

SENATE, No. 1771

STATE OF NEW JERSEY
215th LEGISLATURE

INTRODUCED MARCH 8, 2012

Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator LORETTA WEINBERG

District 37 (Bergen)

SYNOPSIS

Establishes the “General Durable Power of Attorney Act.”

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning powers of attorney, revising statutory law and
2 supplementing Title 46 of the New Jersey Statutory law.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Short title. This act shall be known and may be cited as the
8 “General Durable Power of Attorney Act.”

9 Source: 46:2B-8.1.

10

11 2. Definitions.

12 As used in this act:

13 “Account” means an agreement between a financial institution
14 and its customer pursuant to which the institution accepts funds or
15 property of the customer and agrees to repay or return the funds or
16 property upon the terms and conditions specified in the agreement.
17 The term “account” includes, but is not limited to, checking
18 accounts, savings accounts, certificates of deposit and other types of
19 time and demand accounts as institutions are authorized to enter
20 into pursuant to applicable federal or State law, and brokerage and
21 mutual fund accounts. The term “account” does not include an
22 agreement pursuant to which a banking institution agrees to act as a
23 fiduciary within the meaning of the Uniform Fiduciaries Law,
24 N.J.S. 3B:14-52 et seq.

25 “Agent” means the person, at least 18 years of age, or a qualified
26 bank within the meaning of section 28 of P.L. 1948, c.67 (C.17:9A-
27 28), authorized to act for a principal pursuant to a power of
28 attorney. An agent may be referred to as an “attorney-in-fact” in
29 the power of attorney. For purposes of this act, an agent includes
30 the original agent, any co-agent or successor agent, and any person
31 to whom an agent delegates authority. An agent acting under a
32 power of attorney has a fiduciary relationship with the principal.

33 “Benefits from governmental programs or civil or military
34 service” means any benefit, program or assistance provided under a
35 statute or governmental regulation, subject to any limitations or
36 requirements imposed by the statute or governmental regulation.

37 “Capacity of the principal to execute the power of attorney”
38 means the capacity required to enter into a contract.

39 “Durable,” with respect to a power of attorney, means that the
40 authority conferred is exercisable notwithstanding the principal’s
41 subsequent incapacity.

42 “Execution” means the signing of the instrument by the
43 principal, and acknowledgment of the principal’s signature in
44 accordance with this act.

45 “Financial institution” means a financial entity, including, but
46 not limited to, a bank, credit union, federal credit union, federal
47 mutual savings bank, federal mutual savings and loan association,
48 federal savings and loan association, branch of a foreign banking

1 corporation, insurance company, national bank, public pension
2 fund, retirement system, savings bank, savings and loan association,
3 securities broker, securities dealer, securities firm, mutual fund,
4 trust company, whether chartered by the United States, this State or
5 any other state or territory of the United States or a foreign country.

6 “General power of attorney” means a power of attorney that is
7 intended for general use and not for a limited purpose.

8 “In good faith” means an act or failure to act that is done
9 honestly, regardless of whether it is done negligently and in the
10 absence of knowledge of facts, which, if known to an agent, would
11 obligate the agent to take certain actions or refrain from taking
12 certain actions on behalf of a principal.

13 “Incapacity of the principal” means impairment of the principal
14 by reason of mental or physical illness, deficiency or disability, or
15 the chronic use of drugs or chronic alcoholism or other cause to the
16 extent the principal lacks the ability to govern and manage the
17 principal’s property and personal affairs. “Incapacity of the
18 principal” also means a disability or physical or mental impairment
19 of the principal which is expected to give rise to a need for
20 specialized health, social, and other services, or which makes the
21 principal dependent upon others for assistance to secure these
22 services.

23 “Internal Revenue Code” means the United States Internal
24 Revenue Code of 1986, as amended, or any subsequent federal tax
25 code.

26 “Limited power of attorney” means a power of attorney intended
27 for a limited purpose and not for general use.

28 “Notice” means written notification delivered by any means.

29 “Power of attorney” means a written instrument by which a
30 principal with capacity authorizes an agent to act on the principal’s
31 behalf.

32 “Principal” means an individual, at least 18 years of age, who, in
33 a power of attorney, authorizes an agent to act.

34 “Safe deposit company” means a company operating pursuant to
35 R.S. 17:14A-1 et seq.

36 “Signature” includes any mark made on a document with the
37 intent by the signer to give legal effect to that document. A
38 “signature” also includes any mark made on a document on behalf
39 of a person, with that person’s authority and to effectuate that
40 person’s intent.

41 “Third party” means a person or entity other than a principal or
42 agent, including a financial institution, presented with a power of

1 attorney, or intended, by an agent or a principal, to accept, honor or
2 rely upon a power of attorney.

3 Source: New; 46:2B-8.2; 46:2B-10; 46:2B-19.

4

5 3. Existing powers of attorney not invalidated by
6 P.L. , c. (C.) (pending before the legislature as this act.) A
7 power of attorney executed in this State before the effective date of
8 this act:

9 a. is valid if at the time of its execution the power of attorney
10 complied with the law of this State;

11 b. is not durable unless, at the time of its execution, the power
12 of attorney complied with the requirements then in effect for
13 making it a durable power of attorney; and

14 c. does not revoke any prior power of attorney unless, at the
15 time of its execution, the revocation complied with the requirements
16 then in effect for revoking a power of attorney.

17 Source: New.

18

19 4. Applicability.

20 a. This act applies to all powers of attorney except:

21 (1) a power to make medical or health care decisions or an
22 advanced health care directive;

23 (2) a proxy or other delegation to exercise voting rights or
24 management rights with respect to an entity; however, this act
25 permits the grant of authority from a principal to an agent to act in
26 connection with a proxy or other delegation to exercise voting or
27 management rights;

28 (3) a power created on a form prescribed by a government or
29 governmental subdivision, agency or instrumentality for a
30 governmental purpose;

31 (4) a power created for a limited purpose in accordance with a
32 state or federal statute other than this act;

33 (5) a power to the extent it is coupled with an interest in the
34 subject of the power;

35 (6) a power made by an entity other than a natural person;

36 (7) a grant of limited authority that does not involve any
37 exercise of discretion by the agent;

38 (8) a power that is contained within an agreement or instrument
39 which governs the internal affairs of an entity;

40 (9) a power given to or for the benefit of a creditor in connection
41 with a loan or other credit transaction; and

42 (10) any other power or grant of authority which, either
43 expressly, or by implication under all of the applicable
44 circumstances, is so limited and specific in its purpose that the
45 principal could not have intended the power or grant of authority to
46 be governed by this act.

47 b. Unless doing so is prohibited by other law, nothing in this
48 act bars a principal from expressly providing in a power of attorney,

1 regardless of whether the act is applicable to the power under this
2 section, that this act shall govern the power of attorney.

3 Source: New.

4

5 5. Powers of attorney; durable unless otherwise stated.

6 a. Every power of attorney is “durable” as defined in this act
7 unless the power expressly provides that it terminates upon the
8 incapacity of the principal. Notwithstanding the durability
9 conferred by this section, a power intended by the principal to be
10 durable may state that it is durable.

11 b. Unless the power of attorney expressly provides that it
12 terminates upon the incapacity of the principal, all acts by an agent
13 pursuant to the power, during any period of the principal’s
14 incapacity, shall have the same effect and inure to the benefit of and
15 bind the principal and the principal’s heirs, devisees, successors and
16 personal representatives as if the principal were not incapacitated.

17 c. A power of attorney is exercisable notwithstanding the lapse
18 of time since its execution, unless it states a time or event of
19 termination.

20 Source: 46:2B-8.2; 46:2B-8.3; 46:2B-16.

21

22 6. Creation of a valid power of attorney; when effective.

23 a. To be valid a power of attorney shall be:

24 (1) typed, or printed using letters which are legible and easy to
25 read;

26 (2) in substantial compliance with subsection a. of section 7 of
27 P.L. c. (C.) (pending before the Legislature as this bill);
28 and

29 (3) executed by a principal, with the capacity to do so, in the
30 following manner:

31 (a) the principal, appearing before two witnesses, neither of
32 whom is an agent and a notary public or any other officer
33 authorized to take acknowledgements as provided in R. S. 46:14-
34 6.1, signs and dates the power and acknowledges that the power
35 was executed as the principal’s own act;

36 (b) the witnesses swear before the notary public or other
37 qualifying officer that they witnessed the principal execute the
38 power of attorney as the principal’s own act; and

39 (c) the officer taking the acknowledgment and proof does so in
40 the manner prescribed for the acknowledgement and proof of a
41 conveyance of real property in accordance with subsection c. of
42 R.S. 46:14-2.1. The signatures of the principal and the witnesses
43 may be acknowledged in a single certificate by the notary public or
44 other qualifying officer.

45 b. A power of attorney shall not be invalid solely because of:

46 (1) a lapse of time between the dates of acknowledgement of the
47 signature of the principal and the date of its use; or (2) the

1 subsequent incapacity of the principal during any such lapse of
2 time.

3 c. Unless a power of attorney states otherwise, the date on
4 which the principal's signature is acknowledged is the effective
5 date of the power of attorney. A power of attorney may state that it
6 takes effect upon the occurrence of a date or contingency specified
7 in the instrument, in which case, once acknowledged by the
8 principal, the power of attorney takes effect upon the date or
9 occurrence of the contingency in the manner specified.

10 d. A signature on a power of attorney is presumed to be
11 genuine if acknowledged in accordance with paragraph (3) of
12 subsection a. of this section;

13 e. If a power of attorney made pursuant to this act includes the
14 power to "conduct real estate transactions" as described in section
15 28 of P.L. , c. (C.) (pending before the Legislature as this
16 bill.), the power of attorney shall be recorded prior to or
17 simultaneously with the deed, mortgage or other document executed
18 by the agent in connection with the real estate transaction. A power
19 of attorney is in recordable form if it complies with R.S. 46:15-1.1.
20 Source: New.

21

22 7. Power of attorney; guidelines for contents of form.

23 a. A specific form of power of attorney is not required by the
24 act. However, every power of attorney shall contain provisions to:

25 (1) designate an agent by name, and if more than one agent, a
26 statement of whether the agents must act together or may act
27 independently;

28 (2) grant authority which the principal intends to give the agent;

29 (3) require the agent to follow the principal's instructions as set
30 forth in the power of attorney, or if there are no instructions, act in
31 the principal's best interest;

32 (4) indicate that the power of attorney does not authorize the
33 agent to make health care decisions for the principal; an agent is
34 authorized to make medical or health care decisions for the
35 principal only if the principal signs an advanced directive for health
36 P.L. 1991, c.201 (C. 26:2H-53 et seq.) or P.L. 2005, c.233 (C.
37 26:2H-102, et seq.), as applicable, which names the agent as the
38 principal's health care representative, as defined in section 3 of P.L.
39 1991, c.201 (C.26:2H-55), or as the principal's mental health care
40 representative, as defined in section 3 of P.L. 2005, c.233 (C.26:2H-
41 104); and

42 (5) indicate that the power of attorney does not authorize the
43 agent to do any of the following acts, unless the principal gives
44 express specific authority in the power of attorney for the act:

45 (a) make gifts or gratuitous transfers, including but not limited
46 to gifts or gratuitous transfers of the principal's property to the
47 agent or to a co-agent or successor agent; or

