



GOV. MSG. NO. 1122

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

April 17, 2014

The Honorable Donna Mercado Kim,
President
and Members of the Senate
Twenty-Seventh State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

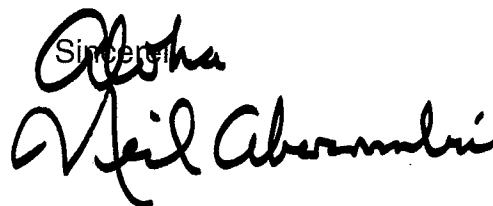
The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Seventh State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on April 17, 2014, the following bill was signed into law:

SB2229 SD2

RELATING TO THE UNIFORM POWER OF
ATTORNEY ACT
ACT 022 (14)

Sincerely,


NEIL ABERCROMBIE
Governor, State of Hawaii

APR 17 2014

RECEIVED
THE SENATE
CLERK'S OFFICE
STATE OF HAWAII

'14 APR 17 P5:05

RECEIVED
SENATE
OFFICE OF THE PRESIDENT

'14 APR 17 P3:40

Approved by the Governor

on APR 17 2014

THE SENATE
TWENTY-SEVENTH LEGISLATURE, 2014
STATE OF HAWAII

ACT 022
S.B. NO. 2229
S.D. 2

A BILL FOR AN ACT

RELATING TO THE UNIFORM POWER OF ATTORNEY ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

"CHAPTER

UNIFORM POWER OF ATTORNEY ACT

PART I. GENERAL PROVISIONS

7 § -1 Definitions. For the purposes of this chapter,
8 unless the context clearly indicates otherwise:

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

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

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



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) Is:

9 (A) Missing;

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

12 (C) Outside of the United States and unable to
13 return.

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

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



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

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

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

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



1 "Sign" means, with present intent to authenticate or adopt
2 a record, to:

- 3 (1) Execute or adopt a tangible symbol; or
- 4 (2) Attach to or logically associate with the record an
5 electronic sound, symbol, or process.

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

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

15 § -2 Applicability. This chapter shall apply to all
16 powers of attorney except:

- 17 (1) A power to the extent it is coupled with an interest
18 in the subject of the power, including a power given
19 to or for the benefit of a creditor in connection with
20 a credit transaction;
- 21 (2) A power to make health care decisions;



1 (3) A power created by a legal parent or legal guardian
2 placing the care of a minor or a disabled adult under
3 another person;

4 (4) A proxy or other delegation to exercise voting rights
5 or management rights with respect to an entity; and

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

9 § -3 Power of attorney. (a) A power of attorney
10 created under this chapter shall be durable unless it expressly
11 provides that it is terminated by the incapacity of the
12 principal.

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

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



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

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

7 (2) The requirements for a military power of attorney
8 pursuant to title 10 United States Code section 1044b,
9 as amended.

10 (e) Except as otherwise provided by statute other than
11 this chapter, a photocopy or electronically transmitted copy of
12 an original power of attorney shall have the same effect as the
13 original.

14 (f) The meaning and effect of a power of attorney is
15 determined by the law of the jurisdiction indicated in the power
16 of attorney and, in the absence of an indication of
17 jurisdiction, by the law of the jurisdiction in which the power
18 of attorney was executed.

19 § -4 Nomination of conservator or guardian; relation of
20 agent to court-appointed fiduciary. (a) In a power of
21 attorney, a principal may nominate a conservator or guardian of
22 the principal's estate, or conservator or guardian of the



1 principal's person for consideration by the court if protective
2 proceedings for the principal's estate or person are begun after
3 the principal executes the power of attorney. Except for good
4 cause shown or disqualification, the court shall make its
5 appointment in accordance with the principal's most recent
6 nomination.

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

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

19 (b) If a power of attorney becomes effective upon the
20 occurrence of a future event or contingency, the principal, in
21 the power of attorney, may authorize one or more persons to



1 determine in a writing or other record that the event or
2 contingency has occurred.

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

9 (1) A physician or licensed psychologist that the
10 principal has an impairment in the ability to receive
11 and evaluate information or make or communicate
12 decisions even with the use of technological
13 assistance; or

14 (2) An attorney at law, a judge, or an appropriate
15 governmental official that the principal is
16 incapacitated.

