

1 "Good faith" means honesty in fact.

2 "Incapacitated" or "incapacity" means the inability of an
3 individual to manage property or business affairs because the
4 individual:

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

8 (2) (A) Missing;
9 (B) Detained, including incarcerated in a penal
10 system; or
11 (C) Outside of the United States and unable to
12 return.

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

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

21 "Presently exercisable general power of appointment" means
22 the power exercisable at the time in question to vest absolute



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

12 "Principal" means an individual who grants authority to an
13 agent in a power of attorney.

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

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

20 "Sign" means, with present intent to authenticate or adopt
21 a record, to:

22 (1) Execute or adopt a tangible symbol; or



1 (2) Attach to or logically associate with the record an
2 electronic sound, symbol, or process.

3 "State" means a state of the United States, the District of
4 Columbia, Puerto Rico, the United States Virgin Islands, or any
5 territory or insular possession subject to the jurisdiction of
6 the United States.

7 "Stocks and bonds" means stocks, bonds, mutual funds, and
8 all other types of securities and financial instruments, whether
9 held directly, indirectly, or in any other manner. The term
10 does not include commodity futures contracts and call or put
11 options on stocks or stock indexes.

12 **§ -2 Applicability.** This chapter applies to all powers
13 of attorney except:

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

18 (2) A power to make health care decisions;

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



1 (4) A power created on a form prescribed by a government
2 or governmental subdivision, agency, or
3 instrumentality for a governmental purpose.

4 § -3 Power of attorney. (a) A power of attorney
5 created under this chapter is durable unless it expressly
6 provides that it is terminated by the incapacity of the
7 principal.

8 (b) A power of attorney must be signed by the principal or
9 in the principal's conscious presence by another individual
10 directed by the principal to sign the principal's name on the
11 power of attorney. A signature on a power of attorney is
12 presumed to be genuine if the principal acknowledges the
13 signature before a notary public or other individual authorized
14 by law to take acknowledgments.

15 (c) A power of attorney executed in Hawaii on or after
16 January 1, 2015, is valid if its execution complied with the law
17 of this State as it existed at the time of execution.

18 (d) A power of attorney executed outside of Hawaii is
19 valid in this State if, when the power of attorney was executed,
20 the execution complied with:



1 (1) The law of the jurisdiction that determines the
2 meaning and effect of the power of attorney pursuant
3 to subsection (f); or

4 (2) The requirements for a military power of attorney
5 pursuant to title 10 U.S.C. section 1044b, as amended.

6 (e) Except as otherwise provided by statute other than
7 this chapter, a photocopy or electronically transmitted copy of
8 an original power of attorney has the same effect as the
9 original.

10 (f) The meaning and effect of a power of attorney is
11 determined by the law of the jurisdiction indicated in the power
12 of attorney and, in the absence of an indication of
13 jurisdiction, by the law of the jurisdiction in which the power
14 of attorney was executed.

15 § -4 **Nomination of conservator or guardian; relation of**
16 **agent to court-appointed fiduciary.** (a) In a power of
17 attorney, a principal may nominate a conservator or guardian of
18 the principal's estate, or conservator or guardian of the
19 principal's person for consideration by the court if protective
20 proceedings for the principal's estate or person are begun after
21 the principal executes the power of attorney. Except for good
22 cause shown or disqualification, the court shall make its



1 appointment in accordance with the principal's most recent
2 nomination.

3 (b) If, after a principal executes a power of attorney, a
4 court appoints a guardian of the principal's estate or other
5 fiduciary charged with the management of some or all of the
6 principal's property, the agent shall be accountable to the
7 fiduciary as well as to the principal. The power of attorney is
8 not terminated and the agent's authority continues unless
9 limited, suspended, or terminated by the court.

10 § -5 Effective date of power of attorney. (a) A power
11 of attorney is effective when executed unless the principal
12 provides in the power of attorney that it becomes effective at a
13 future date or upon the occurrence of a future event or
14 contingency.

15 (b) If a power of attorney becomes effective upon the
16 occurrence of a future event or contingency, the principal, in
17 the power of attorney, may authorize one or more persons to
18 determine in a writing or other record that the event or
19 contingency has occurred.

20 (c) If a power of attorney becomes effective upon the
21 principal's incapacity and the principal has not authorized a
22 person to determine whether the principal is incapacitated, or



1 the person authorized is unable or unwilling to make the
2 determination, the power of attorney becomes effective upon a
3 determination in a writing or other record by:

4 (1) A physician or licensed psychologist that the
5 principal has an impairment in the ability to receive
6 and evaluate information or make or communicate
7 decisions even with the use of technological
8 assistance; or

9 (2) An attorney at law, a judge, or an appropriate
10 governmental official that the principal is
11 incapacitated.

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

20 § -6 Termination of power of attorney or agent's
21 authority. (a) A power of attorney terminates when:

22 (1) The principal dies;



- 1 (2) The principal becomes incapacitated, if the power of
- 2 attorney is not durable;
- 3 (3) The principal revokes the power of attorney;
- 4 (4) The power of attorney provides that it terminates;
- 5 (5) The purpose of the power of attorney is accomplished;
- 6 or
- 7 (6) The principal revokes the agent's authority or the
- 8 agent dies, becomes incapacitated, or resigns, and the
- 9 power of attorney does not provide for another agent
- 10 to act under the power of attorney.
- 11 (b) An agent's authority terminates when:
- 12 (1) The principal revokes the authority;
- 13 (2) The agent dies, becomes incapacitated, or resigns;
- 14 (3) An action is filed for the dissolution or annulment of
- 15 the agent's marriage to the principal or their legal
- 16 separation, unless the power of attorney otherwise
- 17 provides; or
- 18 (4) The power of attorney terminates.
- 19 (c) Unless the power of attorney otherwise provides, an
- 20 agent's authority is exercisable until the authority terminates
- 21 under subsection (b), notwithstanding a lapse of time since the
- 22 execution of the power of attorney.