- 1 (b) designate, change or revoke the beneficiary designations in
2 any life insurance, annuity, or similar contract, employee benefit or
3 plan or retirement benefit or plan, payable on death or transfer on
4 death account, or any other account or benefit; or
- 5 (c) make, amend, alter, revoke or terminate any inter vivos trust,
6 registration of the principal's securities in beneficiary form, or any
7 provisions for nonprobate transfer at death or to open, modify or
8 terminate a transfer on death account; or
- 9 (d) make transfers of property, money or other assets to any
10 trust; or
- 11 (e) disclaim property or disclaim a power of appointment or
12 discretion held by the principal as executor or trustee or in a similar
13 fiduciary capacity; or
- 14 (f) open or close any account of the principal including an
15 account naming the agent and the principal as joint owners unless
16 the change in account status is solely ministerial in nature; or
- 17 (g) create or change rights of survivorship; or
- 18 (h) renounce a principal's designation as fiduciary for another
19 person; or
- 20 (i) reject, renounce, disclaim, release, or consent to a reduction
21 in or modification of a share in or payment from an estate, trust or
22 other beneficial interest; or
- 23 (j) delegate to others any one, more or all of the powers that
24 have been conferred on the agent.
- 25 b. A power of attorney may also provide, for purposes of
26 illustration and not limitation:
- 27 (1) that the principal does not lose authority to act even though
28 similar authority has been given to the agent;
- 29 (2) that the law governing powers of attorney is set forth in
30 P.L. , c. (C.)(pending before the Legislature as this bill)
31 and is available at a State, county or municipal law library or online
32 through the New Jersey Legislature's Internet;
- 33 (3) that the principal may contact an attorney of the principal's
34 own choosing before signing the power of attorney;
- 35 (4) that the power of attorney is effective upon execution in
36 accordance with this act and shall not be affected by the principal's
37 incapacity, or by lapse of time, unless the principal has stated
38 otherwise;
- 39 (5) the name and title of the person who prepared the power of
40 attorney;
- 41 (6) specific delineation of one or more kinds of authority as
42 described in this act, the authority to conduct real estate
43 transactions; tangible personal property transactions; bond, share
44 and commodity transactions; banking transactions; business
45 operating transactions; insurance transactions; estate transactions;
46 litigation and other legal proceedings; personal and family
47 maintenance; health care billing, recordkeeping and payments
48 (which shall be distinguished from an advanced directive for health

1 care); retirement benefit transactions; tax matters; the collection and
2 disbursement of benefits from governmental programs or civil or
3 military service; or any or all of the above;

4 (7) designation of a successor agent, by the agent's name and
5 mailing address, and, if more than one successor agent, a statement
6 of whether the successor agents must act together or may act
7 independently;

8 (8) the telephone number, mailing address and e-mail address of
9 each agent, although if the power of attorney is to be recorded, the
10 preparer may choose not to include the telephone number or e-mail
11 address;

12 (9) that the agent may be compensated from the principal's
13 assets for reasonable expenses incurred on the principal's behalf
14 and services rendered on the principal's behalf, as provided in
15 section 19 of P.L. , c. (C.) (pending before the Legislature
16 as this bill);

17 (10) that the power of attorney continues until the principal
18 revokes it or it is terminated by the principal's death or other event,
19 as provided in section 17 of P.L. , c. (C.) (pending before
20 the legislature as this bill).

21 c. If the principal intends to grant any authority for which an
22 express and specific grant is required under this act, the grant of
23 authority shall be made in accordance with section 22 of P.L. , c.
24 (C.) (pending before the Legislature as this bill) or 15 of
25 P.L. , c. (C.), (pending before the Legislature as this bill) as
26 applicable.

27 d. If the power of attorney includes the power to "conduct real
28 estate transactions" as described in section 28 of P.L. , c. (C.)
29 (pending before the Legislature as this bill), the power of attorney
30 shall be in a recordable form that complies with R.S. 46:15-1.1 and
31 shall be recorded prior to or simultaneously with the deed, mortgage
32 or other document executed by the agent in connection with the real
33 estate;

34 e. If the power of attorney includes the power to "conduct
35 health care billing, recordkeeping and payment" as described in
36 section 36 of P.L. , c. (C.) (pending before the Legislature
37 as section 36 of this bill), the power of attorney shall be construed
38 to mean that the principal authorizes the agent to act as the
39 principal's representative pursuant to the "Health Insurance
40 Portability and Accountability Act of 1996,"(HIPAA), sections
41 1171 through 1179 of the Social Security Act, 42 U.S.C. Section
42 1320d, and applicable regulations, in order to take action including
43 but not limited to obtain access to the principal's health-care
44 information and communicate with the principal's health-care
45 provider; and

46 f. Any special instructions or additional provisions, including
47 but not limited to language to limit or supplement authority granted
48 to the agent, shall be set forth in the power of attorney itself or in an

1 addendum attached to the power of attorney that is initialed by the
2 principal.

3 Source: New.

4

5 8. Fiduciary status and duties of agent.

6 a. An agent acting under a power of attorney has a fiduciary
7 duty to the principal, and if the principal is adjudicated an
8 incapacitated person after the power is executed and the power of
9 attorney is not terminated, to a guardian of the property of the
10 principal, to act within the powers delegated by the power of
11 attorney and solely for the benefit of the principal;

12 b. An agent shall also:

13 (1) act in accordance with the instructions from the principal set
14 forth in the power of attorney, or where no instructions have been
15 given, in the best interest of the principal;

16 (2) act in good faith;

17 (3) keep the principal's property separate and distinct from any
18 other property owned or controlled by the agent, other than property
19 jointly owned by the principal and agent at the time of execution of
20 the power of attorney, except where the agent is the principal's
21 spouse, domestic partner, or partner in civil union and keeping the
22 principal's property separate and distinct from the agent's is not
23 reasonable under the circumstances;

24 (4) cooperate with a person that has authority to make medical
25 and health care decisions for the principal; and

26 (5) keep an accurate record of all receipts, disbursements, and
27 transactions entered into by the agent on behalf of the principal and
28 make the record and the power of attorney available, or render an
29 accounting, at the request of:

30 (i) the principal;

31 (ii) a co-agent or successor agent acting under the power of
32 attorney;

33 (iii) a guardian or conservator appointed for the principal;

34 (iv) the personal representative of the principal's estate;

35 (v) a governmental agency or entity having regulatory authority
36 to protect the welfare of the principal; or

37 (vi) the Superior Court upon application of any heir or other next
38 friend of the principal, where the court is satisfied that the principal
39 is incapacitated and there is concern whether the agent is either
40 acting within the powers granted by the power of attorney or acting
41 solely for the benefit of the principal.

42 c. An agent who fails to make the records and power of
43 attorney available or to render an accounting under paragraph (5) of
44 subsection b. of this section within a reasonable time period after a
45 written request there under, not to exceed 15 days in the case of
46 making the record and power of attorney available, and not to
47 exceed 45 days in the case of rendering an accounting, may be

1 compelled to do so by an order to show cause in accordance with
2 the Rules Governing the Courts of the State of New Jersey.

3 d. If an agent renounces the principal's designation as a
4 fiduciary for another person, the agent shall serve the principal with
5 written notice of the renunciation in the same manner as service on
6 a party in accordance with Rule 1:5-2 of the Rules Governing the
7 Courts of the State of New Jersey.

8 Source: 46:2B-8.13.

9

10 9. Relation of agent to court-appointed fiduciary.

11 a. If, after execution of a power of attorney, a conservator,
12 guardian of the estate, or other fiduciary is appointed by a court to
13 manage some or all of the principal's property, the agent shall be
14 accountable to the fiduciary as well as to the principal, unless the
15 power of attorney is revoked or terminated by court order
16 appointing the fiduciary.

17 b. In a power of attorney, a principal may nominate a
18 conservator, guardian of the principal's estate, or guardian of the
19 principal's person, for consideration by the court if protective
20 proceedings for the principal's person or estate are commenced
21 after the principal executes the power of attorney.

22 Source: 46:2B-8.4.

23

24 10. Acceptance and good faith reliance by third party.

25 a. A third party shall accept a power of attorney that is valid in
26 accordance with section 6 of P.L. , c. (C.) (pending before
27 the Legislature as this bill) or properly executed in accordance with
28 the laws in effect at the time of execution. However, a third party
29 that is a financial institution may also require compliance with the
30 conditions set forth in section 11 of P.L. , c. (C.) (pending
31 before the Legislature as this bill) before accepting the power of
32 attorney.

33 b. A third party may rely upon the authority granted in a power
34 of attorney until the third party has received notice or has
35 knowledge of:

36 (1) the revocation or termination of the power of attorney;

37 (2) the termination or the suspension of the authority of the
38 agent;

39 (3) the death of the principal; or

40 (4) the incapacity of the principal, if the power of attorney
41 expressly provides that it terminates upon the incapacity of the
42 principal.

43 c. A third party who has not received notice or does not have
44 knowledge as provided under subsection b. of this section may
45 require that the agent execute an affidavit stating that at the time of
46 initial exercise of the power of attorney the agent did not have
47 knowledge or notice as provided in paragraphs (1), (2), (3), or (4) of
48 subsection b. of this section, which affidavit is conclusive proof of

1 the power not having been revoked or terminated at that time. A
2 form of affidavit is set forth at section 12 of P.L. , c. (C.)
3 (pending before the Legislature as this bill). If the exercise of the
4 power of attorney requires execution and delivery of any instrument
5 that is recordable, the affidavit when authenticated for recording is
6 likewise recordable.

7 d. No third party may refuse to accept or rely on a power of
8 attorney solely because it is not on a form prescribed by the third
9 party to whom the power is presented. Nor may a third party refuse
10 to accept and rely on a power of attorney solely because of a lapse
11 of time since the execution of the power.

12 e. A third party shall have a reasonable time under the
13 circumstances to decide whether to accept a power of attorney
14 presented to it.

15 f. Subject to paragraph (4) of subsection a. of section 11 of
16 P.L. , c. (C.) (pending before the Legislature as this bill),
17 any third party to whom the power of attorney is presented may
18 retain and rely upon: (1) a photocopy or electronically transmitted
19 copy of the original signed document; or (2) a copy of the original
20 signed document certified to be a true copy of the original by: (i)
21 the attorney who prepared the original and holds either the original
22 or an executed copy; (ii) a financial institution; or (iii) the county
23 recording office of the county in which the original was recorded.
24 If presented with an original signed power of attorney, the third
25 party may not retain the original. Any original shall be copied and
26 promptly returned to the presenter. The third party may rely upon
27 the copy or original power of attorney until the third party receives
28 knowledge or information that requires or permits it not to honor
29 the power of attorney in accordance with this act.

30 Source: 46:2B-8.6; 46:2B-8.11; 46:2B-18; new.

31

32 11. Requirements of financial institutions.

33 a. Although subject to the requirements of section 10 of
34 P.L. , c. (C.) (pending before the Legislature as this act), a
35 third party financial institution may further condition acceptance of
36 and reliance upon a power of attorney as follows:

37 (1) the institution may refuse to rely on or act pursuant to a
38 power of attorney if (i) the signature is not genuine as provided by
39 subsection d. of section 6 of P.L. , c. (C.) (pending before the
40 Legislature as this bill), or (ii) the employee of the institution who
41 receives or is required to act on the power receives notice or has
42 knowledge of the death of the principal, or the principal's
43 incapacity at the time of execution of the power or that the power
44 has been revoked;

45 (2) the institution is not obligated to rely on or act pursuant to a
46 power of attorney if it believes in good faith that the power does not
47 appear to be genuine or that the principal is dead, or that the

1 principal was incapacitated at the time of the execution of the power
2 or that the power has been revoked;

3 (3) if an agent seeks, in accordance with a power of attorney, to
4 withdraw or pay funds from a principal's account at a financial
5 institution, the institution may require the agent to provide evidence
6 satisfactory to the institution of the agent's identity and to execute a
7 signature card in a form as required by that institution;

8 (4) the institution may require a power of attorney that contains
9 an actual original signature of the principal. However, if the
10 institution receives an affidavit that such an original is not available
11 to be presented, the institution shall accept a copy of the power of
12 attorney certified to be a true copy of the original by (i) the attorney
13 who prepared the original and holds either the original or an
14 executed copy; (ii) a financial institution; or (iii) the county
15 recording office of the county in which the original was recorded.

16 (5) if a power of attorney expressly provides that "it shall
17 become effective upon the incapacity of the principal" or similar
18 words, the institution is not obligated to rely on or act pursuant to
19 the power of attorney unless the institution is provided by the agent
20 with proof that the principal is then incapacitated as provided in the
21 power of attorney.

22 b. A financial institution that refuses to rely on or act pursuant
23 to a power of attorney, for any reason, shall notify the agent in
24 writing that the power of attorney has been rejected and the reason
25 for the rejection provided that the agent or principal has given the
26 mailing address of the agent to the institution in writing. Written
27 notice of refusal to honor the power shall be sent by certified mail,
28 return receipt requested, or registered mail to the mailing address
29 given to the institution.

30 Source: 46:2B-13; new.

31

32 12. P.L. , c. (C.). Affidavit of non-revocation or non-
33 termination of power of attorney; language and model form.