17 (d) A person authorized by the principal in the power of
18 attorney to determine that the principal is incapacitated may
19 act as the principal's personal representative pursuant to the
20 Health Insurance Portability and Accountability Act, Sections
21 1171 through 1179 of the Social Security Act, title 42 United
22 States Code section 1320d, as amended, and applicable



1 regulations, to obtain access to the principal's health care
2 information and communicate with the principal's health care
3 provider.

4 § -6 Termination of power of attorney or agent's

5 authority. (a) A power of attorney terminates when:

6 (1) The principal dies;

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

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

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

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

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

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

18 (1) The principal revokes the authority;

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

20 (3) An action is filed for the dissolution or annulment of
21 the agent's marriage to the principal or their legal



1 separation, unless the power of attorney otherwise
2 provides; or

3 (4) The power of attorney terminates.

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

8 (d) Termination of an agent's authority or of a power of
9 attorney is not effective as to the agent or another person
10 that, without actual knowledge of the termination, acts in good
11 faith under the power of attorney. An act so performed, unless
12 otherwise invalid or unenforceable, binds the principal and the
13 principal's successors in interest.

14 (e) Incapacity of the principal of a power of attorney
15 that is not durable shall not revoke or terminate the power of
16 attorney as to an agent or other person that, without actual
17 knowledge of the incapacity, acts in good faith under the power
18 of attorney. An act so performed, unless otherwise invalid or
19 unenforceable, binds the principal and the principal's
20 successors in interest.

21 (f) The execution of a power of attorney shall not revoke
22 a power of attorney previously executed by the principal unless



1 the subsequent power of attorney provides that the previous
2 power of attorney is revoked or that all other powers of
3 attorney are revoked.

4 § -7 Co-agents and successor agents. (a) A principal
5 may designate two or more persons to act as co-agents. Unless
6 the power of attorney otherwise provides, each co-agent may
7 exercise its authority independently.

8 (b) A principal may designate one or more successor agents
9 to act if an agent resigns, dies, becomes incapacitated, is not
10 qualified to serve, or declines to serve. A principal may grant
11 authority to designate one or more successor agents to an agent
12 or other person designated by name, office, or function. Unless
13 the power of attorney otherwise provides, a successor agent:

14 (1) Has the same authority as that granted to the original
15 agent; and

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

19 (c) Except as otherwise provided in the power of attorney
20 and subsection (d), an agent that does not participate in or
21 conceal a breach of fiduciary duty committed by another agent,



1 including a predecessor agent, shall not be liable for the
2 actions of the other agent.

3 (d) An agent that has actual knowledge of a breach or
4 imminent breach of fiduciary duty by another agent shall notify
5 the principal and, if the principal is incapacitated, take any
6 action reasonably appropriate in the circumstances to safeguard
7 the principal's best interest. An agent that fails to notify
8 the principal or take action as required by this subsection
9 shall be liable for the reasonably foreseeable damages that
10 could have been avoided if the agent had notified the principal
11 or taken such action. An agent that breaches a fiduciary duty
12 remains liable for the full amount of damages caused by the
13 breach.

14 § -8 Reimbursement and compensation of agent. Unless
15 the power of attorney otherwise provides, an agent shall be
16 entitled to reimbursement of expenses reasonably incurred on
17 behalf of the principal and to compensation that is reasonable
18 under the circumstances.

19 § -9 Agent's acceptance. Except as otherwise provided
20 in the power of attorney, a person accepts appointment as an
21 agent under a power of attorney by exercising authority or



1 performing duties as an agent or by any other assertion or
2 conduct indicating acceptance.

3 § -10 Agent's duties. (a) Notwithstanding provisions
4 in the power of attorney, an agent that has accepted appointment
5 shall:

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

9 (2) Act in good faith; and

10 (3) Act only within the scope of authority granted in the
11 power of attorney.

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

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

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

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

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



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

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

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

11 (B) The principal's foreseeable obligations and need
12 for maintenance;

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

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

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

21 (d) An agent that acts with care, competence, and
22 diligence for the best interest of the principal shall not be



1 liable solely because the agent also benefits from the act or
2 has an individual or conflicting interest in relation to the
3 property or affairs of the principal.

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

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

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

19 (h) Except as otherwise provided in the power of attorney,
20 an agent shall not be required to disclose receipts,
21 disbursements, or transactions conducted on behalf of the
22 principal unless ordered by a court or requested by the



1 principal, a guardian, a conservator, another fiduciary acting
2 for the principal, a governmental agency having authority to
3 protect the welfare of the principal, or, upon the death of the
4 principal, by the personal representative or successor in
5 interest of the principal's estate. If so requested, within
6 thirty days the agent shall comply with the request or provide a
7 writing or other record substantiating why additional time is
8 needed and shall comply with the request within an additional
9 thirty days.