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

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

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

19 § -7 **Co-agents and successor agents.** (a) A principal
20 may designate two or more persons to act as co-agents. Unless
21 the power of attorney otherwise provides, each co-agent may
22 exercise its authority independently.



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

7 (1) Has the same authority as that granted to the original
8 agent; and

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

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

17 (d) An agent that has actual knowledge of a breach or
18 imminent breach of fiduciary duty by another agent shall notify
19 the principal and, if the principal is incapacitated, take any
20 action reasonably appropriate in the circumstances to safeguard
21 the principal's best interest. An agent that fails to notify
22 the principal or take action as required by this subsection is



1 liable for the reasonably foreseeable damages that could have
2 been avoided if the agent had notified the principal or taken
3 such action.

4 **§ -8 Reimbursement and compensation of agent.** Unless
5 the power of attorney otherwise provides, an agent is entitled
6 to reimbursement of expenses reasonably incurred on behalf of
7 the principal and to compensation that is reasonable under the
8 circumstances.

9 **§ -9 Agent's acceptance.** Except as otherwise provided
10 in the power of attorney, a person accepts appointment as an
11 agent under a power of attorney by exercising authority or
12 performing duties as an agent or by any other assertion or
13 conduct indicating acceptance.

14 **§ -10 Agent's duties.** (a) Notwithstanding provisions
15 in the power of attorney, an agent that has accepted appointment
16 shall:

- 17 (1) Act in accordance with the principal's reasonable
18 expectations to the extent actually known by the agent
19 and, otherwise, in the principal's best interest;
- 20 (2) Act in good faith; and
- 21 (3) Act only within the scope of authority granted in the
22 power of attorney.



- 1 (b) Except as otherwise provided in the power of attorney,
2 an agent that has accepted appointment shall:
- 3 (1) Act loyally for the principal's benefit;
- 4 (2) Act so as not to create a conflict of interest that
5 impairs the agent's ability to act impartially in the
6 principal's best interest;
- 7 (3) Act with the care, competence, and diligence
8 ordinarily exercised by agents in similar
9 circumstances;
- 10 (4) Keep a record of all receipts, disbursements, and
11 transactions made on behalf of the principal;
- 12 (5) Cooperate with a person that has authority to make
13 health care decisions for the principal to carry out
14 the principal's reasonable expectations to the extent
15 actually known by the agent and, otherwise, act in the
16 principal's best interest; and
- 17 (6) Attempt to preserve the principal's estate plan, to
18 the extent actually known by the agent, if preserving
19 the plan is consistent with the principal's best
20 interest based on all relevant factors, including:
- 21 (A) The value and nature of the principal's property;



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

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

6 (D) Eligibility for a benefit, a program, or
7 assistance under a statute or regulation.

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

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

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



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

3 (g) An agent that exercises authority to delegate to
4 another person the authority granted by the principal or that
5 engages another person on behalf of the principal is not liable
6 for an act, error of judgment, or default of that person if the
7 agent exercises care, competence, and diligence in selecting and
8 monitoring the person.

9 (h) Except as otherwise provided in the power of attorney,
10 an agent is not required to disclose receipts, disbursements, or
11 transactions conducted on behalf of the principal unless ordered
12 by a court or requested by the principal, a guardian, a
13 conservator, another fiduciary acting for the principal, a
14 governmental agency having authority to protect the welfare of
15 the principal, or, upon the death of the principal, by the
16 personal representative or successor in interest of the
17 principal's estate. If so requested, within thirty days the
18 agent shall comply with the request or provide a writing or
19 other record substantiating why additional time is needed and
20 shall comply with the request within an additional thirty days.

21 § -11 Exoneration of agent. A provision in a power of
22 attorney relieving an agent of liability for breach of duty is



1 binding on the principal and the principal's successors in
2 interest except to the extent the provision:

3 (1) Relieves the agent of liability for breach of duty
4 committed dishonestly, with an improper motive, or
5 with reckless indifference to the purposes of the
6 power of attorney or the best interest of the
7 principal; or

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

10 § -12 **Judicial relief.** (a) The following persons may
11 petition a court to construe a power of attorney or review the
12 agent's conduct, and grant appropriate relief:

13 (1) The principal or the agent;

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

16 (3) A person authorized to make health care decisions for
17 the principal;

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

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

21 (6) A person named as a beneficiary to receive any
22 property, benefit, or contractual right on the



1 principal's death or as a beneficiary of a trust
2 created by or for the principal that has a financial
3 interest in the principal's estate;

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

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

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

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

14 § -13 **Agent's liability.** An agent that violates this
15 chapter is liable to the principal or the principal's successors
16 in interest for the amount required to:

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

19 (2) Reimburse the principal or the principal's successors
20 in interest for the attorney's fees and costs paid on
21 the agent's behalf.



1 § -14 **Agent's resignation; notice.** Unless the power of
2 attorney provides a different method for an agent's resignation,
3 an agent may resign by giving notice to the principal and, if
4 the principal is incapacitated:

5 (1) To the conservator or guardian, if one has been
6 appointed for the principal, and a co-agent or
7 successor agent; or

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

9 (A) The principal's caregiver;

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

13 (C) A governmental agency having authority to protect
14 the welfare of the principal.

15 § -15 **Acceptance of and reliance upon acknowledged power**

16 **of attorney.** (a) For purposes of this section and section

17 -16, "acknowledged" means purportedly verified before a

18 notary public or other individual authorized to take

19 acknowledgements.

20 (b) A person that in good faith accepts an acknowledged

21 power of attorney without actual knowledge that the signature is



1 not genuine may rely upon the presumption under section -3(b)
2 that the signature is genuine.

3 (c) A person that in good faith accepts an acknowledged
4 power of attorney without actual knowledge that the power of
5 attorney is void, invalid, or terminated, that the purported
6 agent's authority is void, invalid, or terminated, or that the
7 agent is exceeding or improperly exercising the agent's
8 authority may rely upon the power of attorney as if the power of
9 attorney were genuine, valid and still in effect, the agent's
10 authority were genuine, valid and still in effect, and the agent
11 had not exceeded and had properly exercised the authority.