34 a. An affidavit of non-revocation or non-termination of a
35 power of attorney, made in accordance with subsection c. of section
36 10 of P.L. , c. (C.) (pending before the Legislature as this
37 bill), shall state that the agent, at the time of exercise of the power,
38 had no knowledge or notice of revocation or termination of the
39 power of attorney, or of the principal's death, or, if the power
40 expressly states that it terminates upon the principal's incapacity,
41 no knowledge or notice of the principal's incapacity, or if the power
42 expressly states that it terminates upon the appointment by a court
43 of a guardian, conservator or other fiduciary, no knowledge or
44 notice of the appointment by a court of a guardian, conservator or
45 other fiduciary.

46 b. The affidavit shall be prepared in substantially the following
47 form:

48 State of New Jersey, County of [name of county], ss.:

1 [Name of agent], being of full age, and duly sworn according to
2 law, deposes and says:

3
4 1. I, the Agent for [name of principal], hereinafter
5 referred to as “the Principal,” by virtue of a Power of Attorney
6 dated [date of power of attorney], and [if recorded, use following
7 language: recorded (date of recordation of power of attorney, if
8 applicable)] in the Office of the Clerk/Register of (name of county
9 where recorded) County, in Deed Book (book number), page (page
10 number)], which vests me with the authority to act for the Principal
11 for the purposes set forth in the Power of Attorney, including the
12 execution and delivery of the document to which this Affidavit is
13 attached.

14
15 2. To the best of my knowledge and belief, this Power of
16 Attorney is in full force and effect. I have no knowledge or notice
17 of revocation of the Power of Attorney by an act of the Principal
18 nor do I have knowledge or notice of the termination of the Power
19 of Attorney by the death or incapacity of the Principal or by my act
20 or any act of any other agent or by the order of a court or by the
21 terms of the Power of Attorney itself. The Principal either has not
22 been judicially declared to be incapacitated or has been judicially
23 declared to be incapacitated and the court has maintained the power
24 of attorney for certain stated purposes.

25
26 3. This Affidavit is made pursuant to the provisions of the
27 statute [citation].

28
29 _____
30 [Signature of Agent]

31 Sworn and subscribed before me this____
32 day of _____, 20____

33
34 _____
35 [Signature of Notary]

36 c. If the transaction for which the affidavit is executed involves
37 real estate or an interest therein, the affidavit shall be recorded as
38 part of the deed, mortgage or other instrument executed by the
39 agent.

40 Source: New.

41
42 13. Action to compel third party to accept power.

43 a. If a third party refuses to honor or accept a power of
44 attorney, an action may be commenced by a principal; an agent, co-
45 agent, or successor agent acting under the power of attorney; a
46 guardian or conservator appointed for the principal; the spouse,
47 domestic partner or partner in civil union, or a child or parent of the
48 principal; a governmental agency or entity having regulatory

1 authority to protect the welfare of the principal; or the principal's
2 successor in interest, to compel a third party to honor or accept a
3 power of attorney pursuant to sections 10 and 11 of
4 P.L. , c (C.) (pending before the Legislature as this bill).

5 b. An action under this section shall be a summary proceeding
6 commenced in accordance with Rule 4:67 of the Rules Governing
7 the Courts of the State of New Jersey, in the Superior Court,
8 Chancery Division, Probate Part, at which time the only issue to be
9 determined is whether the third party who is refusing to honor or
10 accept a power of attorney in accordance with sections 10 or 11 of
11 P.L. , c. (C.) (pending before the Legislature as this
12 bill).shall be ordered to do so.

13 c. If the form of power of attorney is valid and effective in
14 accordance with section 6 of P.L. , c. (C.) (pending before
15 the Legislature as this bill), and there is no credible issue of fact
16 regarding the capacity of the principal to have executed the power
17 of attorney, or the ability of the agent to exercise the authority
18 conferred by the power of attorney, or whether the power of
19 attorney has been revoked or terminated, the court shall issue an
20 order compelling the third party to honor or accept the power of
21 attorney. The court shall award costs and may award reasonable
22 attorneys' fees to the successful petitioner under this section.

23 Source: New.

24

25 14. Co-agents and successor agents.

26 a. A principal may designate two or more persons to act as co-
27 agents, either jointly or separately; provided that:

28 (1) if the power of attorney does not expressly provide
29 otherwise, the co-agents shall act jointly.

30 (2) joint action by co-agents requires the concurrence of all
31 agents to exercise any power granted.

32 (3) if joint action by co-agents is required, and an agent dies,
33 resigns or, is unable to exercise the authority conferred by the
34 power of attorney, unless otherwise provided, the remaining co-
35 agent, or, if there is more than one, the remaining co-agents by joint
36 action, may act for the principal and exercise all powers granted.

37 (4) if the power of attorney provides separate action by co-
38 agents, then any one agent may exercise all powers granted.

39 b. A principal may designate one or more successor agents to
40 serve. Unless the principal expressly provides otherwise in the
41 power of attorney:

42 (1) a successor agent may act only if every initial or predecessor
43 agent resigns in writing, dies, is unable to exercise the authority
44 conferred by the power of attorney, is not qualified to serve or
45 declines to serve; and

46 (2) a successor has the same authority as that granted to an
47 initial or predecessor agent.

1 c. A co-agent or a successor agent acting under a power of
2 attorney shall have the authority to request, receive and seek to
3 compel a co-agent or predecessor agent to provide a record of all
4 receipts, disbursements and transactions entered into by the agent
5 on behalf of the principal.

6 d. Except as otherwise provided by this section or by the power
7 of attorney, an agent who does not participate in or conceal a breach
8 of fiduciary duty committed by another agent is not liable for the
9 actions of the other agent.

10 Source: 46:2B-8.7.

11
12 15. Delegation by agent.

13 If the principal intends to authorize the agent to delegate to other
14 agents one or more or all of the powers granted under the power of
15 attorney, the principal shall expressly and specifically grant that
16 authority in the power of attorney or the agent may not so delegate.

17 Source: 46:2B-8.8.

18
19 16. Agent's act without notice or knowledge of principal's
20 death, or of termination or revocation of power.

21 a. Any agent who acts in good faith under a valid and
22 enforceable power of attorney, without knowledge or notice of the
23 principal's death, or of the principal's revocation of the power of
24 attorney, binds the principal's successors in interest.

25 b. Any agent who acts in good faith under a valid and
26 enforceable power of attorney that terminates upon the incapacity of
27 the principal, or upon the appointment by a court of a guardian,
28 conservator or other fiduciary, or for any other reason, without
29 knowledge or notice of the principal's incapacity, or without
30 knowledge or notice of the appointment by a court of a guardian,
31 conservator or other fiduciary, or without knowledge or notice that
32 the power of attorney has terminated for any other reason, binds the
33 principal and the principal's successors in interest.

34 c. If the agent executes an affidavit, in accordance with section
35 12 of P.L. , c. (C.) (pending before the Legislature as this
36 bill), the agent's act in accordance with the power shall be
37 presumed valid, subject to challenge only by a clear and convincing
38 showing of fraud, intentional misconduct, or gross neglect.
39 Nevertheless, a subsequent determination of fraud, intentional
40 misconduct or gross neglect shall not affect the interest of a party
41 who dealt with the agent in good faith and in reliance upon the
42 power of attorney and the affidavit.

43 Source: 46:2B-8.5; 46:2B-8.6.

44
45 17. Revocation and termination of power of attorney.

46 a. A power of attorney is revoked when the principal:

- 1 (1) executes a subsequent power of attorney that expressly
2 revokes the prior power of attorney or states that all other powers of
3 attorney are revoked;
- 4 (2) causes all executed originals of the power of attorney to be
5 physically destroyed, including any originals that have been filed
6 with financial institutions; or
- 7 (3) executes a written instrument of revocation which is
8 acknowledged in the same manner as the power of attorney in
9 accordance with paragraph (3) of subsection a. of section 6 of
10 P.L. , c. (C.) (pending before the Legislature as this
11 bill); or
- 12 (4) otherwise revokes the power of attorney in accordance with
13 its terms.
- 14 b. If a power of attorney that has been recorded is revoked, but
15 the revocation is not recorded in the recording office where the
16 original power of attorney was recorded, the revocation shall be
17 ineffective as to a third party or an agent who acts in reliance on the
18 recorded power of attorney without knowledge or notice of the
19 revocation.
- 20 c. Except upon a court order for good cause, no person other
21 than the principal may revoke a durable power of attorney.
- 22 d. A power of attorney terminates when:
- 23 (1) if the power is a limited power of attorney, the purpose of
24 the power of attorney is accomplished;
- 25 (2) the principal dies, provided that if the agent, who without
26 knowledge or notice of the principal's death, acts in good faith
27 under the power, any action so taken by the agent, unless otherwise
28 invalid or unenforceable, binds the principal's successors in
29 interest;
- 30 (3) the principal becomes incapacitated and the power of
31 attorney expressly provides that it terminates upon the incapacity of
32 the principal, provided that if the agent, who without knowledge or
33 notice of the principal's incapacity, acts in good faith under the
34 power, any action so taken by the agent, unless otherwise invalid or
35 unenforceable, binds the principal and the principal's successors in
36 interest;
- 37 (4) the principal revokes the power of attorney in accordance
38 with subsection a. of this section;
- 39 (5) the agent dies, is unable to exercise the authority conferred
40 by the power of attorney, or resigns, and there is no co-agent or
41 successor agent or none who is willing or able to serve;
- 42 (6) the agent's authority terminates because the marriage,
43 domestic partnership or partnership in civil union of the agent who
44 is the spouse or domestic partner of or partner in civil union with
45 the principal is terminated by divorce, annulment, dissolution or
46 other proceeding, unless the power of attorney otherwise provides;
- 47 (7) a court order terminates the power of attorney; or
- 48 (8) the power of attorney terminates by its terms.

1 e. Despite the revocation or termination of a power of attorney
2 under this section, an agent's good faith act may bind the principal
3 and the principal's successors in interest in accordance with section
4 16 of P.L. , c. (C) (pending before the Legislature as this
5 bill).

6 Source: 46:2B-8.10; 46:2B-8.5; 46:2B-8.4c.

7
8 18. Agent to disclose relationship with principal.

9 a. In any transaction where the agent is acting pursuant to a
10 power of attorney and the handwritten signature of the agent or
11 principal is required, the agent shall disclose the principal and agent
12 relationship by:

13 (1) signing (name of agent) as agent for (name of principal);or

14 (2) signing (name of principal) by (name of agent) as agent; or

15 (3) any similar written disclosure of the principal and agent
16 relationship.

17 b. When the agent engages in a transaction on behalf of the
18 principal, the agent is attesting that at the time of the transaction:

19 (1) the agent has actual authority to engage in the transaction;

20 (2) the agent does not have knowledge or notice of the
21 termination or revocation of the power of attorney, or knowledge or
22 notice of any facts indicating that the power has been terminated or
23 revoked;

24 (3) if the power of attorney does not expressly provide that it
25 terminates upon the incapacity of the principal, that the agent does
26 not have knowledge or notice of the principal's incapacity, or
27 knowledge or notice of any facts indicating the principal's
28 incapacity; and

29 (4) the agent does not have knowledge or notice that the power
30 of attorney has been modified in any way that would affect the
31 ability of the agent to engage in the transaction, or knowledge or
32 notice of any facts indicating that the power has been so modified.

33 c. The attestation of the agent pursuant to subsection b. is not
34 effective as to any third party with knowledge or notice that the
35 power has terminated or been revoked prior to the transaction.

36 Source: New.

37
38 19. Compensation of the agent.

39 A principal may, in the power of attorney, direct that an agent be
40 compensated from the principal's assets for services rendered as
41 agent, which may include reimbursement for reasonable expenses
42 incurred on the principal's behalf, and provide for the method by
43 which compensation shall be calculated and when compensation
44 shall be paid. In the absence of any such direction, upon
45 appropriate application, a court may award reasonable
46 compensation to the agent.

47 Source: 46:2B-8.12.

1 20. Agent authorized to act with respect to transactions in this or
2 any other state.

3 An agent may exercise all powers described in this act that are
4 exercisable by the principal upon and after presentation of the
5 power of attorney to the necessary person or institution with respect
6 to any transaction permitted by this act, whether conducted in this
7 or any other state or jurisdiction.