10 § -11 Exoneration of agent. A provision in a power of
11 attorney relieving an agent of liability for breach of duty
12 shall be binding on the principal and the principal's successors
13 in interest except to the extent the provision:

- 14 (1) Relieves the agent of liability for breach of duty
15 committed dishonestly, with an improper motive, or
16 with reckless indifference to the purposes of the
17 power of attorney or the best interest of the
18 principal; or
19 (2) Was inserted as a result of an abuse of a confidential
20 or fiduciary relationship with the principal.



1 § -12 Judicial relief. (a) The following persons may
2 petition a court to construe a power of attorney or review the
3 agent's conduct, and grant appropriate relief:

4 (1) The principal or the agent;

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

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

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

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

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

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

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

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



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

5 § -13 **Agent's liability.** An agent that violates this
6 chapter shall be liable to the principal or the principal's
7 successors in interest for the amount required to:

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

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

13 § -14 **Agent's resignation; notice.** Unless the power of
14 attorney provides a different method for an agent's resignation,
15 an agent may resign by giving notice to the principal and, if
16 the principal is incapacitated:

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

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

21 (A) The principal's caregiver;



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

4 (C) A governmental agency having authority to protect
5 the welfare of the principal.

6 § -15 Acceptance of and reliance upon acknowledged power

7 of attorney. (a) For purposes of this section and section

8 -16, "acknowledged" means purportedly verified before a

9 notary public or other individual authorized to take

10 acknowledgements.

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

12 power of attorney without actual knowledge that the signature is

13 not genuine may rely upon the presumption under section -3(b)

14 that the signature is genuine.

15 (c) A person that in good faith accepts an acknowledged

16 power of attorney without actual knowledge that the power of

17 attorney is void, invalid, or terminated, that the purported

18 agent's authority is void, invalid, or terminated, or that the

19 agent is exceeding or improperly exercising the agent's

20 authority may rely upon the power of attorney as if the power of

21 attorney were genuine, valid, and still in effect, the agent's



1 authority were genuine, valid, and still in effect, and the
2 agent had not exceeded and had properly exercised the authority.

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

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

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

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

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

21 (f) For purposes of this section and section -16, a
22 person that conducts activities through employees is without



1 actual knowledge of a fact relating to a power of attorney, a
2 principal, or an agent if the employee conducting the
3 transaction involving the power of attorney is without actual
4 knowledge of the fact.

5 § -16 Liability for refusal to accept acknowledged power
6 of attorney. (a) Except as otherwise provided in subsection

7 (b):

8 (1) A person shall either accept an acknowledged power of
9 attorney or request a certification, a translation, or
10 an opinion of counsel under section -15(d) no later
11 than seven business days after presentation of the
12 power of attorney for acceptance;

13 (2) If a person requests a certification, a translation,
14 or an opinion of counsel under section -15(d), the
15 person shall accept the power of attorney no later
16 than five business days after receipt of the
17 certification, translation, or opinion of counsel; and

18 (3) A person may not require an additional or different
19 form of power of attorney for authority granted in the
20 power of attorney presented.

21 (b) A person shall not be required to accept an
22 acknowledged power of attorney if:



- 1 (1) The person is not otherwise required to engage in a
2 transaction with the principal in the same
3 circumstances;
- 4 (2) Engaging in a transaction with the agent or the
5 principal in the same circumstances would be
6 inconsistent with federal law;
- 7 (3) The person has actual knowledge of the termination of
8 the agent's authority or of the power of attorney
9 before exercise of the power;
- 10 (4) A request for a certification, a translation, or an
11 opinion of counsel under section -15(d) is refused;
- 12 (5) The person in good faith believes that the power is
13 not valid or that the agent does not have the
14 authority to perform the act requested, whether or not
15 a certification, a translation, or an opinion of
16 counsel under section -15(d) has been requested or
17 provided; or
- 18 (6) The person makes, or has actual knowledge that another
19 person has made, a report to the adult protective and
20 community services branch of the department of human
21 services stating a good faith belief that the
22 principal may be subject to physical or financial



1 abuse, neglect, exploitation, or abandonment by the
2 agent or a person acting for or with the agent.