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

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

18 (2) An English translation of the power of attorney if the
19 power of attorney contains, in whole or in part,
20 language other than English; and

21 (3) An opinion of counsel as to any matter of law
22 concerning the power of attorney if the person making



1 the request provides in a writing or other record the
2 reason for the request.

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

7 (f) For purposes of this section and section -16, a
8 person that conducts activities through employees is without
9 actual knowledge of a fact relating to a power of attorney, a
10 principal, or an agent if the employee conducting the
11 transaction involving the power of attorney is without actual
12 knowledge of the fact.

13 § -16 Liability for refusal to accept acknowledged power
14 of attorney. (a) Except as otherwise provided in subsection
15 (b):

16 (1) A person shall either accept an acknowledged power of
17 attorney or request a certification, a translation, or
18 an opinion of counsel under section -15(d) no later
19 than seven business days after presentation of the
20 power of attorney for acceptance;

21 (2) If a person requests a certification, a translation,
22 or an opinion of counsel under section -15(d), the



1 person shall accept the power of attorney no later
2 than five business days after receipt of the
3 certification, translation, or opinion of counsel; and

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

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

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

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

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

18 (4) A request for a certification, a translation, or an
19 opinion of counsel under section -15(d) is refused;

20 (5) The person in good faith believes that the power is
21 not valid or that the agent does not have the
22 authority to perform the act requested, whether or not



1 a certification, a translation, or an opinion of
2 counsel under section -15(d) has been requested or
3 provided; or

4 (6) The person makes, or has actual knowledge that another
5 person has made, a report to the adult protective and
6 community services branch of the department of human
7 services stating a good faith belief that the
8 principal may be subject to physical or financial
9 abuse, neglect, exploitation, or abandonment by the
10 agent or a person acting for or with the agent.

11 (c) A person that refuses to accept an acknowledged power
12 of attorney in violation of this section is subject to:

13 (1) A court order mandating acceptance of the power of
14 attorney; and

15 (2) Liability for reasonable attorney's fees and costs
16 incurred in any action or proceeding that confirms the
17 validity of the power of attorney or mandates
18 acceptance of the power of attorney.

19 **§ -17 Principles of law and equity.** Unless displaced by
20 a provision of this chapter, the principles of law and equity
21 supplement this chapter.



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

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

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

14 (c) Subject to subsections (a), (b), (d), and (e), if a
15 power of attorney grants to an agent authority to do all acts
16 that a principal could do, the agent has the general authority
17 described in sections -34 through -46.

18 (d) Unless the power of attorney otherwise provides, a
19 grant of authority to make a gift is subject to section -47.

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



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

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

11 § -32 **Incorporation of authority.** (a) An agent has
12 authority described in this part if the power of attorney refers
13 to general authority with respect to the descriptive term for
14 the subjects stated in sections -34 through -47 or cites
15 the section in which the authority is described.

16 (b) A reference in a power of attorney to general
17 authority with respect to the descriptive term for a subject in
18 sections -34 through -47 or a citation to a section of
19 sections -34 through -47 incorporates the entire section
20 as if it were set out in full in the power of attorney.

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



1 § -33 **Construction of authority generally.** Except as
2 otherwise provided in the power of attorney, by executing a
3 power of attorney that incorporates by reference a subject
4 described in sections -34 through -47 or that grants to an
5 agent authority to do all acts that a principal could do
6 pursuant to section -34(c), a principal authorizes the agent,
7 with respect to that subject, to:

- 8 (1) Demand, receive, and obtain by litigation or
9 otherwise, money or another thing of value to which
10 the principal is, may become, or claims to be
11 entitled, and conserve, invest, disburse, or use
12 anything so received or obtained for the purposes
13 intended;
- 14 (2) Contract in any manner with any person, on terms
15 agreeable to the agent, to accomplish a purpose of a
16 transaction and perform, rescind, cancel, terminate,
17 reform, restate, release, or modify the contract or
18 another contract made by or on behalf of the
19 principal;
- 20 (3) Execute, acknowledge, seal, deliver, file, or record
21 any instrument or communication the agent considers
22 desirable to accomplish a purpose of a transaction,



- 1 including creating at any time a schedule listing some
2 or all of the principal's property and attaching it to
3 the power of attorney;
- 4 (4) Initiate, participate in, submit to alternative
5 dispute resolution, settle, oppose, or propose or
6 accept a compromise with respect to a claim existing
7 in favor of or against the principal or intervene in
8 litigation relating to the claim;
- 9 (5) Seek on the principal's behalf the assistance of a
10 court or other governmental agency to carry out an act
11 authorized in the power of attorney;
- 12 (6) Engage, compensate, and discharge an attorney,
13 accountant, discretionary investment manager, expert
14 witness, or other advisor;
- 15 (7) Prepare, execute, and file a record, report, or other
16 document to safeguard or promote the principal's
17 interest under a statute or regulation;
- 18 (8) Communicate with any representative or employee of a
19 government or governmental subdivision, agency, or
20 instrumentality, on behalf of the principal;



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

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

6 § -34 **Real property.** Unless the power of attorney
7 otherwise provides, language in a power of attorney granting
8 general authority with respect to real property authorizes the
9 agent to:

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

14 (2) Sell; exchange; convey with or without covenants,
15 representations, or warranties; quitclaim; release;
16 surrender; retain title for security; encumber;
17 partition; consent to partitioning; subject to an
18 easement or covenant; subdivide; apply for zoning or
19 other governmental permits; plat or consent to
20 platting; develop; grant an option concerning; lease;
21 sublease; contribute to an entity in exchange for an
22 interest in that entity; or otherwise grant or dispose