8 Source: 46:2B-12.

9

10 21. Powers of attorney executed in other jurisdictions; choice of
11 law.

12 a. A power of attorney executed in another state or jurisdiction
13 in compliance with the law of that state or jurisdiction, or the law of
14 this State, is valid in this State regardless of whether the principal is
15 a domiciliary of this State.

16 b. The meaning and effect of a power of attorney is determined
17 by the law of the jurisdiction indicated in the power, and if no
18 governing jurisdiction is indicated in the power, by the law of the
19 jurisdiction in which the power was executed.

20 Source: New.

21

22 22. Gifts and other gratuitous transfers; self-dealing; other acts
23 requiring express and specific authority.

24 a. An authorization in a power of attorney to perform all acts
25 which the principal could perform if personally present and capable
26 of acting, or words to that effect, is not an express or specific
27 authorization to make gifts. If the principal intends to authorize the
28 agent to make any gifts or to gratuitously transfer property of the
29 principal to the agent, or to a co-agent or successor agent, or to any
30 others, the principal shall expressly and specifically grant that
31 authority in the power of attorney. A power of attorney shall not be
32 construed to authorize the agent to make any gifts or to gratuitously
33 transfer property of the principal to the agent or to a co-agent or
34 successor agent, or to any others except to the extent unless the
35 power of attorney expressly and specifically so authorizes.

36 b. If the principal intends to authorize the agent to designate,
37 change, or revoke any beneficiary of any contract of insurance on
38 the life of the principal or annuity contract for the benefit of the
39 principal, or any type of employment or retirement benefit or plan
40 for the principal, or any other account or benefit, the principal shall
41 expressly and specifically grant such authority in the power of
42 attorney.

43 c. If the principal intends to authorize the agent to make,
44 amend, alter, revoke or terminate an inter vivos trust, the principal
45 shall expressly and specifically grant such authority in the power of
46 attorney.

47 d. If the principal intends to authorize the agent to open,
48 modify or terminate a transfer on death account as described in

1 sections 6 through 8 of P.L. , c. (C.) (pending before the
2 Legislature as this bill) and designate or change any beneficiary of
3 such account, or to make, amend, alter or revoke any provisions for
4 nonprobate transfer at death, the principal shall expressly and
5 specifically grant such authority in the power of attorney.

6 e. If the principal intends to authorize the agent to make
7 transfers of money, property or other assets to any trust, or to
8 disclaim property or disclaim a power of appointment or discretion
9 held by the principal as executor or trustee or in a similar fiduciary
10 capacity, the principal shall expressly and specifically grant such
11 authority in the power of attorney.

12 f. If the principal intends to authorize the agent to open or
13 close any accounts of the principal, including a joint account
14 naming the agent and the principal as the joint owners, unless the
15 change in account is solely ministerial in nature, the principal shall
16 expressly and specifically grant such authority in the power of
17 attorney.

18 g. If the principal intends to authorize the agent to create or
19 change rights of survivorship, the principal shall expressly and
20 specifically grant such authority in the power of attorney.

21 h. If the principal intends to authorize the agent to renounce a
22 principal's designation as a fiduciary for another person, the
23 principal shall expressly and specifically grant such authority in the
24 power of attorney.

25 i. If the principal intends to authorize the agent to reject,
26 renounce, disclaim, release or consent to a reduction in or
27 modification of a share in or payment from an estate, trust or other
28 beneficial interest, the principal shall expressly and specifically
29 grant such authority in the power of attorney.

30 j. Unless the power of attorney expressly and specifically
31 provides otherwise, if after naming the spouse or domestic partner
32 or partner in civil union as a permissible recipient of gifting or other
33 transfers, the principal is divorced, or the principal's marriage is
34 annulled or its nullity declared, or the marriage or domestic
35 partnership or partnership in civil union is dissolved, the divorce,
36 annulment, declaration of nullity or dissolution terminates the
37 authority to gift or make other transfers to the former spouse or
38 domestic partner or partner in civil union. Remarriage or a new
39 ceremony for a domestic partnership or partnership in civil union to
40 the prior spouse or prior domestic partner or partner in civil union
41 shall revive the power.

42 Source: 46:2B-8.13a; new.

43

44 23. Liability of person or institution acting in reliance on power
45 of attorney.

46 No person or institution acting in reliance on a power of attorney
47 as set forth in this act, shall be held liable for injury for any act or
48 omission if the act or omission is performed in good faith and

1 within the scope of the duties of the person or institution, unless the
2 act or omission constitutes a crime, actual fraud, actual malice or
3 willful misconduct or the person or institution acting in reliance on
4 the power of attorney has knowledge or notice that the principal
5 lacked capacity to execute the power of attorney.

6 Source: 46:2B-14.

7

8 24. Resignation of agent.

9 Unless the power of attorney provides otherwise, an agent shall
10 resign by written notice delivered by regular and certified mail,
11 return receipt requested, to the principal. A copy of the written
12 notice shall also be delivered by regular and certified mail, return
13 receipt requested, to any co-agent or successor agent, or to a
14 conservator or guardian appointed for the principal, as appropriate,
15 or if there is no co-agent, successor agent, conservator or guardian,
16 to a governmental agency having regulatory authority to protect the
17 welfare of the principal, such as Adult Protective Services, the
18 Division of Developmental Disabilities, the Bureau of Guardianship
19 Services, or the Ombudsman for the Institutionalized Elderly, or
20 their successor agencies.

21 Source: New.

22

23 25. Remedies not exclusive.

24 The remedies set forth in this act are not exclusive and do not
25 abrogate any right or remedy under any other law of this State.

26 Source: New.

27

28 26. Authority of agent not to exceed principal.

29 Nothing in this act shall be deemed to give an agent any greater
30 authority or rights than the principal could exercise on the
31 principal's own behalf.

32 Source: 46:2B-15.

33

34 27. Financial transactions; acts authorized.

35 If any power of attorney contains language which confers
36 authority on the agent to "conduct banking transactions as set forth
37 in section 2 of P.L.1991, c.95 (C.46:2B-11)," or "conduct financial
38 transactions" or words to that effect, unless the power of attorney
39 otherwise provides, the agent shall have the authority under the
40 power of attorney to:

41 a. continue, modify or terminate any account or other financial
42 arrangement made by or on behalf of the principal prior to creation
43 of the agency;

44 b. open, either in the name of the agent alone, the principal
45 alone or in both their names jointly, or otherwise, an account of any
46 type in any financial institution selected by the agent; hire, remove
47 the contents of or surrender a safe deposit box or vault space; and
48 make other contracts for the procuring of other services made

- 1 available by any financial institution or safe deposit company as the
2 agent shall deem desirable;
- 3 c. draw, sign and deliver checks or drafts for any purpose,
4 withdraw by check, order, draft, wire transfer, electronic funds
5 transfer or otherwise, any funds or property of the principal
6 deposited with, or left in the custody of, any financial institution,
7 wherever located, either prior or subsequent to the creation of the
8 agency, and use any line of credit connected with any such
9 accounts, apply for any automatic teller machine card or debit card
10 or use any automatic teller machine card or debit card, including
11 already existing cards, in connection with any such accounts and
12 apply for and use any bank credit card issued in the name of the
13 agent as an alternate user, but shall not use existing credit cards
14 issued in the name of the principal, or existing bank credit card
15 accounts of the principal;
- 16 d. prepare periodic financial statements concerning the assets
17 and liabilities or income and expenses of the principal, and to
18 deliver statements so prepared to the financial institution or other
19 person whom the agent believes to be reasonably entitled;
- 20 e. receive statements, vouchers, notices or other documents
21 from any financial institution and to act with respect to them;
- 22 f. have free access during normal business hours to any safe
23 deposit box or vault to which the principal would have access;
- 24 g. borrow money by bank overdraft, loan agreement or
25 promissory note of the principal given for a period or on demand
26 and at an interest rate as the agent shall select; give any security
27 out of the assets of the principal as the agent shall deem desirable or
28 necessary for any borrowing; pay, renew or extend the time of
29 payment of any agreement or note so given or given by or on behalf
30 of the principal; and procure for the principal a loan from any
31 financial institution by any other procedure made available by the
32 financial institution;
- 33 h. make, assign, endorse, discount, guaranty and negotiate for
34 any purpose all promissory notes, checks, drafts or other negotiable
35 or non-negotiable paper instruments of the principal or payable to
36 the principal or to the principal's order; receive the cash or other
37 proceeds of these transactions; and accept any draft drawn by any
38 person upon the principal and pay it when due;
- 39 i. receive for the principal and deal in or with any trust receipt,
40 warehouse receipt or other negotiable or non-negotiable instrument
41 in which the principal has or claims to have interest;
- 42 j. apply for and receive letters of credit or traveler's checks
43 from any institution selected by the agent, giving any related
44 indemnity or other agreements as the agent shall deem appropriate;
- 45 k. consent to an extension in the time of payment for any
46 commercial paper or financial transaction in which the principal has
47 an interest or by which the principal is, or might be, affected in any
48 way;

1 l. demand, receive, obtain by action, proceeding or otherwise
2 any money or other thing of value to which the principal is, may
3 become or may claim to be entitled to as the proceeds of any
4 transaction conducted by the principal or by the agent in the
5 execution of any of the powers described in this section, or partly
6 by the principal and partly by the agent so acting; conserve, invest,
7 disburse or utilize anything so received for the purposes enumerated
8 in this section; and reimburse the agent for any expenditures
9 properly made by the agent in the execution of the powers conferred
10 upon the agent by the power of attorney pursuant to this section;

11 m. execute, acknowledge, seal and deliver any instrument in the
12 name of the principal or otherwise which the agent deems useful to
13 accomplish any purpose enumerated in this section;

14 n. prosecute, defend, submit to alternative dispute resolution,
15 mediation or arbitration, or settle and propose or accept a
16 compromise with respect to any claim existing in favor of or against
17 the principal based on or involving any financial transaction or
18 intervene in any action or proceeding relating to the transaction;

19 o. hire, discharge and compensate any attorney, accountant,
20 expert witness or other assistant or assistants when the agent deems
21 the action to be appropriate for the proper execution by the agent of
22 any of the powers described in this section and for maintaining the
23 necessary records; and

24 p. in addition to the specific acts set forth in this section, do
25 any other act which the principal may do through an agent
26 concerning any transaction with a financial institution which affects
27 the financial or other interests of the principal.

28 Source: 46:2B-11.

29

30 28. Real estate transactions; acts authorized.

