specifically provides for compensation.

4 **§39B-1-113. Agent's acceptance.**

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

9 **§39B-1-114. Agent's duties.**

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

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

15 (2) Act in good faith; and

16 (3) Act only within the scope of authority granted in the
17 power of attorney.

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

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

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

24 (3) Act with the care, competence and diligence ordinarily

1 exercised by agents in similar circumstances;

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

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

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

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

13 (B) The principal's foreseeable obligations and need for
14 maintenance;

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

17 (D) Eligibility for a benefit, a program or assistance under
18 a statute or regulation.

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

22 (d) An agent that acts with care, competence and diligence for
23 the best interest of the principal is not liable solely because the
24 agent also benefits from the act or has an individual or

1 conflicting interest in relation to the property or affairs of the
2 principal.

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

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

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

17 (h) Except as otherwise provided in the power of attorney, an
18 agent is not required to disclose receipts, disbursements or
19 transactions conducted on behalf of the principal or provide an
20 accounting unless: ordered by a court or requested by the
21 principal, a guardian, a conservator, another fiduciary acting for
22 the principal, a governmental agency having authority to protect
23 the welfare of the principal or, upon the death of the principal,
24 by the personal representative or successor in interest of the

1 principal's estate. If so requested, within thirty days the agent
2 shall comply with the request or provide a writing or other record
3 substantiating why additional time is needed and shall comply with
4 the request within an additional thirty days. If an agent fails or
5 refuses to comply with the provisions of this section, the court
6 may award the principal or other authorized party requesting the
7 disclosure reimbursement of reasonable attorneys fees and costs
8 incurred.

9 **§39B-1-115. Exoneration of agent.**

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

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

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

20 **§39B-1-116. Judicial relief.**

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

24 (1) The principal or the agent;

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

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

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

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

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

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

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

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

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

21 **§39B-1-117. Agent's liability.**

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

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

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

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

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

11 **§39B-1-118. Agent's resignation; notice.**

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

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

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

18 (A) The principal's caregiver;

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

21 (C) A governmental agency having authority to protect the
22 welfare of the principal.

23 **§39B-1-119. Acceptance of and reliance upon acknowledged power of**
24 **attorney.**

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

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

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

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

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

4 (2) An English translation of the power of attorney if the
5 power of attorney contains, in whole or in part, language other
6 than English; and

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

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

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

19 **§39B-1-120. Liability for refusal to accept acknowledged statutory**
20 **form power of attorney.**

21 (a) In this section, "statutory form power of attorney" means
22 a power of attorney substantially in the form provided in this act
23 or that meets the requirements for a military power of attorney
24 pursuant to 10 U.S.C. §1044b.

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

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

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

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

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

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

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

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

24 (4) A request for a certification, a translation, or an

1 opinion of counsel under section one hundred nineteen subsection
2 (d) of this article is not timely provided;

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

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

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

20 **§39B-1-121. Principles of law and equity.**

21 Unless displaced by a provision of this act, the principles of
22 law and equity supplement this act.

23 **§39B-1-122. Laws applicable to financial institutions and**
24 **entities.**

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

4 **§39B-1-123. Remedies under other law.**

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

8 **ARTICLE 2. AUTHORITY.**

9 **§39B-2-101. Authority that requires specific grant; grant of**
10 **general authority.**

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

- 17 (1) Create, amend, revoke or terminate an inter vivos trust;
18 (2) Make a gift;
19 (3) Create or change rights of survivorship;
20 (4) Create or change a beneficiary designation;
21 (5) Delegate authority granted under the power of attorney;
22 (6) Waive the principal's right to be a beneficiary of a joint
23 and survivor annuity, including a survivor benefit under a
24 retirement plan;

1 (7) Exercise fiduciary powers that the principal has authority
2 to delegate; or

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

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

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

17 (d) Unless the power of attorney otherwise provides, a grant
18 of authority to make a gift is subject to the provisions of section
19 on hundred and seventeen of this article.

20 (e) Subject to subsections (a), (b) and (d) of this section,
21 if the subjects over which authority is granted in a power of
22 attorney are similar or overlap, the broadest authority controls.

23 (f) Authority granted in a power of attorney is exercisable
24 with respect to property that the principal has when the power of

1 attorney is executed or acquires later, whether or not the property
2 is located in this state and whether or not the authority is
3 exercised or the power of attorney is executed in this state.