3 (c) A person that refuses to accept an acknowledged power
4 of attorney in violation of this section shall be subject to:

5 (1) A court order mandating acceptance of the power of
6 attorney; and

7 (2) Liability for reasonable attorney's fees and costs
8 incurred in any action or proceeding that confirms the
9 validity of the power of attorney or mandates
10 acceptance of the power of attorney.

11 § -17 Principles of law and equity. Unless displaced by
12 a provision of this chapter, the principles of law and equity
13 shall supplement this chapter.

14 § -18 Laws applicable to financial institutions and
15 entities. This chapter shall not supersede any other law
16 applicable to financial institutions or other entities, and the
17 other law shall control if inconsistent with this chapter.

18 § -19 Remedies under other law. The remedies under this
19 chapter shall not be exclusive and shall not abrogate any right
20 or remedy under the law of this State other than this chapter.

21 PART II. AUTHORITY



1 § -31 Authority that requires specific grant; grant of
2 general authority. (a) An agent under a power of attorney may
3 do the following on behalf of the principal or with the
4 principal's property only if the power of attorney expressly
5 grants the agent the authority and exercise of the authority is
6 not otherwise prohibited by another agreement or instrument to
7 which the authority or property is subject:

- 8 (1) Create, amend, revoke, or terminate an inter vivos
9 trust;
- 10 (2) Make a gift;
- 11 (3) Create or change rights of survivorship;
- 12 (4) Create or change a beneficiary designation;
- 13 (5) Delegate authority granted under the power of
14 attorney;
- 15 (6) Waive the principal's right to be a beneficiary of a
16 joint and survivor annuity, including a survivor
17 benefit under a retirement plan; or
- 18 (7) Exercise fiduciary powers that the principal has
19 authority to delegate.

20 (b) Notwithstanding a grant of authority to do an act
21 described in subsection (a), unless the power of attorney
22 otherwise provides, an agent that is not an ancestor, spouse, or



1 descendant of the principal may not exercise authority under a
2 power of attorney to create in the agent, or in an individual to
3 whom the agent owes a legal obligation of support, an interest
4 in the principal's property, whether by gift, right of
5 survivorship, beneficiary designation, disclaimer, or otherwise.

6 (c) Subject to subsections (a), (b), (d), and (e), if a
7 power of attorney grants to an agent authority to do (or other
8 broadly worded authority in a general power of attorney signed
9 prior to the effective date of this Act) all acts that a
10 principal could do, the agent shall have the general authority
11 described in sections -34 through -46.

12 (d) Unless the power of attorney otherwise provides, a
13 grant of authority to make a gift shall be subject to section
14 -47.

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

18 (f) Authority granted in a power of attorney shall be
19 exercisable with respect to property that the principal has when
20 the power of attorney is executed or acquires later, whether or
21 not the property is located in this State and whether or not the



1 authority is exercised or the power of attorney is executed in
2 this State.

3 (g) An act performed by an agent pursuant to a power of
4 attorney shall have the same effect and inure to the benefit of
5 and bind the principal and the principal's successors in
6 interest as if the principal had performed the act.

7 § -32 Incorporation of authority. (a) An agent shall
8 have authority described in this part if the power of attorney
9 refers to general authority with respect to the descriptive term
10 for the subjects stated in sections -34 through -47 or
11 cites the section in which the authority is described.

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

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

19 § -33 Construction of authority generally. Except as
20 otherwise provided in the power of attorney, by executing a
21 power of attorney that incorporates by reference a subject
22 described in sections -34 through -47 or that grants to an



1 agent authority to do all acts that a principal could do
2 pursuant to section -31(c), a principal authorizes the agent,
3 with respect to that subject, to:

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

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

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



- 1 (4) Initiate, participate in, submit to alternative
2 dispute resolution, settle, oppose, or propose or
3 accept a compromise with respect to a claim existing
4 in favor of or against the principal or intervene in
5 litigation relating to the claim;
- 6 (5) Seek on the principal's behalf the assistance of a
7 court or other governmental agency to carry out an act
8 authorized in the power of attorney;
- 9 (6) Engage, compensate, and discharge an attorney,
10 accountant, discretionary investment manager, expert
11 witness, or other advisor;
- 12 (7) Prepare, execute, and file a record, report, or other
13 document to safeguard or promote the principal's
14 interest under a statute or regulation;
- 15 (8) Communicate with any representative or employee of a
16 government or governmental subdivision, agency, or
17 instrumentality, on behalf of the principal;
- 18 (9) Access communications intended for, and communicate on
19 behalf of the principal, whether by mail, electronic
20 transmission, telephone, or other means; and
- 21 (10) Do any lawful act with respect to the subject and all
22 property related to the subject.