31 If a power of attorney contains language that confers authority
32 on the agent to “conduct real estate transactions,” or words to that
33 effect, unless the power of attorney otherwise provides, the agent
34 shall have the authority under the power of attorney to:

35 a. demand, buy, lease, receive, reject, accept as a gift or as
36 security for an extension of credit, or otherwise acquire an interest
37 in real property or a right incident to real property;

38 b. sell, exchange, convey with or without covenants,
39 representations or warranties, quitclaim, release, surrender, retain
40 title for security, encumber, mortgage, partition, consent to
41 partitioning, subject to an easement or covenant, subdivide, apply
42 for zoning or other governmental permits; plat or consent to
43 platting, develop, grant an option concerning, lease, sublease,
44 contribute to an entity in exchange for an interest in that entity, or
45 otherwise grant or dispose of an interest in real property or a right
46 incident to real property;

47 c. pledge or mortgage an interest in real property or right
48 incident to real property as security to borrow money or pay, renew,

- 1 or extend the time of payment of a debt of the principal or a debt
2 guaranteed by the principal;
- 3 d. release, assign, satisfy, or enforce by litigation or otherwise
4 a mortgage, deed of trust, conditional sale contract, encumbrance,
5 lien, or other claim to real property which exists or is asserted;
- 6 e. manage or conserve an interest in real property or a right
7 incident to real property owned or claimed to be owned by the
8 principal, including insuring against liability or casualty or other
9 loss; obtaining or regaining possession of or protecting the interest
10 or right by litigation or otherwise; paying, assessing, compromising
11 or contesting taxes or assessments or applying for and receiving
12 refunds in connection with them; and purchasing supplies, hiring
13 assistance or labor, and making repairs or alterations to the real
14 property;
- 15 f. use, develop, alter, replace, remove, erect, or install
16 structures or improvements upon real property in or incident to
17 which the principal has, or claims to have, an interest or right;
- 18 g. participate in a reorganization with respect to real property
19 or an entity that owns an interest in or right incident to real property
20 and receive, and hold, and act with respect to bonds and shares or
21 other property received in a plan of reorganization, including selling
22 or otherwise disposing of them, exercising or selling an option,
23 right of conversion, or similar right with respect to them, and
24 exercising any voting rights in person or by proxy;
- 25 h. change the form of title of an interest in or right incident to
26 real property;
- 27 i. execute, acknowledge, seal and deliver any deed, affidavit of
28 title and other closing documents, and to do any and all other acts
29 and things reasonably necessary to consummate the sale of premises
30 or land generally, or specifically;
- 31 j. execute, acknowledge, seal and deliver any revocation,
32 declaration, mortgage, lease, notice, check or other instrument
33 which the agent deems useful to accomplish any purpose
34 enumerated in this section;
- 35 k. dedicate to public use, with or without consideration,
36 easements or other real property in which the principal has, or
37 claims to have, an interest;
- 38 l. demand, receive, obtain by action, proceeding or otherwise
39 any money or other thing of value to which the principal is, may
40 become or may claim to be entitled to as the proceeds of any real
41 estate transaction conducted by the principal or by the agent in the
42 execution of any of the powers described in this section, or partly
43 by the principal and partly by the agent so acting; conserve, invest,
44 disburse or utilize anything so received for the purposes enumerated
45 in this section; and reimburse the agent for any expenditures
46 properly made by the agent in the execution of the powers conferred
47 upon the agent by the power of attorney pursuant to this section;

1 m. prosecute, defend, submit to alternative dispute resolution,
2 mediation or arbitration, or settle and propose or accept a
3 compromise with respect to any claim existing in favor of or against
4 the principal based on or involving any real estate transaction or
5 intervene in any action or proceeding relating to the transaction;

6 n. hire, discharge and compensate any attorney, accountant,
7 expert witness or other assistant or assistants when the agent deems
8 the action to be appropriate for the proper execution by the agent of
9 any of the powers described in this section and for maintaining the
10 necessary records; and

11 o. in addition to the specific acts set forth in this section, do
12 any other act which the principal may do through an agent
13 concerning any real property that affects the interests of the
14 principal.

15 Source: New.

16

17 29. Tangible personal property transactions; acts authorized.

18 If a power of attorney contains language that confers authority
19 on the agent to “conduct tangible personal property transactions,” or
20 words to that effect, unless the power of attorney otherwise
21 provides, the agent shall have the authority under the power of
22 attorney to:

23 a. demand, buy, receive, reject, accept as a gift or as security
24 for an extension of credit, or otherwise acquire ownership or
25 possession of tangible personal property or an interest in tangible
26 personal property;

27 b. sell, exchange, convey with or without covenants,
28 representations, or warranties, quitclaim, release, surrender, create a
29 security interest in, encumber, grant options concerning, lease,
30 sublease, or, otherwise dispose of tangible personal property or an
31 interest in tangible personal property;

32 c. grant a security interest in tangible personal property, or an
33 interest in tangible personal property as security to borrow money
34 or pay, renew, or extend the time of payment of a debt of the
35 principal or a debt guaranteed by the principal;

36 d. release, assign, satisfy, or enforce by litigation or otherwise,
37 a security interest, lien or other claim on behalf of the principal,
38 with respect to tangible personal property or an interest in tangible
39 personal property;

40 e. manage or conserve tangible personal property or an interest
41 in tangible personal property;

42 f. demand, receive, obtain by action, proceeding or otherwise
43 any money or other thing of value to which the principal is, may
44 become or may claim to be entitled to as the proceeds of any
45 tangible personal property transaction conducted by the principal or
46 by the agent in the execution of any of the powers described in this
47 section, or partly by the principal and partly by the agent so acting;
48 conserve, invest, disburse or utilize anything so received for the

1 purposes enumerated in this section; and reimburse the agent for
2 any expenditures properly made by the agent in the execution of the
3 powers conferred upon the agent by the power of attorney pursuant
4 to this section;

5 g. execute, acknowledge, seal and deliver any instrument in the
6 name of the principal or otherwise which the agent deems useful to
7 accomplish any purpose enumerated in this section;

8 h. prosecute, defend, submit to alternative dispute resolution,
9 mediation or arbitration, or settle and propose or accept a
10 compromise with respect to any claim existing in favor of or against
11 the principal based on or involving any tangible personal property
12 transaction or intervene in any action or proceeding relating to the
13 transaction;

14 i. hire, discharge and compensate any attorney, accountant,
15 expert witness or other assistant or assistants when the agent deems
16 the action to be appropriate for the proper execution by the agent of
17 any of the powers described in this section and for maintaining the
18 necessary records; and

19 j. in addition to the specific acts set forth in this section, do
20 any other act which the principal may do through an agent
21 concerning any tangible personal property or interest in any
22 tangible personal property that affects the interests of the principal.

23 Source: New.

24

25 30. Bond, share and commodity transactions; acts authorized.

26 If a power of attorney contains language that confers authority
27 on the agent to “conduct bond, share and commodity transactions,”
28 or words to that effect, unless the power of attorney otherwise
29 provides, the agent shall have the authority under the power of
30 attorney to:

31 a. sell, exchange, transfer either with or without a guaranty,
32 release, surrender, hypothecate, pledge, grant options concerning,
33 loan, trade in, or otherwise dispose of any bond, share, other
34 instrument of similar character, commodity interest, or any
35 instrument with respect to a commodity interest, together with the
36 interest, dividends, proceeds or other distributions connected with
37 them;

38 b. receive certificates and other evidences of ownership with
39 respect to a bond, share, other instrument of similar character,
40 commodity interest, or any instrument with respect to a commodity
41 interest;

42 c. exercise voting rights with respect to a bond or share in
43 person or by proxy, enter into voting trusts, and consent to
44 limitations on the right to vote;

45 d. manage or conserve any bond, share, instrument of similar
46 character, commodity interest or any instrument with respect to a
47 commodity;

1 e. carry in the name of a nominee selected by the agent any
2 evidence of the ownership of any bond, share, other instrument of
3 similar character, commodity interest or instrument with respect to
4 a commodity, belonging to the principal;

5 f. demand, receive, obtain by action, proceeding or otherwise
6 any money or other thing of value to which the principal is, may
7 become or may claim to be entitled to as the proceeds of any bond,
8 share or commodity transaction conducted by the principal or by the
9 agent in the execution of any of the powers described in this
10 section, or partly by the principal and partly by the agent so acting;
11 conserve, invest, disburse or utilize anything so received for the
12 purposes enumerated in this section; and reimburse the agent for
13 any expenditures properly made by the agent in the execution of the
14 powers conferred upon the agent by the power of attorney pursuant
15 to this section;

16 g. execute, acknowledge, seal and deliver any instrument in the
17 name of the principal or otherwise which the agent deems useful to
18 accomplish any purpose enumerated in this section;

19 h. prosecute, defend, submit to alternative dispute resolution,
20 mediation or arbitration, or settle and propose or accept a
21 compromise with respect to any claim existing in favor of or against
22 the principal based on or involving any bond, share or commodity
23 transaction or intervene in any action or proceeding relating to the
24 transaction;

25 i. hire, discharge and compensate any attorney, accountant,
26 expert witness or other assistant or assistants when the agent deems
27 the action to be appropriate for the proper execution by the agent of
28 any of the powers described in this section and for maintaining the
29 necessary records; and

30 j. in addition to the specific acts set forth in this section, do
31 any other act which the principal may do through an agent
32 concerning any transaction with respect to any interest in any bond,
33 share or commodity interest that affects the financial or other
34 interests of the principal.

35 Source: New.

36
37 31. Business operating transactions; acts authorized.

38 Subject to the terms of a document or agreement governing an
39 entity or an entity ownership interest, if a power of attorney
40 contains language that confers authority on the agent to “conduct
41 business operating transactions,” or words to that effect, unless the
42 power of attorney otherwise provides, the agent shall have the
43 authority under the power of attorney to:

44 a. operate, buy, sell, enlarge, reduce, or terminate an ownership
45 interest;

46 b. perform a duty, discharge a liability and exercise in person
47 or by proxy a right, power, privilege, or option that the principal
48 has, may have, or claims to have;

- 1 c. enforce the terms of an ownership agreement;
- 2 d. with respect to an entity or business owned solely by the
3 principal regardless of the form of organization of the business,
4 provided that proof of the principal's sole ownership is
5 demonstrated:
- 6 (1) continue, modify, renegotiate, extend and terminate any
7 contractual arrangements made with any person, firm, association,
8 corporation or other entity, by or on behalf of the principal prior to
9 the creation of the agency;
- 10 (2) determine: the location of the operation; nature and extent of
11 the business; methods of manufacturing, selling, merchandising,
12 financing, accounting, and advertising employed in operations;
13 amounts and types of insurance carried; mode of engaging,
14 compensating and dealing with employees, accountants, attorneys,
15 or other advisors; and the name or form of organization;
- 16 (3) change the name or form of organization under which the
17 entity or business is operated and enter into an ownership
18 agreement with other persons to take over all or part of the
19 operation of the entity or business; and
- 20 (4) demand and receive money due or claimed by the principal
21 or on the principal's behalf in the operation of the entity or business
22 and control and disburse the money in the operation of the entity or
23 business;
- 24 e. collect and disburse accounts receivable; continue, modify,
25 renegotiate, extend and terminate a contract made by or on behalf of
26 the principal before execution of the power of attorney; inject
27 additional capital in which the principal has an interest; join in a
28 plan of reorganization, consolidation, conversion, domestication, or
29 merger of the entity or business; sell or liquidate all or part of the
30 entity or business; establish the value under a buy-out agreement to
31 which the principal is a party; and prepare, sign, file and deliver
32 reports, compilations, returns, or other documents with respect to
33 the entity or business and make related payments; pay, compromise,
34 or contest taxes, assessments, fines or penalties and perform any
35 other act to protect the principal from illegal or unnecessary
36 taxation, assessments, fines or penalties with respect to the entity or
37 business;
- 38 f. demand, receive, obtain by action, proceeding or otherwise
39 any money or other thing of value to which the principal is, may
40 become or may claim to be entitled to as the proceeds of any
41 business operating transaction conducted by the principal or by the
42 agent in the execution of any of the powers described in this
43 section, or partly by the principal and partly by the agent so acting;
44 engage in banking transactions the agent deems desirable for
45 effectuating the execution of the powers described in this section;
46 conserve, invest, disburse or utilize anything so received for the
47 purposes enumerated in this section; and to reimburse the agent for
48 any expenditures properly made by the agent in the execution of the

1 powers conferred upon the agent by the power of attorney pursuant
2 to this section;

3 g. execute, acknowledge, seal and deliver any instrument in the
4 name of the principal or otherwise which the agent deems useful to
5 accomplish any purpose enumerated in this section;

6 h. prosecute, defend, submit to alternative dispute resolution,
7 mediation or arbitration, or settle and propose or accept a
8 compromise with respect to any claim existing in favor of or against
9 the principal based on or involving any business operating
10 transaction or intervene in any action or proceeding relating to the
11 transaction;

12 i. hire, discharge and compensate any attorney, accountant,
13 expert witness or other assistant or assistants when the agent deems
14 the action to be appropriate for the proper execution by the agent of
15 any of the powers described in this section and for maintaining the
16 necessary records; and

17 j. in addition to the specific acts set forth in this section, do
18 any other act which the principal may do through an agent
19 concerning any business operating transaction that affects the
20 interests of the principal.

21 Source: New.

22

23 32. Insurance transactions; acts authorized.