- 1 of an interest in real property or a right incident to
2 real property;
- 3 (3) Pledge or mortgage an interest in real property or
4 right incident to real property as security to borrow
5 money or pay, renew, or extend the time of payment of
6 a debt of the principal or a debt guaranteed by the
7 principal;
- 8 (4) Release, assign, satisfy, or enforce by litigation or
9 otherwise a mortgage, deed of trust, conditional sale
10 contract, encumbrance, lien, or other claim to real
11 property which exists or is asserted;
- 12 (5) Manage or conserve an interest in real property or a
13 right incident to real property owned or claimed to be
14 owned by the principal, including:
- 15 (A) Insuring against liability or casualty or other
16 loss;
- 17 (B) Obtaining or regaining possession of or
18 protecting the interest or right by litigation or
19 otherwise;
- 20 (C) Paying, assessing, compromising, or contesting
21 taxes or assessments or applying for and
22 receiving refunds in connection with them; and



- 1 (D) Purchasing supplies, hiring assistance or labor,
2 and making repairs or alterations to the real
3 property;
- 4 (6) Use, develop, alter, replace, remove, erect, or
5 install structures or other improvements upon real
6 property in or incident to which the principal has, or
7 claims to have, an interest or right;
- 8 (7) Participate in a reorganization with respect to real
9 property or an entity that owns an interest in or
10 right incident to real property and receive, and hold,
11 and act with respect to stocks and bonds or other
12 property received in a plan of reorganization,
13 including:
- 14 (A) Selling or otherwise disposing of them;
- 15 (B) Exercising or selling an option, right of
16 conversion, or similar right with respect to
17 them; and
- 18 (C) Exercising any voting rights in person or by
19 proxy;
- 20 (8) Change the form of title of an interest in or right
21 incident to real property; and



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

4 § -35 **Tangible personal property.** Unless the power of
5 attorney otherwise provides, language in a power of attorney
6 granting general authority with respect to tangible personal
7 property authorizes the agent to:

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

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

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



- 1 (4) Release, assign, satisfy, or enforce by litigation or
2 otherwise, a security interest, lien, or other claim
3 on behalf of the principal, with respect to tangible
4 personal property or an interest in tangible personal
5 property;
- 6 (5) Manage or conserve tangible personal property or an
7 interest in tangible personal property on behalf of
8 the principal, including:
 - 9 (A) Insuring against liability or casualty or other
10 loss;
 - 11 (B) Obtaining or regaining possession of or
12 protecting the property or interest, by
13 litigation or otherwise;
 - 14 (C) Paying, assessing, compromising, or contesting
15 taxes or assessments or applying for and
16 receiving refunds in connection with taxes or
17 assessments;
 - 18 (D) Moving the property from place to place;
 - 19 (E) Storing the property for hire or on a gratuitous
20 bailment; and
 - 21 (F) Using and making repairs, alterations, or
22 improvements to the property; and



1 (6) Change the form of title of an interest in tangible
2 personal property.

3 § -36 **Stocks and bonds.** Unless the power of attorney
4 otherwise provides, language in a power of attorney granting
5 general authority with respect to stocks and bonds authorizes
6 the agent to:

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

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

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

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

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

18 § -37 **Commodities and options.** Unless the power of
19 attorney otherwise provides, language in a power of attorney
20 granting general authority with respect to commodities and
21 options authorizes the agent to:



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

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

7 § -38 Banks and other financial institutions. Unless
8 the power of attorney otherwise provides, language in a power of
9 attorney granting general authority with respect to banks and
10 other financial institutions authorizes the agent to:

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

14 (2) Establish, modify, and terminate an account or other
15 banking arrangement with a bank, trust company,
16 savings and loan association, credit union, thrift
17 company, brokerage firm, or other financial
18 institution selected by the agent;

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



S.B. NO. 2229

- 1 (4) Withdraw, by check, order, electronic funds transfer,
2 or otherwise, money or property of the principal
3 deposited with or left in the custody of a financial
4 institution;
- 5 (5) Receive statements of account, vouchers, notices, and
6 similar documents from a financial institution and act
7 with respect to them;
- 8 (6) Enter a safe deposit box or vault and withdraw or add
9 to the contents;
- 10 (7) Borrow money and pledge as security personal property
11 of the principal necessary to borrow money or pay,
12 renew, or extend the time of payment of a debt of the
13 principal or a debt guaranteed by the principal;
- 14 (8) Make, assign, draw, endorse, discount, guarantee, and
15 negotiate promissory notes, checks, drafts, and other
16 negotiable or nonnegotiable paper of the principal or
17 payable to the principal or the principal's order,
18 transfer money, receive the cash or other proceeds of
19 those transactions, and accept a draft drawn by a
20 person upon the principal and pay it when due;
- 21 (9) Receive for the principal and act upon a sight draft,
22 warehouse receipt, or other document of title whether



- 1 tangible or electronic, or other negotiable or
2 nonnegotiable instrument;
- 3 (10) Apply for, receive, and use letters of credit, credit
4 and debit cards, electronic transaction
5 authorizations, and traveler's checks from a financial
6 institution and give an indemnity or other agreement
7 in connection with letters of credit; and
- 8 (11) Consent to an extension of the time of payment with
9 respect to commercial paper or a financial transaction
10 with a financial institution.

11 § -39 **Operation of entity or business.** Subject to the
12 terms of a document or an agreement governing an entity or an
13 entity ownership interest, and unless the power of attorney
14 otherwise provides, language in a power of attorney granting
15 general authority with respect to operation of an entity or
16 business authorizes the agent to:

- 17 (1) Operate, buy, sell, enlarge, reduce, or terminate an
18 ownership interest;
- 19 (2) Perform a duty or discharge a liability and exercise
20 in person or by proxy a right, power, privilege, or
21 option that the principal has, may have, or claims to
22 have;