1 § -34 Real property. Unless the power of attorney
2 otherwise provides, language in a power of attorney granting
3 general authority with respect to real property shall authorize
4 the agent to:

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

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

20 (3) Pledge or mortgage an interest in real property or
21 right incident to real property as security to borrow
22 money or pay, renew, or extend the time of payment of



- 1 a debt of the principal or a debt guaranteed by the
- 2 principal;
- 3 (4) Release, assign, satisfy, or enforce by litigation or
- 4 otherwise a mortgage, deed of trust, conditional sale
- 5 contract, encumbrance, lien, or other claim to real
- 6 property that exists or is asserted;
- 7 (5) Manage or conserve an interest in real property or a
- 8 right incident to real property owned or claimed to be
- 9 owned by the principal, including by:
- 10 (A) Insuring against liability or casualty or other
- 11 loss;
- 12 (B) Obtaining or regaining possession of or
- 13 protecting the interest or right by litigation or
- 14 otherwise;
- 15 (C) Paying, assessing, compromising, or contesting
- 16 taxes or assessments or applying for and
- 17 receiving refunds in connection with them; and
- 18 (D) Purchasing supplies, hiring assistance or labor,
- 19 and making repairs or alterations to the real
- 20 property;
- 21 (6) Use, develop, alter, replace, remove, erect, or
- 22 install structures or other improvements upon real



1 property in or incident to which the principal has, or
2 claims to have, an interest or right;

3 (7) Participate in a reorganization with respect to real
4 property or an entity that owns an interest in or
5 right incident to real property and receive, hold, and
6 act with respect to stocks and bonds or other property
7 received in a plan of reorganization, including by:

8 (A) Selling or otherwise disposing of them;

9 (B) Exercising or selling an option, right of
10 conversion, or similar right with respect to
11 them; and

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

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

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

19 § -35 Tangible personal property. Unless the power of
20 attorney otherwise provides, language in a power of attorney
21 granting general authority with respect to tangible personal
22 property shall authorize the agent to:



- 1 (1) Demand, buy, receive, accept as a gift or as security
2 for an extension of credit, or otherwise acquire or
3 reject ownership or possession of tangible personal
4 property or an interest in tangible personal property;
- 5 (2) Sell; exchange; convey with or without covenants,
6 representations, or warranties; quitclaim; release;
7 surrender; create a security interest in; grant
8 options concerning; lease; sublease; or otherwise
9 dispose of tangible personal property or an interest
10 in tangible personal property;
- 11 (3) Grant a security interest in tangible personal
12 property or an interest in tangible personal property
13 as security to borrow money or pay, renew, or extend
14 the time of payment of a debt of the principal or a
15 debt guaranteed by the principal;
- 16 (4) Release, assign, satisfy, or enforce by litigation or
17 otherwise, a security interest, lien, or other claim
18 on behalf of the principal, with respect to tangible
19 personal property or an interest in tangible personal
20 property;



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

20 § -36 **Stocks and bonds.** Unless the power of attorney

21 otherwise provides, language in a power of attorney granting



1 general authority with respect to stocks and bonds shall

2 authorize the agent to:

- 3 (1) Buy, sell, and exchange stocks and bonds;
- 4 (2) Establish, continue, modify, or terminate an account
5 with respect to stocks and bonds;
- 6 (3) Pledge stocks and bonds as security to borrow, pay,
7 renew, or extend the time of payment of a debt of the
8 principal;
- 9 (4) Receive certificates and other evidences of ownership
10 with respect to stocks and bonds; and
- 11 (5) Exercise voting rights with respect to stocks and
12 bonds in person or by proxy, enter into voting trusts,
13 and consent to limitations on the right to vote.