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

8 **§39B-2-102. Incorporation of authority.**

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

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

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

24 **§39B-2-103. Construction of authority generally.**

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

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

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

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

21 (4) Initiate, participate in, submit to alternative dispute
22 resolution, settle, oppose or propose or accept a compromise with
23 respect to a claim existing in favor of or against the principal or
24 intervene in litigation relating to the claim;

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

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

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

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

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

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

17 **§39B-2-104. Real property.**

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

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

24 (2) Sell, exchange, convey with or without covenants,

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

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

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

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

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

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

23 (C) Paying, assessing, compromising or contesting taxes or
24 assessments or applying for and receiving refunds in connection

1 with them; and

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

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

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

13 (A) Selling or otherwise disposing of them;

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

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

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

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

22 (b) In order to exercise the powers provided in subdivisions
23 (2), (3), (8) and (9), subsection (a) of this section, or to
24 release or assign an interest in real property as described in

1 subdivision (4), subsection (a) of this section, the power of
2 attorney must first be recorded in the office of the clerk of the
3 county commission in the county in which the property is located.

4 **§39B-2-105. Tangible personal property.**

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

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

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

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

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

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

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

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

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

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

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

12 and

13 (F) Using and making repairs, alterations or improvements to
14 the property; and

15 (6) Change the form of title of an interest in tangible
16 personal property.

17 **§39B-2-106. Stocks and bonds.**

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

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

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

24 (3) Pledge stocks and bonds as security to borrow, pay, renew

1 or extend the time of payment of a debt of the principal;

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

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

7 **§39B-2-107. Commodities and options.**

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

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

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

15 **§39B-2-108. Banks and other financial institutions.**

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

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

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

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

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

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

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

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

16 (8) 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
19 the principal's order, transfer money, receive the cash or other
20 proceeds of those transactions, and accept a draft drawn by a
21 person upon the principal and pay it when due;

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

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

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

8 **§39B-2-109. Operation of entity or business.**

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

14 (1) Operate, buy, sell, enlarge, reduce or terminate an
15 ownership interest;

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

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

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

24 (5) Exercise in person or by proxy, or enforce by litigation

1 or otherwise, a right, power, privilege or option the principal has
2 or claims to have as the holder of stocks and bonds;

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

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

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

12 (B) Determine:

13 (i) The location of its operation;

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

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

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

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

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

24 (D) Demand and receive money due or claimed by the principal

1 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
3 entity or 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,
7 conversion, 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
10 buy-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
13 business 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
16 illegal or unnecessary taxation, assessments, fines or penalties,
17 with respect to an entity or business, including attempts to
18 recover, in any manner permitted by law, money paid before or after
19 the execution of the power of attorney.

20 **§39B-2-110. Insurance and annuities.**

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

24 (1) Continue, pay the premium or make a contribution on,

1 modify, exchange, rescind, release or terminate a contract procured
2 by or on behalf of the principal which insures or provides an
3 annuity to either the principal or another person, whether or not
4 the principal is a beneficiary under the contract;

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

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

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

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

16 (6) Exercise an election;

17 (7) Exercise investment powers available under a contract of
18 insurance or annuity;

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

21 (9) Change or convert the type of insurance or annuity with
22 respect to which the principal has or claims to have authority
23 described in this section;

24 (10) Apply for and procure a benefit or assistance under a

1 statute or regulation to guarantee or pay premiums of a contract of
2 insurance on the life of the principal;

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

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

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

13 **§39B-2-111. Estates, trusts and other beneficial interests.**

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

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

23 (1) Accept, receive, receipt for, sell, assign, pledge or
24 exchange a share in or payment from an estate, trust or other

1 beneficial interest;

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

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

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

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

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

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

24 (8) Reject, renounce, disclaim, release or consent to a

1 reduction in or modification of a share in or payment from an
2 estate, trust or other beneficial interest.

3 **§39B-2-112. Claims and litigation.**

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

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

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

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

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

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

24 (6) Waive the issuance and service of process upon the

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

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

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

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

21 **§39B-2-113. Personal and family maintenance.**

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

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

5 (A) The principal's children;

6 (B) Other individuals legally entitled to be supported by the
7 principal; and

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

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

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

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

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

19 (4) Provide normal domestic help, usual vacations and travel
20 expenses, and funds for shelter, clothing, food, appropriate
21 education, including postsecondary and vocational education and
22 other current living costs for the individuals described in
23 subsection (1) of this section;

24 (5) Pay expenses for necessary health care and custodial care

1 on behalf of the individuals described in subdivision (1) of this
2 section;

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

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

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

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

21 (b) Authority with respect to personal and family maintenance
22 is neither dependent upon, nor limited by, authority that an agent
23 may or may not have with respect to gifts under this article.