24 If a power of attorney contains language that confers authority
25 on the agent to “conduct insurance transactions,” or words to that
26 effect, unless the power of attorney otherwise provides, the agent
27 shall have the authority under the power of attorney to:

28 a. continue, pay the premium or assessment or make a
29 contribution on any contract of life, accident, health, disability or
30 liability or any combination of such insurance procured by or on
31 behalf of the principal which insures or provides an annuity to
32 either the principal or another person, whether or not the principal
33 is a beneficiary under the contract; provided that with respect to life
34 insurance contracts existing at the time the power of attorney is
35 executed, the authority granted by the power shall not include the
36 authority to add, delete or otherwise change the beneficiary
37 designation in effect for the contract, or modify, rescind, exchange,
38 release or terminate such contract unless the specific authority to
39 add, delete or otherwise change the beneficiary designation or to
40 modify, rescind, exchange, release or terminate such contract is
41 expressly and specifically conveyed in a power of attorney that is
42 executed pursuant to this act;

43 b. procure new, different or additional contracts of insurance or
44 annuities protecting the principal; select the amount, type of
45 insurance contract and the mode of payment under each policy; and
46 pay the premium or assessment on, modify, rescind, exchange,
47 release or terminate any contract procured by the agent;

- 1 c. collect, sell, assign, hypothecate, borrow against, or pledge
2 the interest of the principal in a contract of insurance or annuity;
- 3 d. apply for and receive any available loan on the security of
4 the contract of insurance, whether for the payment of a premium or
5 for the procuring of cash; surrender and thereupon receive the cash
6 surrender value; exercise an election as to the beneficiary or mode
7 of payment, change the manner of premium payments; and change
8 or convert the type of insurance contract with respect to any
9 contract to which the principal has, or claims to have, any one or
10 more of the powers described in this section; provided that the
11 authority granted by the power shall not include the authority to
12 add, delete or otherwise change the beneficiary designation in effect
13 for the contract, unless the power to add, delete or change the
14 beneficiary designation is expressly and specifically conveyed in a
15 power of attorney executed pursuant to this act;
- 16 e. demand, receive, obtain by action, proceeding or otherwise
17 any money or other thing of value to which the principal is, may
18 become or may claim to be entitled to as the proceeds of any
19 insurance transaction conducted by the principal or by the agent in
20 the execution of any of the powers described in this section, or
21 partly by the principal and partly by the agent so acting; to
22 conserve, invest, disburse or utilize anything so received for the
23 purposes enumerated in this section; and reimburse the agent for
24 any expenditures properly made by the agent in the execution of the
25 powers conferred upon the agent by the power of attorney pursuant
26 to this section;
- 27 f. execute, acknowledge, seal and deliver any instrument in the
28 name of the principal or otherwise which the agent deems useful to
29 accomplish any purpose enumerated in this section;
- 30 g. prosecute, defend, submit to alternative dispute resolution,
31 mediation or arbitration, or settle and propose or accept a
32 compromise with respect to any claim existing in favor of or against
33 the principal based on or involving any insurance transaction or
34 intervene in any action or proceeding relating to the transaction;
- 35 h. hire, discharge and compensate any attorney, accountant,
36 expert witness or other assistant or assistants when the agent deems
37 the action to be appropriate for the proper execution by the agent of
38 any of the powers described in this section and for maintaining the
39 necessary records; and
- 40 i. in addition to the specific acts set forth in this section, do
41 any other act which the principal may do through an agent
42 concerning the procuring, supervising, managing, modifying,
43 enforcing, or terminating a contract of insurance or otherwise
44 involving any insurance transaction in which the principal is
45 insured or that affects the interests of the principal.

46 Source: New.

47

48 33. Estate transactions; acts authorized.

1 If a power of attorney contains language that confers authority
2 on the agent to “conduct estate transactions,” or words to that
3 effect, unless the power of attorney otherwise provides, the agent
4 shall have the authority under the power of attorney to:

5 a. accept, receive, receipt for, sell, assign, pledge, or exchange
6 a share in or payment from an estate, trust or other beneficial
7 interest;

8 b. demand or obtain money or another thing of value to which
9 the principal is, may become, or claims to be, entitled by reason of
10 an estate, trust, or other beneficial interest, by litigation or
11 otherwise;

12 c. exercise for the benefit of the principal a presently
13 exercisable general power of appointment held by the principal;

14 d. conserve, invest, disburse or use anything received for an
15 authorized purpose;

16 e. transfer an interest of the principal in real property, bonds
17 and shares, accounts with financial institutions or securities,
18 intermediaries, insurance, annuities, and other property to the
19 trustee of a revocable trust created by the principal as settlor;

20 f. apply for and to procure, in the name of the principal, letters
21 of administration, letters testamentary, letters of trusteeship, or any
22 other type of judicial or administrative authority to act as a
23 fiduciary;

24 g. demand, receive, obtain by action, proceeding or otherwise
25 any money or other thing of value to which the principal is, may
26 become or may claim to be entitled to by reason of the death testate
27 or intestate of any person or of any testamentary disposition or of
28 any trust, or by reason of the administration of the estate of a
29 decedent or absentee, or of the guardianship of a minor or
30 intellectually incapacitated person, or the administration of any trust
31 or other fund; initiate, participate in and oppose any proceeding for
32 the ascertainment of the meaning, validity or effect of any deed,
33 will, declaration of trust, or other transaction affecting the interest
34 of the principal; initiate, participate in and oppose any proceeding
35 for the removal, substitution or surcharge of a fiduciary; conserve,
36 invest disburse or use anything so received for purposes enumerated
37 in this section; and reimburse the agent for any expenditures
38 properly made by the agent in the execution of the powers conferred
39 upon the agent by the power of attorney pursuant to this section;

40 h. execute, acknowledge, seal and deliver any instrument in the
41 name of the principal or otherwise which the agent deems useful to
42 accomplish any purpose enumerated in this section;

43 i. prosecute, defend, submit to alternative dispute resolution,
44 mediation or arbitration, or settle and propose or accept a
45 compromise with respect to any claim which affects the estate of a
46 decedent, absentee, minor or intellectually incapacitated person, or
47 the administration of a trust or other fund, in any one of which the
48 principal has, or claims to have, an interest or with respect to which

1 the principal is a fiduciary, or intervene in any action or proceeding
2 related to the estate, trust or fund;

3 j. hire, discharge and compensate any attorney, accountant,
4 expert witness or other assistant or assistants when the agent deems
5 the action to be appropriate for the proper execution by the agent of
6 any of the powers described in this section and for maintaining the
7 necessary records; and

8 k. in addition to the specific acts set forth in this section, do
9 any other act which the principal may do through an agent
10 concerning the estate or the administration of a trust or other fund,
11 in any one of which the principal has, or claims to have, an interest
12 or with respect to which the principal is a fiduciary; provided that
13 with respect to beneficiary designations existing at the time the
14 power of attorney is executed, or the power to reject, renounce,
15 disclaim, release, or consent to a reduction in or modification of a
16 share in or payment from an estate, trust or other beneficial interest,
17 or the establishment of a trust or the transfer of property, money or
18 other assets to a trust already established for the benefit of the
19 principal or such people as the principal shall designate, the
20 authority granted by the power shall not include the authority to
21 change the designation of a beneficiary, or reject, renounce,
22 disclaim, release, or consent to a reduction in or modification of a
23 share in or payment from an estate, trust or other beneficial interest,
24 or the establishment of a trust or the transfer of property, money or
25 other assets to a trust already established for the benefit of the
26 principal or such people as the principal shall designate, unless the
27 authority to make such change is expressly and specifically
28 conveyed in a power of attorney executed pursuant to this act. A
29 power of attorney may be used to renounce the principal's
30 designation as a fiduciary for another person in accordance with this
31 act only if expressly and specifically conveyed in a power of
32 attorney executed pursuant to this act.

33 Source: New.

34

35 34. Litigation and other legal proceedings; acts authorized.

36 If a power of attorney contains language that confers authority
37 on the agent to "conduct litigation and other legal proceedings," or
38 words to that effect, unless the power of attorney otherwise
39 provides, the agent shall have the authority under the power of
40 attorney to:

41 a. assert and maintain before a court, administrative agency, or
42 other tribunal a claim, claim for relief, cause of action,
43 counterclaim, offset, recoupment, or defense, including an action to
44 recover property or other thing of value, recover damages sustained
45 by the principal, eliminate or modify tax liability, or seek an
46 injunction, specific performance or other relief;

- 1 b. bring an action of interpleader or to determine adverse
2 claims or intervene or interplead in any action or proceeding, and
3 act in any litigation as amicus curiae;
- 4 c. seek attachment, garnishment, order of arrest, replevin,
5 distraint, or any other preliminary, provisional, or intermediate
6 relief or effect or satisfy a judgment, lien, order or decree;
- 7 d. submit to or propose and accept a compromise, offer of
8 judgment, admission of any facts, submission of any controversy on
9 an agreed statement of facts, consent to examination before trial,
10 and generally bind the principal in the conduct of any litigation or
11 controversy as the agent deems desirable;
- 12 e. submit to alternative dispute resolution, mediation,
13 arbitration, or settle and propose or accept a compromise with
14 respect to any claim existing in favor of or against the principal, or
15 any litigation to which the principal is or may become designated a
16 party;
- 17 f. waive the issuance and service of process, accept service of
18 process, appear for the principal, designate persons upon whom
19 process directed to the principal may be served, execute and file or
20 deliver stipulations on the principal's behalf, verify pleadings,
21 appeal to appellate tribunals, procure and give surety and indemnity
22 bonds at such times and to such extent as the agent deems desirable
23 or necessary, contract and pay for the preparation and printing of
24 records and briefs, receive and execute, file or deliver any consent,
25 waiver, release, confession of judgment, satisfaction of judgment,
26 notice, agreement, or other instrument which the agent deems
27 desirable or necessary in connection with the prosecution or defense
28 of any litigation to which the principal is or may become or be
29 designated a party;
- 30 g. act for the principal with respect to bankruptcy or insolvency
31 proceedings, or with respect to a reorganization, receivership, or
32 application for the appointment of a receiver or trustee which
33 affects an interest of the principal in any chattel, bond, share,
34 commodity interest, chose in action or other thing of value;
- 35 h. pay from funds in the agent's control or for the account of
36 the principal, any judgment, award, or order against the principal or
37 to receive and conserve any money or other things of value paid in a
38 settlement made in connection with a claim or litigation and to
39 receive and endorse checks and to deposit them;
- 40 i. hire, discharge and compensate any attorney, accountant,
41 expert witness or other assistant or assistants when the agent deems
42 the action to be appropriate for the proper execution by the agent of
43 any of the powers described in this section and for maintaining the
44 necessary records; and
- 45 j. in addition to the specific acts set forth in this section, do
46 any other act which the principal may do through an agent
47 concerning any claim by or against the principal or with any

1 litigation or proceeding to which the principal is or may become or
2 be designated a party.

3 Source: New.

4

5 35. Personal and family maintenance; acts authorized.