14 § -37 **Commodities and options.** Unless the power of
15 attorney otherwise provides, language in a power of attorney
16 granting general authority with respect to commodities and
17 options shall authorize the agent to:

- 18 (1) Buy, sell, exchange, assign, settle, and exercise
19 commodity futures contracts and call or put options on
20 stocks or stock indexes traded on a regulated option
21 exchange; and



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

3 § -38 Banks and other financial institutions. Unless
4 the power of attorney otherwise provides, language in a power of
5 attorney granting general authority with respect to banks and
6 other financial institutions shall authorize the agent to:

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

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

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

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



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



1 authorizations, and traveler's checks from a financial
2 institution and give an indemnity or other agreement
3 in connection with letters of credit; and

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

7 § -39 Operation of entity or business. Unless the power
8 of attorney otherwise provides, and subject to the terms of a
9 document or an agreement governing an entity or an entity
10 ownership interest, language in a power of attorney granting
11 general authority with respect to operation of an entity or
12 business shall authorize the agent to:

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

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

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

20 (4) Initiate, participate in, submit to alternative
21 dispute resolution, settle, oppose, or propose or
22 accept a compromise with respect to litigation to



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



- 1 (iii) The methods of manufacturing, selling,
2 merchandising, financing, accounting, and
3 advertising employed in its operation;
- 4 (iv) The amount and types of insurance carried;
5 and
- 6 (v) The mode of engaging, compensating, and
7 dealing with its employees and accountants,
8 attorneys, or other advisors;
- 9 (C) Change the name or form of organization under
10 which the entity or business is operated and
11 enter into an ownership agreement with other
12 persons to take over all or part of the operation
13 of the entity or business; and
- 14 (D) Demand and receive money due or claimed by the
15 principal or on the principal's behalf in the
16 operation of the entity or business and control
17 and disburse the money in the operation of the
18 entity or business;
- 19 (8) Put additional capital into an entity or business in
20 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 shall authorize 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 that 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 shall
7 authorize 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 shall authorize 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 that 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 another 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 shall authorize 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 paragraph (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 paragraph (1);
- 10 (5) Pay expenses for necessary health care and custodial
11 care on behalf of the individuals described in
12 paragraph (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 United States Code
17 section 1320d, as amended, and applicable regulations,
18 in making decisions related to the past, present, or
19 future payment for the provision of health care
20 consented to by the principal or anyone authorized
21 under the law of this State to consent to health care
22 on behalf of the 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 paragraph (1);
- 6 (8) Maintain credit and debit accounts for the convenience
- 7 of the individuals described in paragraph (1) and open
- 8 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 shall be neither dependent upon, nor limited by,
- 16 authority that an agent may or may not have with respect to
- 17 gifts under 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 shall authorize 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 paragraph (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 of 1986, as amended:



- 1 (1) An individual retirement account under Internal
2 Revenue Code Section 408, title 26 United States Code
3 section 408, as amended;
- 4 (2) A Roth individual retirement account under Internal
5 Revenue Code Section 408A, title 26 United States Code
6 section 408A, as amended;
- 7 (3) A deemed individual retirement account under Internal
8 Revenue Code Section 408(q), title 26 United States
9 Code section 408(q), as amended;
- 10 (4) An annuity or mutual fund custodial account under
11 Internal Revenue Code Section 403(b), title 26 United
12 States Code 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 United States Code section
16 401(a), as amended;
- 17 (6) A plan under Internal Revenue Code Section 457(b),
18 title 26 United States Code section 457(b), as
19 amended; and
- 20 (7) A nonqualified deferred compensation plan under
21 Internal Revenue Code Section 409A, title 26 United
22 States Code 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 shall authorize 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 shall authorize 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 United States Code section 2032A, as amended, closing
5 agreements, and any power of attorney required by the
6 Internal Revenue Service or other taxing authority
7 with respect to a tax year upon which the statute of
8 limitations has not run and the following twenty-five
9 tax years;

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

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

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

19 § -47 Gifts. (a) In this section, a gift "for the
20 benefit of" a person includes a gift to a trust, an account
21 under chapter 553A, the Uniform Transfers to Minors Act, and a
22 tuition savings account or prepaid tuition plan as defined under



1 Internal Revenue Code section 529, 26 title United States Code
2 section 529, as 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 shall authorize 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 United States Code section
13 2503(b), as amended, without regard to whether the
14 federal gift tax exclusion applies to the gift, or if
15 the principal's spouse agrees to consent to a split
16 gift pursuant to Internal Revenue Code Section 2513,
17 title 26 United States Code section 2513, as amended,
18 in an amount per donee not to exceed twice the annual
19 federal gift tax exclusion limit; and

20 (2) Consent, pursuant to Internal Revenue Code Section
21 2513, title 26 United States Code section 2513, as
22 amended, to the splitting of a gift made by the



1 principal's spouse in an amount per donee not to
2 exceed the aggregate annual gift tax exclusions for
3 both spouses.