24 **§39B-2-114. Benefits from governmental programs or civil or**

1 **military service.**

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

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

10 (1) Execute vouchers in the name of the principal for
11 allowances and reimbursements payable by the United States or a
12 foreign government or by a state or subdivision of a state to the
13 principal, including allowances and reimbursements for
14 transportation of the individuals described in section one hundred
15 and thirteen, subsection (a)(1) of this article, and for shipment
16 of their household effects;

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

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

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

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

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

11 **§39B-2-115. Retirement plans.**

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

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

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

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

24 (4) An annuity or mutual fund custodial account under Internal

1 Revenue Code, 26 U.S.C. §403(b);

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

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

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

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

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

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

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

15 (4) Make contributions to a retirement plan;

16 (5) Exercise investment powers available under a retirement
17 plan; and

18 (6) Borrow from, sell assets to or purchase assets from a
19 retirement plan.

20 **§39B-2-116. Taxes.**

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

24 (1) Prepare, sign and file federal, state, local and foreign

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

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

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

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

17 **§39B-2-117. Gifts.**

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

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

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

11 (2) Consent, pursuant to Internal Revenue Code, 26 U.S.C.
12 §2513, to the splitting of a gift made by the principal's spouse in
13 an amount per donee not to exceed the aggregate annual gift tax
14 exclusions for both spouses.

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

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

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

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

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

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

5 **ARTICLE 3. STATUTORY FORMS.**

6 **§39B-3-101. Statutory form power of attorney.**

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

10 **State of West Virginia**

11 **STATUTORY FORM POWER OF ATTORNEY**

12 **IMPORTANT INFORMATION**

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

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

22 You should select someone you trust to serve as your agent.
23 Unless you specify otherwise, generally the agent's authority will
24 continue until you die or revoke the power of attorney or the agent

1 resigns or is unable to act for you.

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

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

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

15 **DESIGNATION OF AGENT**

16 I _____ name the following person as my agent:

17 (Name of Principal)

18 Name of Agent: _____

19 Agent's Address: _____

20 Agent's Telephone Number: _____

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

23 Name of Successor Agent: _____

24 Successor Agent's Address: _____

1 Successor Agent's Telephone Number: _____

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

4 Name of Second Successor Agent: _____

5 Second Successor Agent's Address: _____

6 Second Successor Agent's Telephone Number: _____

7 **GRANT OF GENERAL AUTHORITY**

8 I grant my agent and any successor agent general authority to
9 act for me with respect to the following subjects as defined in the
10 Uniform Power of Attorney Act [inert citaion]:

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

15 () Real Property

16 () Tangible Personal Property

17 () Stocks and Bonds

18 () Commodities and Options

19 () Banks and Other Financial Institutions

20 () Operation of Entity or Business

21 () Insurance and Annuities

22 () Estates, Trusts, and Other Beneficial Interests

23 () Claims and Litigation

24 () Personal and Family Maintenance

- 1 () Benefits from Governmental Programs or Civil or Military
2 Service
3 () Retirement Plans
4 () Taxes
5 () All Preceding Subjects

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

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

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

13 () Create, amend, revoke, or terminate an inter vivos trust

14 () Make a gift, subject to the limitations of the West Virginia
15 Uniform Power of Attorney Act and any special instructions
16 in this power of attorney

17 () Create or change rights of survivorship

18 () Create or change a beneficiary designation

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

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

24 () Exercise fiduciary powers that the principal has authority to

1 delegate

2 [() Disclaim or refuse an interest in property, including a
3 power of appointment]

4 **LIMITATION ON AGENT'S AUTHORITY**

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

9 **SPECIAL INSTRUCTIONS (OPTIONAL)**

10 You may give special instructions on the following lines:

11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____

18 **EFFECTIVE DATE**

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

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

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

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

2 _____

3 Nominee's Address: _____

4 Nominee's Telephone Number: _____

5 Name of Nominee for [guardian] of my person: _____

6 Nominee's Address: _____

7 Nominee's Telephone Number: _____

8 **RELIANCE ON THIS POWER OF ATTORNEY**

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

12 **SIGNATURE AND ACKNOWLEDGMENT**

13 _____

14 Your Signature _____ Date _____

15 Your Name Printed _____

16 Your Address _____

17 Your Telephone Number _____

18 State of _____

19 [County] of _____

20 This document was acknowledged before me on _____,

21 _____ (Date)

22 by _____.