- 1 (3) Enforce the terms of an ownership agreement;
- 2 (4) Initiate, participate in, submit to alternative
- 3 dispute resolution, settle, oppose, or propose or
- 4 accept a compromise with respect to litigation to
- 5 which the principal is a party because of an ownership
- 6 interest;
- 7 (5) Exercise in person or by proxy, or enforce by
- 8 litigation or otherwise, a right, power, privilege, or
- 9 option the principal has or claims to have as the
- 10 holder of stocks and bonds;
- 11 (6) Initiate, participate in, submit to alternative
- 12 dispute resolution, settle, oppose, or propose or
- 13 accept a compromise with respect to litigation to
- 14 which the principal is a party concerning stocks and
- 15 bonds;
- 16 (7) With respect to an entity or business owned solely by
- 17 the principal:
- 18 (A) Continue, modify, renegotiate, extend, and
- 19 terminate a contract made by or on behalf of the
- 20 principal with respect to the entity or business
- 21 before execution of the power of attorney;
- 22 (B) Determine:



S.B. NO. 2229

- 1 (i) The location of its operation;
- 2 (ii) The nature and extent of its business;
- 3 (iii) The methods of manufacturing, selling,
- 4 merchandising, financing, accounting, and
- 5 advertising employed in its operation;
- 6 (iv) The amount and types of insurance carried;
- 7 and
- 8 (v) The mode of engaging, compensating, and
- 9 dealing with its employees and accountants,
- 10 attorneys, or other advisors;
- 11 (C) Change the name or form of organization under
- 12 which the entity or business is operated and
- 13 enter into an ownership agreement with other
- 14 persons to take over all or part of the operation
- 15 of the entity or business; and
- 16 (D) Demand and receive money due or claimed by the
- 17 principal or on the principal's behalf in the
- 18 operation of the entity or business and control
- 19 and disburse the money in the operation of the
- 20 entity or business;
- 21 (8) Put additional capital into an entity or business in
- 22 which the principal has an interest;



- 1 (9) Join in a plan of reorganization, consolidation,
2 conversion, domestication, or merger of the entity or
3 business;
- 4 (10) Sell or liquidate all or part of an entity or
5 business;
- 6 (11) Establish the value of an entity or business under a
7 buy-out agreement to which the principal is a party;
- 8 (12) Prepare, sign, file, and deliver reports, compilations
9 of information, returns, or other papers with respect
10 to an entity or business and make related payments;
11 and
- 12 (13) Pay, compromise, or contest taxes, assessments, fines,
13 or penalties and perform any other act to protect the
14 principal from illegal or unnecessary taxation,
15 assessments, fines, or penalties, with respect to an
16 entity or business, including attempts to recover, in
17 any manner permitted by law, money paid before or
18 after the execution of the power of attorney.

19 § -40 **Insurance and annuities.** Unless the power of
20 attorney otherwise provides, language in a power of attorney
21 granting general authority with respect to insurance and
22 annuities authorizes the agent to:



- 1 (1) Continue, pay the premium or make a contribution on,
2 modify, exchange, rescind, release, or terminate a
3 contract procured by or on behalf of the principal
4 which insures or provides an annuity to either the
5 principal or another person, whether or not the
6 principal is a beneficiary under the contract;
- 7 (2) Procure new, different, and additional contracts of
8 insurance and annuities for the principal and the
9 principal's spouse, children, and other dependents,
10 and select the amount, type of insurance or annuity,
11 and mode of payment;
- 12 (3) Pay the premium or make a contribution on, modify,
13 exchange, rescind, release, or terminate a contract of
14 insurance or annuity procured by the agent;
- 15 (4) Apply for and receive a loan secured by a contract of
16 insurance or annuity;
- 17 (5) Surrender and receive the cash surrender value on a
18 contract of insurance or annuity;
- 19 (6) Exercise an election;
- 20 (7) Exercise investment powers available under a contract
21 of insurance or annuity;



- 1 (8) Change the manner of paying premiums on a contract of
2 insurance or annuity;
- 3 (9) Change or convert the type of insurance or annuity
4 with respect to which the principal has or claims to
5 have authority described in this section;
- 6 (10) Apply for and procure a benefit or assistance under a
7 statute or regulation to guarantee or pay premiums of
8 a contract of insurance on the life of the principal;
- 9 (11) Collect, sell, assign, hypothecate, borrow against, or
10 pledge the interest of the principal in a contract of
11 insurance or annuity;
- 12 (12) Select the form and timing of the payment of proceeds
13 from a contract of insurance or annuity; and
- 14 (13) Pay, from proceeds or otherwise; compromise or
15 contest; and apply for refunds in connection with a
16 tax or assessment levied by a taxing authority with
17 respect to a contract of insurance or annuity or its
18 proceeds or liability accruing by reason of the tax or
19 assessment.

20 **§ -41 Estates, trusts, and other beneficial interests.**

21 (a) In this section, "estate, trust, or other beneficial
22 interest" means a trust, probate estate, guardianship,



1 conservatorship, escrow, or custodianship or a fund from which
2 the principal is, may become, or claims to be, entitled to a
3 share or payment.

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

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

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

15 (3) Exercise for the benefit of the principal a presently
16 exercisable general power of appointment held by the
17 principal;

18 (4) Initiate, participate in, submit to alternative
19 dispute resolution, settle, oppose, or propose or
20 accept a compromise with respect to litigation to
21 ascertain the meaning, validity, or effect of a deed,



- 1 will, declaration of trust, or other instrument or
2 transaction affecting the interest of the principal;
- 3 (5) Initiate, participate in, submit to alternative
4 dispute resolution, settle, oppose, or propose or
5 accept a compromise with respect to litigation to
6 remove, substitute, or surcharge a fiduciary;
- 7 (6) Conserve, invest, disburse, or use anything received
8 for an authorized purpose;
- 9 (7) Transfer an interest of the principal in real
10 property, stocks and bonds, accounts with financial
11 institutions or securities intermediaries, insurance,
12 annuities, and other property to the trustee of a
13 revocable trust created by the principal as settlor;
14 and
- 15 (8) Reject, renounce, disclaim, release, or consent to a
16 reduction in or modification of a share in or payment
17 from an estate, trust, or other beneficial interest.