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

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

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

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

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

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

19 PART III. STATUTORY FORMS

20 § -51 Statutory form power of attorney. A document
21 substantially in the following form may be used to create a



1 statutory form power of attorney that has the meaning and effect
2 prescribed by this chapter.

3 STATE OF HAWAII
4 STATUTORY FORM POWER OF ATTORNEY
5 IMPORTANT INFORMATION

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

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

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

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

21 This form provides for designation of one agent. If you
22 wish to name more than one agent, you may name a co-agent in the



1 Special Instructions. Co-agents are not required to act
2 together unless you include that requirement in the Special
3 Instructions.

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

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

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

12

13 DESIGNATION OF AGENT

14 I _____ name the following person

15 (Name of Principal)

16 as my agent:

17

18 Name of Agent:

19 _____

20 Agent's Address:

21 _____



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 _____

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 -47, 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

This document was acknowledged before me on

3

4

(Date)

5

by _____

6

(Name of Principal)

7

8

_____ (Seal, if any)

9

Signature of Notary

10

11

My commission expires: _____

12

13

This document prepared by:

14

15

16

17

IMPORTANT INFORMATION FOR AGENT

18

Agent's Duties

19

When you accept the authority granted under this power of

20

attorney, a special legal relationship is created between you

21

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

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



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State of _____

County of _____

I, _____ (Name of

Agent), certify under penalty of perjury that

_____ (Name of Principal)

granted me authority as an agent or successor agent in a power

of attorney dated _____.

I further certify that to my knowledge:

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

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

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

(4) _____



1 _____
2 _____

3 (Insert other relevant statements)

4
5 SIGNATURE AND ACKNOWLEDGMENT

6 _____
7 Agent's Signature Date

8 _____
9 Agent's Name Printed

10 _____
11 Agent's Address

12 _____
13 Agent's Telephone Number

14
15 This document was acknowledged before me on

16 _____
17 (Date)

18 by _____
19 (Name of Agent)

20
21 _____ (Seal, if any)

22 Signature of Notary



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My commission expires: _____

This document prepared by:

PART IV. MISCELLANEOUS PROVISIONS

§ -61 Uniformity of application and construction. In applying and construing this chapter, consideration shall 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 United States Code section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, title 15 United States Code section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, title 15 United States Code 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 shall apply to a power of attorney
5 created before, on, or after the effective date of
6 this chapter;

7 (2) This chapter shall apply 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 shall apply 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 shall not apply
17 and the superseded law shall apply; and

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

20 SECTION 2. Section 412:4-100, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) Other provisions of the laws of this State,
2 including, but not limited to, chapter 490, the Uniform
3 Commercial Code, [~~chapter 551D, the Uniform Durable Power of~~
4 ~~Attorney Act,~~] chapter , the Uniform Power of Attorney Act,
5 chapter 553A, Uniform Transfers to Minors Act, chapter 556, the
6 Uniform Fiduciaries Act, chapter 560, the Uniform Probate Code,
7 and any successor or similar acts shall also be applicable to
8 deposits in this State. The rights, protections, releases and
9 discharges of financial institutions with respect to its
10 depositors or third parties contained in this article and other
11 applicable laws shall be cumulative."

12 SECTION 3. Section 432E-4, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) The provider shall discuss with the enrollee and the
15 enrollee's immediate family both advanced health-care
16 directives, as provided for in chapter 327E, and durable powers
17 of attorney in relation to medical treatment [~~, as provided for~~
18 ~~in chapter 327E and section 551D-2.5]~~."

19 SECTION 4. Chapter 551D, Hawaii Revised Statutes, is
20 repealed.

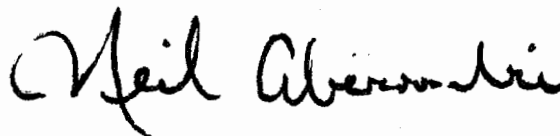
21 SECTION 5. The Revisor of Statutes shall insert the
22 appropriate effective date of this Act in section 1 of this Act.



1 SECTION 6. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect upon its approval.

APPROVED this 17 day of APR, 2014



GOVERNOR OF THE STATE OF HAWAII