6 If a power of attorney contains language that confers authority
7 on the agent to “conduct personal and family maintenance,” or
8 words to that effect, unless the power of attorney otherwise
9 provides, the agent shall have the authority under the power of
10 attorney to:

11 a. perform the acts necessary to maintain the customary
12 standard of living, including but not limited to the costs of food,
13 shelter, clothing, appropriate education (which may mean
14 postgraduate or vocational education, or both), incidentals, usual
15 vacations and travel expenses, domestic help, healthcare, and
16 custodial care, of the principal, the principal’s spouse or domestic
17 partner or partner in civil union, the principal’s children, other
18 individuals legally entitled to be supported by the principal, and any
19 other individuals whom the principal has customarily supported or
20 indicated an intent to support, regardless of whether living when the
21 power of attorney is executed or later born;

22 b. make periodic payments of child support and other family
23 maintenance required by a court or governmental agency or an
24 agreement to which the principal is a party;

25 c. continue any provision made by the principal for
26 automobiles or other means of transportation, including but not
27 limited to registering, licensing, insuring, and replacement, for the
28 individuals described in paragraph a.;

29 d. maintain credit and debit accounts, and open new accounts,
30 as appropriate, for the individuals described in paragraph a.;

31 e. continue payments incidental to membership or affiliation of
32 the principal in a religious institution, club, society, order or other
33 organization or continue contributions to those organizations;

34 f. continue the discharge of any services or duties assumed by
35 the principal, prior to the creation of the agency or thereafter, to any
36 parent, relative or friend of the principal;

37 g. act as the principal’s personal representative pursuant to the
38 “Health Insurance Portability and Accountability Act of 1996)
39 ”Pub. L. 104-191 and applicable regulations, in order to obtain
40 access to the principal’s health-care information and communicate
41 with the principal’s health-care provider; and

42 h. demand, receive, obtain by action, proceeding or otherwise
43 any money or other thing of value to which the principal is or may
44 become or may claim to be entitled as a salary, wages, commission
45 or other remuneration for services performed, or as a dividend or
46 distribution upon any stock, or as interest or principal upon any
47 indebtedness or periodic distribution of profits from any partnership
48 or business in which the principal has or claims an interest, and

- 1 endorse, collect or otherwise realize upon any instrument for the
2 payment so received;
- 3 i. use any asset of the principal for the performance of the
4 powers enumerated in this section, including but not limited to the
5 power to draw money by check or otherwise from any bank deposit
6 of the principal, to sell any land, real property, tangible personal
7 property, bond, share, commodity interest, chose in action or other
8 asset of the principal, to borrow money and to pledge as security for
9 such loan, any asset, including insurance, which belongs to the
10 principal;
- 11 j. execute, acknowledge, verify, seal, file and deliver any
12 application, consent, petition, notice, release, waiver, agreement or
13 other instrument that the agent deems desirable to accomplish any
14 purpose enumerated in this section;
- 15 k. prosecute, defend, submit to alternative dispute resolution,
16 mediation or arbitration, or settle and propose or accept a
17 compromise with respect to any claim existing in favor of or against
18 the principal based on or involving any transaction enumerated in
19 this section or to intervene in any action or proceeding relating to
20 the transaction;
- 21 l. hire, discharge and compensate any attorney, accountant,
22 expert witness or other assistant or assistants when the agent deems
23 the action to be appropriate for the proper execution by the agent of
24 any of the powers described in this section and for maintaining the
25 necessary records; and
- 26 m. in addition to the specific acts set forth in this section, do
27 any other act which the principal may do through an agent for the
28 welfare of the spouse, domestic partner or partner in civil union,
29 children or dependents of the principal or for the preservation and
30 maintenance of the other personal relationships of the principal to
31 parents, relatives, friends and organizations.
- 32 Source: New.

- 33
- 34 36. Health care billing, recordkeeping and payment; acts
35 authorized.
- 36 a. If a power of attorney contains language that confers
37 authority on the agent to “conduct health care billing, recordkeeping
38 and payment,” or words to that effect, unless the power of attorney
39 otherwise provides, the agent shall have the authority under the
40 power of attorney to:
- 41 (1) access records relating to the provision of health care and
42 make decisions relating to the past, present or future payment for
43 the provision of health care consented to by or on behalf of the
44 principal or the principal’s health care agent authorized under State
45 law;
- 46 (2) keep records of all cash received and disbursed for or on
47 account of the principal, of all credits and debits to the account of

1 the principal, and of all transactions affecting in any way the assets
2 and liabilities of the principal;

3 (3) prepare, execute and file all tax, social security,
4 unemployment insurance and information returns, required by the
5 laws of the United States, of any state or of any subdivision thereof
6 or of any foreign government; and prepare, execute and file all
7 other papers and instruments which the agent deems desirable for
8 the safeguarding of the principal against excess or illegal taxation
9 or against penalties imposed for a claimed violation of any law or
10 other governmental regulation;

11 (4) prepare, execute and file any record, report, statement or
12 other document to safeguard or promote the principal's interest,
13 under a statute or governmental regulation;

14 (5) prosecute, defend, submit to alternative dispute resolution,
15 mediation or arbitration, or settle and propose or accept a
16 compromise with respect to any claim existing in favor of or against
17 the principal based on or involving any healthcare billing,
18 recordkeeping and payment that affects the interests of the
19 principal;

20 (6) hire, discharge and compensate any attorney, accountant,
21 expert witness or other assistant or assistants when the agent deems
22 the action to be appropriate for the proper execution by the agent of
23 any of the powers described in this section and for maintaining the
24 necessary records; and

25 (7) in addition to the specific acts set forth in this section, do
26 any other act which the principal may do through an agent
27 concerning any healthcare billing, recordkeeping and payment that
28 affects the interests of the principal.

29 b. The authority granted under this section shall be construed to
30 mean that the principal authorizes the agent to act as the principal's
31 representative pursuant to the "Health Insurance Portability and
32 Accountability Act of 1996 Pub. law 104-191 and applicable
33 regulations, in order to obtain access to the principal's health-care
34 information and communicate with the principal's health-care
35 provider.

36 c. The authority granted under this section shall not include
37 authorization for the agent to make other medical or health care
38 decisions for the principal which may be authorized only by an
39 advanced directive for health care, in accordance with section 1 of
40 P.L. 1991, c.201 (C.26:2H-53 et seq.). P.L. 2005, c. 233 (26:2H-103
41 et. seq.), or both, as applicable.

42 Source: New.

43

44 37. Retirement benefit transactions; acts authorized.

45 For purposes of this section "retirement benefits" means a plan
46 or account created by an employer, the principal or another
47 individual to provide retirement benefits or deferred compensation
48 of which the principal is a participant, beneficiary or owner,

1 including a plan or account governed by the Internal Revenue Code,
2 as appropriate. If a power of attorney contains language that
3 confers authority on the agent to “conduct retirement benefit
4 transactions,” or words to that effect, unless the power of attorney
5 otherwise provides, the agent shall have the authority under the
6 power of attorney to:

- 7 a. select the form and timing of payments under a retirement
8 plan, and contribute to and withdraw benefits from the plan;
- 9 b. make a rollover, including a direct trustee-to-trustee
10 rollover, of benefits from one retirement plan to another, or make
11 investment directions;
- 12 c. establish a retirement plan in the principal’s name;
- 13 d. exercise investment powers available under a retirement
14 plan;
- 15 e. borrow from, sell assets to, or purchase assets from a
16 retirement plan;
- 17 f. make investment directions, select and change payment
18 options, and exercise any other election for the principal with
19 regard to any retirement benefit or plan in which the principal has
20 an interest, provided that the authority granted hereby shall not
21 include the authority to add, delete or otherwise change the
22 designation of the beneficiaries in effect for any such retirement
23 benefit or plan, unless the authority to add, delete or otherwise
24 change the designation of the beneficiaries is expressly and
25 specifically conveyed in a power of attorney executed pursuant to
26 this act;
- 27 g. convert to or from a Roth IRA;
- 28 h. execute, acknowledge, verify, seal, file and deliver any
29 application, consent, petition, notice, release, waiver, agreement or
30 other instrument that the agent deems desirable to accomplish any
31 purpose enumerated in this section;
- 32 i. prosecute, defend, submit to alternative dispute resolution,
33 mediation or arbitration, or settle and propose or accept a
34 compromise with respect to any claim existing in favor of or against
35 the principal based on or involving any retirement benefit or plan or
36 intervene in any action or proceeding relating to the transaction;
- 37 j. hire, discharge and compensate any attorney, accountant,
38 expert witness or other assistant or assistants when the agent deems
39 the action to be appropriate for the proper execution by the agent of
40 any of the powers described in this section and for maintaining the
41 necessary records; and
- 42 k. in addition to the specific acts set forth in this section, do
43 any other act which the principal may do through an agent
44 concerning any retirement benefit or plan maintained by the
45 principal or in which the principal has an interest or may thereafter
46 have an interest.

47 Source: New.

1 38. Tax matters; acts authorized.

2 a. If a power of attorney contains language that confers
3 authority on the agent to “conduct tax matters,” or words to that
4 effect, unless the power of attorney otherwise provides, the agent
5 shall have the authority under the power of attorney to:

6 (1) prepare, sign, and file federal, state, local and foreign
7 income, gift, payroll, property, and any other tax returns, claims for
8 refunds, requests for extension of time, petitions regarding tax
9 matters, and any other tax-related documents;

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 federal,
14 state, local or foreign tax law;

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

17 (5) act for the principal in all tax matters in connection with any
18 authority enumerated in sections 27 through 39 of P.L. , c. (C.)
19 (pending before the legislature as this bill);

20 (6) execute, acknowledge, verify, seal, file and deliver any
21 application, consent, petition, notice, release, waiver, agreement or
22 other instrument that the agent deems desirable to accomplish any
23 purpose enumerated in this section;

24 (7) prosecute, defend, submit to alternative dispute resolution,
25 mediation or arbitration, or settle and propose or accept a
26 compromise with respect to any claim existing in favor of or against
27 the principal based on or involving any tax matters or intervene in
28 any action or proceeding relating to the transaction;

29 (8) hire, discharge and compensate any attorney, accountant,
30 expert witness or other assistant or assistants when the agent deems
31 the action to be appropriate for the proper execution by the agent of
32 any of the powers described in this section and for maintaining the
33 necessary records; and

34 (9) in addition to the specific acts set forth in this section, do
35 any other act which the principal may do through an agent
36 concerning any tax matters involving the principal or in which the
37 principal has an interest or may thereafter have an interest
38 regardless of whether any specific act is authorized by the
39 principal’s execution of an IRS Form 2848; “Power of Attorney and
40 Declaration of Representative” or similar document.

41 b. The powers explicitly authorized in this section shall not be
42 construed to diminish any like powers authorized in any other
43 section of this act.

44 Source: New.

45

46 39. Collect and disburse benefits from governmental programs
47 or civil or military service; acts authorized.

1 If a power of attorney contains language that confers authority
2 on the agent to “collect and disburse benefits from governmental
3 programs or civil or military service,” or words to that effect, unless
4 the power of attorney otherwise provides, the agent shall have the
5 authority under the power of attorney to:

6 a. execute vouchers in the name of the principal for allowances
7 and reimbursements payable by the United States or a foreign
8 government or by a state or subdivision of a state, or by another
9 jurisdiction, to the principal, including allowances and
10 reimbursements for transportation of the individuals described in
11 subsection a. of section 35 of P.L. , c. (C.), pending before
12 Legislature as this bill) and for shipment of their household effects;

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

19 c. enroll in, apply for, select, reject, change, amend, or
20 discontinue a benefit or program on the principal’s behalf;

21 d. prepare, file and prosecute a claim of the principal to any
22 benefit or assistance, financial or otherwise, to which the principal
23 claims to be entitled under a statute or governmental regulation,
24 including but not limited to any benefit or assistance arising from or
25 based upon military service performed prior or subsequent to
26 creation of the agency by the principal or by any person related to
27 the principal by blood or by marriage, domestic partnership or as
28 partners in civil union, to execute any receipt or other instrument
29 which the agent deems desirable or necessary for the enforcement
30 or the collection of the claim;

31 e. receive the financial proceeds of any claim of the type
32 described in this section, converse, invest, disburse or use anything
33 so received for a lawful purpose;

34 f. communicate with any representative or employee of a
35 government, governmental subdivision, agency, or instrumentality
36 on behalf of the principal;

37 g. prosecute, defend, submit to alternative dispute resolution,
38 mediation or arbitration, or settle and propose to accept a
39 compromise with respect to any claim existing in favor of or against
40 the principal based on or involving any benefit from governmental
41 programs or from civil or military service or intervene in any action
42 or proceeding relating to the benefit;

43 h. hire, discharge and compensate any attorney, accountant,
44 expert witness or other assistant or assistants when the agent deems
45 the action to be appropriate for the proper execution by the agent of
46 any of the powers described in this section and for maintaining the
47 necessary records; and

1 i. in addition to the specific acts set forth in this section, do
2 any other act which the principal may do through an agent to assure
3 the maximum possible benefit from governmental programs or from
4 civil or military service performed prior to or after the creation of
5 the agency.

6 Source: New.

7
8 40. The provisions of this act shall hereafter apply to any power
9 of attorney made pursuant to the provisions of P.L. 2000, c. 109 (C.
10 46:2B-8.1 to 46:2B-8.14).

11
12 41. The following are repealed:

13 Section 1 through 14, inclusive, of P.L. 2000, c.109 (C. 46:2B-
14 8.1 through 46:2B-8.14).

15 Section 1 of P.L. 2003, c. 138 (C. 46:2B-8.13a)

16 Section 1 through 10, inclusive, of P.L. 1991, c.95 (C. 46:2B-10
17 through 46:2B-19.)

18
19 42. This act shall take effect on the 60th day after the date of
20 enactment.

21
22
23 STATEMENT
24

25 This legislation is based upon recommendations of the New
26 Jersey Law Revision Commission, (“the NJLRC”), in a published
27 report entitled “Revised Final Report Relating to General Durable
28 Power of Attorney Act” (“the report”), dated September 17, 2010.