18 **§ -42 Claims and litigation.** Unless the power of
19 attorney otherwise provides, language in a power of attorney
20 granting general authority with respect to claims and litigation
21 authorizes the agent to:



- 1 (1) Assert and maintain before a court or administrative
2 agency a claim, claim for relief, cause of action,
3 counterclaim, offset, recoupment, or defense,
4 including an action to recover property or other thing
5 of value, recover damages sustained by the principal,
6 eliminate or modify tax liability, or seek an
7 injunction, specific performance, or other relief;
- 8 (2) Bring an action to determine adverse claims or
9 intervene or otherwise participate in litigation;
- 10 (3) Seek an attachment, garnishment, order of arrest, or
11 other preliminary, provisional, or intermediate relief
12 and use an available procedure to effect or satisfy a
13 judgment, order, or decree;
- 14 (4) Make or accept a tender, offer of judgment, or
15 admission of facts, submit a controversy on an agreed
16 statement of facts, consent to examination, and bind
17 the principal in litigation;
- 18 (5) Submit to alternative dispute resolution, settle, and
19 propose or accept a compromise;
- 20 (6) Waive the issuance and service of process upon the
21 principal, accept service of process, appear for the
22 principal, designate persons upon which process



- 1 directed to the principal may be served, execute and
2 file or deliver stipulations on the principal's
3 behalf, verify pleadings, seek appellate review,
4 procure and give surety and indemnity bonds, contract
5 and pay for the preparation and printing of records
6 and briefs, receive, execute, and file or deliver a
7 consent, waiver, release, confession of judgment,
8 satisfaction of judgment, notice, agreement, or other
9 instrument in connection with the prosecution,
10 settlement, or defense of a claim or litigation;
- 11 (7) Act for the principal with respect to bankruptcy or
12 insolvency, whether voluntary or involuntary,
13 concerning the principal or some other person, or with
14 respect to a reorganization, receivership, or
15 application for the appointment of a receiver or
16 trustee which affects an interest of the principal in
17 property or other thing of value;
- 18 (8) Pay a judgment, award, or order against the principal
19 or a settlement made in connection with a claim or
20 litigation; and
- 21 (9) Receive money or other thing of value paid in
22 settlement of or as proceeds of a claim or litigation.



1 § -43 **Personal and family maintenance.** (a) Unless the
2 power of attorney otherwise provides, language in a power of
3 attorney granting general authority with respect to personal and
4 family maintenance authorizes the agent to:

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

9 (A) The principal's children;

10 (B) Other individuals legally entitled to be
11 supported by the principal; and

12 (C) The individuals whom the principal has
13 customarily supported or indicated the intent to
14 support;

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

19 (3) Provide living quarters for the individuals described
20 in subsection (1) by:

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



- 1 (B) Paying the operating costs, including interest,
2 amortization payments, repairs, improvements, and
3 taxes, for premises owned by the principal or
4 occupied by those individuals;
- 5 (4) Provide normal domestic help, usual vacations and
6 travel expenses, and funds for shelter, clothing,
7 food, appropriate education, including postsecondary
8 and vocational education, and other current living
9 costs for the individuals described in subsection (1);
- 10 (5) Pay expenses for necessary health care and custodial
11 care on behalf of the individuals described in
12 subsection (1);
- 13 (6) Act as the principal's personal representative
14 pursuant to the Health Insurance Portability and
15 Accountability Act, Sections 1171 through 1179 of the
16 Social Security Act, title 42 U.S.C. section 1320d, as
17 amended, and applicable regulations, in making
18 decisions related to the past, present, or future
19 payment for the provision of health care consented to
20 by the principal or anyone authorized under the law of
21 this state to consent to health care on behalf of the
22 principal;



- 1 (7) Continue any provision made by the principal for
2 automobiles or other means of transportation,
3 including registering, licensing, insuring, and
4 replacing them, for the individuals described in
5 subsection (1);
- 6 (8) Maintain credit and debit accounts for the convenience
7 of the individuals described in subsection (1) and
8 open new accounts; and
- 9 (9) Continue payments incidental to the membership or
10 affiliation of the principal in a religious
11 institution, club, society, order, or other
12 organization or to continue contributions to those
13 organizations.
- 14 (b) Authority with respect to personal and family
15 maintenance is neither dependent upon, nor limited by, authority
16 that an agent may or may not have with respect to gifts under
17 this chapter.

18 § -44 Benefits from governmental programs or civil or
19 military service. (a) In this section, "benefits from
20 governmental programs or civil or military service" means any
21 benefit, program, or assistance provided under a statute or
22 regulation, including Social Security, medicare, and medicaid.



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

5 (1) Execute vouchers in the name of the principal for
6 allowances and reimbursements payable by the United
7 States or a foreign government or by a state or
8 subdivision of a state to the principal, including
9 allowances and reimbursements for transportation of
10 the individuals described in subsection -43(a)(1),
11 and for shipment of their household effects;

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

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



- 1 (4) Prepare, file, and maintain a claim of the principal
2 for a benefit or assistance, financial or otherwise,
3 to which the principal may be entitled under a statute
4 or regulation;
- 5 (5) Initiate, participate in, submit to alternative
6 dispute resolution, settle, oppose, or propose or
7 accept a compromise with respect to litigation
8 concerning any benefit or assistance the principal may
9 be entitled to receive under a statute or regulation;
10 and
- 11 (6) Receive the financial proceeds of a claim described in
12 subsection (4) and conserve, invest, disburse, or use
13 for a lawful purpose anything so received.