23 (Name of Principal)

24 _____ (Seal, if any)

1 Signature of Notary

2 My commission expires: _____

3 [This document prepared by: _____]

4 **IMPORTANT INFORMATION FOR AGENT**

5 **Agent's Duties**

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

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

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

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

20 _____ by _____

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

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

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

- 1 (2) Avoid conflicts that would impair your ability to act in
2 the principal's best interest;
- 3 (3) Act with care, competence and diligence;
- 4 (4) Keep a record of all receipts, disbursements and
5 transactions made on behalf of the principal;
- 6 (5) Cooperate with any person that has authority to make
7 health-care decisions for the principal to do what you know the
8 principal reasonably expects or, if you do not know the principal's
9 expectations, to act in the principal's best interest; and
10 attempt to preserve the principal's estate plan if you know the
11 plan and preserving the plan is consistent with the principal's
12 best interest.

13 **Termination of Agent's Authority**

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

- 19 (1) Death of the principal;
- 20 (2) The principal's revocation of the power of attorney or
21 your authority;
- 22 (3) The occurrence of a termination event stated in the power
23 of attorney;
- 24 (4) The purpose of the power of attorney is fully

1 accomplished; or

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

7 **Liability of Agent**

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

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

15 **§39B-3-102. Agent's certification**

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

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

19 **AGENT'S AUTHORITY**

20 State of _____

21 [County] of _____]

22 I, _____ (Name of

23 Agent), [certify] under penalty of perjury that

24 _____ (Name of Principal) granted me

1 authority as an agent or successor agent in a power of attorney
2 dated _____.

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

4 (1) The Principal is alive and has not revoked the power of
5 attorney or my authority to act under the power of attorney and the
6 power of attorney and my authority to act under the power of
7 attorney have not terminated;

8 (2) If the power of attorney was drafted to become effective
9 upon the happening of an event or contingency, the event or
10 contingency has occurred;

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

13 _____
14 _____
15 _____

16 (Insert other relevant statements)

17 **SIGNATURE AND ACKNOWLEDGMENT**

18 _____

19 Agent's Signature Date

20 Agent's Name Printed _____

21 Agent's Address _____

22 Agent's Telephone Number _____

23 This document was acknowledged before me on _____,

24 (Date)

1 by _____.

2 (Name of Agent)

3 _____ (Seal, if any)

4 Signature of Notary

5 My commission expires: _____

6 [This document prepared by: _____]

7 **ARTICLE 4. MISCELLANEOUS PROVISIONS.**

8 **§39B-4-101. Uniformity of application and construction.**

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

13 **§39B-4-102. Relation to electronic signatures in Global and**
14 **National Commerce Act.**

15 This act modifies, limits and supersedes the federal
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
17 §7001 et seq., but does not modify, limit or supersede 15 U.S.C.
18 Section 7001(c), of that act, or authorize electronic delivery of
19 any of the notices described in 15 U.S.C. Section §7003(b), of that
20 act.

21 **§39B-4-103. Effect on existing powers of attorney.**

22 Except as otherwise provided in this act, on the effective
23 date of this act its provisions apply to:

24 (1) A power of attorney created before, on, or after the

1 effective date of this act;

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

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

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

12 **CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP**

13 **AND CONSERVATORSHIP ACT.**

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

15 **§44A-3-3. Distributive duties and powers of the conservator of a**
16 **protected person.**

17 (a) A conservator of a protected person, without the necessity
18 of seeking prior court authorization, shall apply the income and
19 principal of the estate as needed for the protected person's
20 support, care, health, and if applicable, habilitation, education
21 or therapeutic needs. A conservator shall also apply the income
22 and principal as needed for the support of any legal dependents who
23 are unable to support themselves and who are in need of support.

24 (b) A conservator, when making distributions, shall exercise

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

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

15 ~~(d) A conservator may not revoke or amend a durable power of~~
16 ~~attorney which has been executed by the protected person without~~
17 ~~the prior approval of the court.~~