29 The introduction to the report declares that in 2006, the National
30 Conference of Commissioners on Uniform State Laws, approved
31 and recommended for enactment in all states the *Uniform Power of*
32 *Attorney Act* (UPOAA), in response to a national review of state
33 power of attorney legislation. Based upon that uniform enactment,
34 and a comprehensive review of recent amendments to the New York
35 durable power of attorney law, Laws 2008, ch. 644, (signed into law
36 as Chapter 4 of the Laws of 2009, amending the General
37 Obligations Law (Chapter 644)), (“Chapter 644”). the NJLRC was
38 prompted to evaluate the need for revision to the current New
39 Jersey power of attorney statutes, Title 46:2B-8.1 through 46:2B-
40 8.14. Known as the Revised Durable Power of Attorney Act (“the
41 RDPAA”), this law was enacted in 2000, replacing an earlier New
42 Jersey power of attorney law.

43 Section 1. This section declares that the act shall be known and
44 may be cited as, the “General Durable Power of Attorney Act.” The
45 NJLRC declares in the report that the sole reason for a change in
46 the name of the act is to distinguish the current law from the
47 proposed revised law. This new act combines elements of the
48 current Revised Durable Power of Attorney Act with elements of

1 the statutes pertaining to banking power of attorneys and adds new
2 elements adopted from other sources as noted.

3 Section 2. The definitions section is new. Some of the
4 definitions are adopted from current section 46:2B-10; some are
5 extrapolated from current section 46:2B-8.2; some from, Chapter
6 644, and some from UPOAA. The definition of “durable” is
7 derived in part from source section 46:2B-8.2, and the definition of
8 “incapacity of the principal” is adopted from the definition of
9 “incapacitated individual” in Title 3B. The term “incapacity” is no
10 longer coupled with the term “disability” as in the current act
11 because disability does not necessarily render someone incapable of
12 property and business management. The term “disability,”
13 however, is included within the definition of incapacity of the
14 principal and its meaning is consistent with Title 3B. The definition
15 of “capacity of the principal to execute a power of attorney” has
16 been added to clarify that a principal who may be incapacitated for
17 purposes of durability of the power nonetheless may have had the
18 capacity to make the power of attorney.

19 The term “agent,” which is used in the current statute governing
20 banking powers of attorney, is now used here to replace the term
21 “attorney-in-fact” to avoid confusion by the public about the
22 meaning of the term and the differences between an attorney-in-fact
23 and an attorney-at-law. The term “account” is used in the current
24 statute governing banking powers but has been modified to include
25 financial institutions as well as banking institutions. The term
26 “safety deposit company” is used in the current statute governing
27 banking powers. The term “signature” is adopted from current
28 N.J.S. 46:14-4.2.

29 Section 3. This is a new provision, recognizes the validity,
30 enforceability and revocation of durable powers of attorney created
31 prior to enactment of the proposed new law.

32 Section 4. This is a proposed new section, concerning the
33 applicability of the act, is substantially derived from the UPOAA,
34 and, suggestions raised as a result of recent amendments to the New
35 York statute. Pertinent provisions of this section are summarized:

36 Paragraph (2) of subsection a. excludes from the act a proxy or
37 other delegation to exercise voting rights or management rights with
38 respect to an entity. It is adopted from the UPOAA. Paragraph
39 (5) of subsection a. is adopted from the UPOAA and, addresses
40 situations where, “due to the agent’s interest in the subject matter of
41 the power, the agent is not intended to act as the principal’s
42 fiduciary. . . .”

43 Paragraph (6) of subsection a. clarifies that the act applies only
44 to powers of attorney made by natural persons.

45 Paragraph (7) of subsection a. excludes from the act a grant of
46 limited authority that does not require the authorized person to use
47 any discretion. Such limited authority, includes, but is not limited
48 to, the power to accept service of pleadings or other documents on

1 the principal's behalf, or the authority to sign a document, such as a
2 deed or contract, on behalf of the principal in connection with a
3 transaction, or a stock power which by its terms appoints an attorney
4 in fact solely to effect the transfer on the books of the issuer.

5 Paragraph (8) of subsection a. excludes from the act any power
6 contained within an agreement governing the internal affairs of a
7 corporation, limited liability company, partnership or cooperative or
8 condominium association, including, but not limited to, a
9 shareholder agreement, partnership agreement, limited liability
10 company operating agreement, or an offering plan, bylaws or
11 declaration of condominium.

12 Paragraph (10) of subsection a. is a "catchall" provision to cover
13 a myriad of other documents, or provisions in documents,
14 designated as "powers of attorney" though not contemplated or
15 intended to be governed by this act. An example would be a
16 discretionary brokerage account agreement or a trading
17 authorization agreement.

18 Subsection b. of this section permits a principal to expressly
19 provide in a power of attorney that the power of attorney is
20 governed by this act regardless of whether this act would apply to
21 the power of attorney.

22 Section 5. The source sections are merged and modified in this
23 new section. The terms "durable" and "incapacity of the principal"
24 are now defined in proposed section 46:2B-20.2. Subsection a. is
25 modeled on Section 104 of the UPOAA. Subsection b. is modeled
26 on source provision N.J.S. 46:2B-8.3 and 46:2B-16 pertaining to
27 banking institutions.

28 Unlike the current act -- which provides that in order to be
29 durable, the power of attorney must recite certain language showing
30 the principal's intent to make it so -- the new act now provides that
31 a power of attorney is durable unless otherwise stated. This is
32 based on the belief -- as articulated in the comments to the UPOAA -- that
33 most principals prefer that a power be durable to hedge against the
34 need for guardianship. The second sentence of subsection a. is
35 added because third parties, especially those unfamiliar with New
36 Jersey law or those without access to our statutes, may not be aware
37 of the durability (unless otherwise stated) conferred by the revised
38 provision.

39 Section 6. The proposed new section is substantially derived
40 from the UPOAA and Chapter 644. New subsection a. (3) replaces
41 current section 46:2B-8.9, which required that the power of attorney
42 be in writing and duly signed and acknowledged as a deed. The
43 new provision requires acknowledgement and proof of the
44 principal's signature before two witnesses, neither of which is the
45 agent, as well as a notary public or other officer in accordance with
46 N.J.S. 46:14-6.1. A signature in compliance with this provision is
47 presumed to be genuine (as is the case in the UPOAA, Section 104).

1 A provision has been added to clarify that powers of attorney
2 that grant the authority to “conduct real estate transactions” must be
3 recorded prior to or simultaneously with the document executed by
4 the agent in connection with the real estate transaction. The
5 standards for validity under this section and recordability under
6 N.J.S. 46:15-1.1, are not the same, and so although a power of
7 attorney which meets the requirements of N.J.S. 46:15-1.1 is
8 recordable, recording does not in and of itself mean the power of
9 attorney is otherwise valid within the meaning of the section.

10 Section 7. The current act does not provide or suggest a form of
11 power of attorney. This section sets forth guidelines for the
12 contents of a power of attorney. Subsection a. establishes those
13 issues that should be addressed in a power of attorney in some
14 manner although no form of power of attorney is mandated.
15 Subsection b. sets forth illustrative guidelines. Both sets of
16 guidelines are derived substantially from current practice, portions
17 of the forms provided in Chapter 644 and the UPOAA that are
18 deemed workable. Clarification is added regarding the requirement
19 of preparing in recordable form those powers of attorney that grant
20 the authority to conduct real estate transactions. Powers of attorney
21 that grant an agent the authority to conduct health care billing,
22 recordkeeping and payment also may authorize the agent to act as
23 the personal representative of the principal for purposes of HIPAA.

24 Section 8. The source statute is incorporated into this new
25 section. Subsections b. and c. are derived, in part, from Section 114
26 of the UPOAA suggestions.

27 Section 9. The source statute is incorporated into this new
28 section with some modification in language based on the UPOAA.
29 Subsection c. of the source statute has been moved to new provision
30 46:2B-20.17c.

31 Section 10. This section is derived substantially from its source
32 sections with some modifications in language. Subsection d. is new
33 and derived, from among other sources, from Chapter 644.

34 Subsection b. of this section deviates from its source provision
35 by the deletion of the word “actual” before the word “notice.

36 Subsection f. is derived from source section 46:2B-8.11 but adds
37 the option of electronic transmission of an original power, as
38 provided in the UPOAA (Section 106 d.). Subsection f. also
39 provides a third method of certifying true copies of original powers
40 of attorney and requires prompt return of the original power to the
41 presenter.

42 Section 11. This section is derived substantially from its source
43 and merges the banking provisions with the current act, with some
44 modifications in language.

45 Section 12. This new section is derived from a form provided by
46 a title group company.

47 Section 13. This section provides for a summary method to
48 compel third party acceptance of a power of attorney, the form and

1 execution of which complies with the statute. The proposed new
2 section is derived from Chapter 644 (section 5-1510).

3 Section 14. The proposed new section is substantially derived
4 from a combination of Chapter 644 and the UPOAA. Unlike the
5 current statute and the UPOAA, but in keeping with New York's
6 statute, this proposed revised section presumes that the principal
7 intends the co-agents to act jointly unless otherwise provided.
8 Subsection d. is adopted from the UPOAA.

9 Section 15. This section is derived substantially from its source
10 with some modifications in language.

11 Section 16. This section is derived substantially from source
12 section 46:2B-8.5 with some modifications in language. Reference
13 to "actual" before the word "knowledge" has been deleted. Notice,
14 as defined in this act, or constructive knowledge, is now sufficient.

15 Section 17. Section 17 incorporates elements of the source
16 statutes and section 3B:3-13 pertaining to the revocation of wills,
17 and adopts some language from a combination of Chapter 644 and
18 the UPOAA. Subsection e. refers to new section 46:2B-20.16 and
19 reliance upon the concept (as adopted from source section 46:2B-
20 8.5) that an agent's actions may bind a principal or principal's
21 successors in interest, despite the revocation or termination of the
22 power of attorney, if the agent acts in good faith and without
23 knowledge of the principal's death or incapacity.

24 Section 18. The proposed new section is substantially derived
25 from Chapter 644 (section 5-1507) and the suggestions that the
26 relationship of agent and principal be expressly stated when the
27 agent signs on the principal's behalf.

28 Section 19. This section is substantially derived from the source
29 statute with the modification that the direction regarding
30 compensation be provided, if at all, in the power of attorney itself
31 and not in a separate written document. Possible reimbursement for
32 reasonable expenses incurred, permitted in the UPOAA (section
33 112), is also included here.

34 Section 20. This new section is derived substantially from its
35 source with some modifications.

36 Section 21. The current statute does not address powers of
37 attorney executed in other jurisdictions. Proposed new subsection
38 a. is substantially derived from Chapter 644. Proposed new
39 subsection b. is substantially derived from the UPOAA.

40 Section 22. This section is substantially derived from the source
41 statute but also adds elements from Chapter 644 and the UPOAA.
42 This section permits the authority to make gifts and other gratuitous
43 transfers by express and specific provision in the power of attorney
44 itself and sets out guidelines for doing so. This section also permits
45 certain other acts only by express and specific provision in the
46 power of attorney.

1 Section 23. This section is derived substantially from its source
2 with some modifications to expand its application beyond banking
3 institutions.

4 Section 24. This section is substantially derived from the
5 UPOAA with some modifications.

6 Section 25. This section is new and is self-explanatory. It is
7 derived from the UPOAA.

8 Section 26. This section is derived substantially from its source.

9 Section 27. The proposed new section is substantially derived
10 from the source provision with some modifications to language and
11 to expand the section's application to financial institutions that may
12 not be banking institutions.

13 Sections 28 and 29 are substantially derived from Chapter 644,
14 but follow the format established by current section 46:2B-11
15 pertaining to banking powers.

16 Sections 30 through 39 are substantially derived from Chapter
17 644 and the UPOAA, but follow the format established by current
18 section 46:2B-11 pertaining to banking powers.

19 The bill repeals section 1 through 14, inclusive, of P.L. 2000,
20 c.109 (C. 46:2B-8.1 through 46:2B-8.14) and section 1 of P.L.
21 2003, c. 138 (C. 46:2B-8.13a) and P.L. 1991, c.95 (C. 46:2B-10
22 through 46:2B-19).