14 § -45 **Retirement plans.** (a) In this section,
15 "retirement plan" means a plan or account created by an
16 employer, the principal, or another individual to provide
17 retirement benefits or deferred compensation of which the
18 principal is a participant, beneficiary, or owner, including a
19 plan or account under the following sections of the Internal
20 Revenue Code:



- 1 (1) An individual retirement account under Internal
2 Revenue Code Section 408, title 26 U.S.C. section 408,
3 as amended;
- 4 (2) A Roth individual retirement account under Internal
5 Revenue Code Section 408A, title 26 U.S.C. section
6 408A, as amended;
- 7 (3) A deemed individual retirement account under Internal
8 Revenue Code Section 408(q), title 26 U.S.C. section
9 408(q), as amended;
- 10 (4) An annuity or mutual fund custodial account under
11 Internal Revenue Code Section 403(b), title 26 U.S.C.
12 section 403(b), as amended;
- 13 (5) A pension, profit-sharing, stock bonus, or other
14 retirement plan qualified under Internal Revenue Code
15 Section 401(a), title 26 U.S.C. section 401(a), as
16 amended;
- 17 (6) A plan under Internal Revenue Code Section 457(b),
18 title 26 U.S.C. section 457(b), as amended; and
- 19 (7) A nonqualified deferred compensation plan under
20 Internal Revenue Code Section 409A, title 26 U.S.C.
21 section 409A, as amended.



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

- 4 (1) Select the form and timing of payments under a
5 retirement plan and withdraw benefits from a plan;
- 6 (2) Make a rollover, including a direct trustee-to-trustee
7 rollover, of benefits from one retirement plan to
8 another;
- 9 (3) Establish a retirement plan in the principal's name;
- 10 (4) Make contributions to a retirement plan;
- 11 (5) Exercise investment powers available under a
12 retirement plan; and
- 13 (6) Borrow from, sell assets to, or purchase assets from a
14 retirement plan.

15 § -46 Taxes. Unless the power of attorney otherwise
16 provides, language in a power of attorney granting general
17 authority with respect to taxes authorizes the agent to:

- 18 (1) Prepare, sign, and file federal, state, local, and
19 foreign income, gift, payroll, property, Federal
20 Insurance Contributions Act, and other tax returns,
21 claims for refunds, requests for extension of time,
22 petitions regarding tax matters, and any other tax-



1 related documents, including receipts, offers,
2 waivers, consents, including consents and agreements
3 under Internal Revenue Code Section 2032A, 26 title
4 U.S.C. section 2032A, as amended, closing agreements,
5 and any power of attorney required by the Internal
6 Revenue Service or other taxing authority with respect
7 to a tax year upon which the statute of limitations
8 has not run and the following twenty-five tax years;

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

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

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

18 § -47 Gifts. (a) In this section, a gift "for the
19 benefit of" a person includes a gift to a trust, an account
20 under the Uniform Transfers to Minors Act, and a tuition savings
21 account or prepaid tuition plan as defined under Internal



1 Revenue Code section 529, 26 title U.S.C. section 529, as
2 amended.

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

6 (1) Make outright to, or for the benefit of, a person, a
7 gift of any of the principal's property, including by
8 the exercise of a presently exercisable general power
9 of appointment held by the principal, in an amount per
10 donee not to exceed the annual dollar limits of the
11 federal gift tax exclusion under Internal Revenue Code
12 Section 2503(b), title 26 U.S.C. section 2503(b), as
13 amended, without regard to whether the federal gift
14 tax exclusion applies to the gift, or if the
15 principal's spouse agrees to consent to a split gift
16 pursuant to Internal Revenue Code Section 2513, title
17 26 U.S.C. section 2513, as amended, in an amount per
18 donee not to exceed twice the annual federal gift tax
19 exclusion limit; and

20 (2) Consent, pursuant to Internal Revenue Code Section
21 2513, title 26 U.S.C. section 2513, as amended, to the
22 splitting of a gift made by the principal's spouse in



1 an amount per donee not to exceed the aggregate annual
2 gift tax exclusions for both spouses.

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

- 8 (1) The value and nature of the principal's property;
- 9 (2) The principal's foreseeable obligations and need for
10 maintenance;
- 11 (3) Minimization of taxes, including income, estate,
12 inheritance, generation-skipping transfer, and gift
13 taxes;
- 14 (4) Eligibility for a benefit, a program, or assistance
15 under a statute or regulation; and
- 16 (5) The principal's personal history of making or joining
17 in making gifts.

18 **PART III. STATUTORY FORMS**

19 § -51 **Statutory form power of attorney.** A document
20 substantially in the following form may be used to create a
21 statutory form power of attorney that has the meaning and effect
22 prescribed by this chapter.



1 STATE OF HAWAII

2 STATUTORY FORM POWER OF ATTORNEY

3 IMPORTANT INFORMATION

4 This power of attorney authorizes another person (your
5 agent) to make decisions concerning your property for you (the
6 principal). Your agent will be able to make decisions and act
7 with respect to your property, including your money, whether or
8 not you are able to act for yourself. The meaning of authority
9 over subjects listed on this form is explained in the Uniform
10 Power of Attorney Act in chapter , Hawaii Revised Statutes.

11 This power of attorney does not authorize the agent to make
12 health care decisions for you.

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

17 Your agent is entitled to reasonable compensation unless
18 you state otherwise in the Special Instructions.

19 This form provides for designation of one agent. If you
20 wish to name more than one agent, you may name a co-agent in the
21 Special Instructions. Co-agents are not required to act



1 together unless you include that requirement in the Special
2 Instructions.

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

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

8 If you have questions about the power of attorney or the
9 authority you are granting to your agent, you should seek legal
10 advice before signing this form.

11

12 DESIGNATION OF AGENT

13 I _____ name the following person

14 (Name of Principal)

15 as my agent:

16

17 Name of Agent:

18 _____

19 Agent's Address:

20 _____



1 Agent's Telephone Number:

2 _____

3

4 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

7

8 Name of Successor Agent:

9 _____

10 Successor Agent's Address:

11 _____

12 Successor Agent's Telephone Number:

13 _____

14

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

17

18 Name of Second Successor Agent:

19 _____

20 Second Successor Agent's Address:

21 _____



1 Second Successor Agent's Telephone Number:

2 _____

3

4 GRANT OF GENERAL AUTHORITY

5 I grant my agent and any successor agent general authority
6 to act for me with respect to the following subjects as defined
7 in the Uniform Power of Attorney Act in chapter , Hawaii
8 Revised Statutes.

9

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

14

- 15 Real Property
- 16 Tangible Personal Property
- 17 Stocks and Bonds
- 18 Commodities and Options
- 19 Banks and Other Financial Institutions
- 20 Operation of Entity or Business
- 21 Insurance and Annuities
- 22 Estates, Trusts, and Other Beneficial Interests



- 1 Claims and Litigation
- 2 Personal and Family Maintenance
- 3 Benefits from Governmental Programs or Civil or
- 4 Military Service
- 5 Retirement Plans
- 6 Taxes
- 7 All Preceding Subjects

8

9 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

12

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

18

19 Create, amend, revoke, or terminate an inter
20 vivos trust

21 Make a gift, subject to the limitations of the
22 Uniform Power of Attorney Act under section



- 1 -36, Hawaii Revised Statutes, and any special
- 2 instructions in this power of attorney
- 3 (___) Create or change rights of survivorship
- 4 (___) Create or change a beneficiary designation
- 5 (___) Authorize another person to exercise the
- 6 authority granted under this power of attorney
- 7 (___) Waive the principal's right to be a beneficiary
- 8 of a joint and survivor annuity, including a
- 9 survivor benefit under a retirement plan
- 10 (___) Exercise fiduciary powers that the principal has
- 11 authority to delegate

13 LIMITATION ON AGENT'S AUTHORITY

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

19 SPECIAL INSTRUCTIONS (OPTIONAL)

20 You may give special instructions on the following lines:

21 _____

22 _____



1 _____
 2 _____
 3 _____
 4 _____

5
6 EFFECTIVE DATE

7 This power of attorney is effective immediately unless I
8 have stated otherwise in the Special Instructions.

9

10 NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

11 If it becomes necessary for a court to appoint a
12 conservator or guardian of my estate or guardian of my person, I
13 nominate the following person(s) for appointment:

14

15 Name of Nominee for conservator or guardian of my estate:

16 _____

17 Nominee's Address:

18 _____

19 Nominee's Telephone Number:

20 _____

21 Name of Nominee for guardian of my person:

22 _____



1 Nominee's Address:

2 _____

3 Nominee's Telephone Number:

4 _____

5

6 RELIANCE ON THIS POWER OF ATTORNEY

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

10

11 SIGNATURE AND ACKNOWLEDGMENT

12 _____

13 Your Signature Date

14 _____

15 Your Name Printed

16 _____

17 Your Address

18 _____

19 Your Telephone Number

20

21 State of _____

22 County of _____



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

This document was acknowledged before me on

_____ ,

(Date)

by _____

(Name of Principal)

_____ (Seal, if any)

Signature of Notary

My commission expires: _____

This document prepared by:

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal



1 duties that continue until you resign or the power of attorney
2 is terminated or revoked. You must:

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

7 (2) Act in good faith;

8 (3) Do nothing beyond the authority granted in this power
9 of attorney; and

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

14
15 (Principal's Name) by (Your Signature) as Agent

16 Unless the Special Instructions in this power of attorney
17 state otherwise, you must also:

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

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

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



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

11

12 Termination of Agent's Authority

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

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



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

8

9 Liability of Agent

10 The meaning of the authority granted to you is defined in
11 the Uniform Power of Attorney Act, in chapter , Hawaii
12 Revised Statutes. If you violate the Uniform Power of Attorney
13 Act in chapter , Hawaii Revised Statutes, or act outside
14 the authority granted, you may be liable for any damages caused
15 by your violation.

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

18

19 § -52 Agent's certification. The following optional
20 form may be used by an agent to certify facts concerning a power
21 of attorney.



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

3
4 State of _____
5 County of _____

6
7 I, _____ (Name of
8 Agent), certify under penalty of perjury that
9 _____ (Name of Principal)
10 granted me authority as an agent or successor agent in a power
11 of attorney dated _____.

12
13 I further certify that to my knowledge:

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

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

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



1 (4)

2 _____

3 _____

4 _____

5 (Insert other relevant statements)

6

7 SIGNATURE AND ACKNOWLEDGMENT

8 _____

9 Agent's Signature Date

10 _____

11 Agent's Name Printed

12 _____

13 Agent's Address

14 _____

15 Agent's Telephone Number

16

17 This document was acknowledged before me on

18 _____,

19 (Date)

20 by _____.

21 (Name of Agent)

22



(Seal, if any)

Signature of Notary

My commission expires:

This document prepared by:

PART IV

MISCELLANEOUS PROVISIONS

§ -61 Uniformity of application and construction. In

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

§ -62 Relation to electronic signatures in global and

national commerce act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, title 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, title 15 U.S.C. section 7003(b).

1 § -63 Effect on existing powers of attorney. Except as
2 otherwise provided in this chapter, on the effective date of
3 this chapter:

4 (1) This chapter applies to a power of attorney created
5 before, on, or after the effective date of this
6 chapter;

7 (2) This chapter applies to a judicial proceeding
8 concerning a power of attorney commenced on or after
9 the effective date of this chapter;

10 (3) This chapter applies to a judicial proceeding
11 concerning a power of attorney commenced before the
12 effective date of this chapter, unless the court finds
13 that application of a provision of this chapter would
14 substantially interfere with the effective conduct of
15 the judicial proceeding or prejudice the rights of a
16 party, in which case that provision does not apply and
17 the superseded law applies; and

18 (4) An act done before the effective date of this chapter
19 is not affected by this chapter."
20



S.B. NO. 2229

1 SECTION 2. Chapter 551D, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 3. This Act shall take effect upon its approval.
4

INTRODUCED BY: Inzanne Chun Cleveland
Yesler Jr.
Will Evers
Clarence K. Michikami
Robert A.
Randy H. Bell



S.B. NO. 2229

Report Title:

Uniform Power of Attorney Act; Authority

Description:

Establishes the Uniform Power of Attorney Act. Defines the levels of authority granted in a power of attorney to the principal's agent. Requires the agent to act in good faith and within the scope of authority granted in the power of attorney. Provides sample documents to be used to create a statutory form power of attorney. Repeals Chapter 551D, Hawaii Revised Statutes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

