

CHAPTER 2011-210

Committee Substitute for Senate Bill No. 670

An act relating to powers of attorney; providing directives to the Division of Statutory Revision; creating s. 709.2101, F.S.; providing a short title; creating s. 709.2102, F.S.; providing definitions; creating s. 709.2103, F.S.; providing applicability; providing exceptions; creating s. 709.2104, F.S.; providing for a durable power of attorney; creating s. 709.2105, F.S.; specifying the qualifications for an agent; providing requirements for the execution of a power of attorney; creating s. 709.2106, F.S.; providing for the validity of powers of attorney created by a certain date or in another jurisdiction; providing for the validity of a military power of attorney; providing for the validity of a photocopy or electronic copy of a power of attorney; creating s. 709.2107, F.S.; providing for the meaning and effectiveness of a power of attorney; creating s. 709.2108, F.S.; specifying when a power of attorney is effective; providing limitations with respect to a future power of attorney; creating s. 709.2109, F.S.; providing for the termination or suspension of a power of attorney or an agent's authority; creating s. 709.2110, F.S.; providing for the revocation of a power of attorney; creating s. 709.2111, F.S.; providing for the designation of co-agents and successor agents; specifying the responsibility of a successor agent for a predecessor agent; authorizing a co-agent to delegate certain banking transaction to a co-agent; creating s. 709.2112, F.S.; providing for the reimbursement and compensation of agents; creating s. 709.2113, F.S.; providing for the agent's acceptance of appointment; creating s. 709.2114, F.S.; providing for an agent's duties; limiting an agent's liability, absent a breach of duty; requiring that an agent make certain disclosures upon order of a court, upon the death of the principal, or under certain other circumstances; creating s. 709.2115, F.S.; providing for the exoneration of an agent; providing exceptions; creating s. 709.2116, F.S.; providing for judicial relief; authorizing the award of attorney's fees and costs; providing for a judicial challenge to an agent's exercise of power based on a conflict of interest; specifying the burden of proof required to overcome that challenge; creating s. 709.2117, F.S.; providing for an agent's liability; creating s. 709.2118, F.S.; providing for an agent's resignation; creating s. 709.2119, F.S.; providing for the acceptance of and reliance upon a power of attorney; authorizing a third party to require an affidavit; providing for the validity of acts taken on behalf of a principal who is reported as missing by a branch of the United States Armed Forces; providing a restriction on the conveyance of homestead property held by such a principal; creating s. 709.2120, F.S.; providing for liability if a third person refuses to accept a power of attorney under certain circumstances; providing for an award of damages and attorney's fees and costs; creating s. 709.2121, F.S.; requiring that notice of certain events be provided to an agent or other third person; specifying the form of the notice and when it is effective; creating s. 709.2201, F.S.; providing for the authority of an agent; providing limitations; providing that an agent's authority extends to property

later acquired by the principal; creating s. 709.2202, F.S.; specifying that certain authority requires separate signed enumeration; restricting the amount of certain gifts made by an agent; specifying certain acts that do not require specific authority if the agent is authorized to conduct banking transactions; limiting the application of such provision; creating s. 709.2208, F.S.; providing for authority to conduct banking and security transactions; creating s. 709.2301, F.S.; specifying the role of common law; creating s. 709.2302, F.S.; providing for the preemption of laws relating to financial institutions; creating s. 709.2303, F.S.; providing for the recognition of other remedies; creating s. 709.2401, F.S.; specifying the relationship of the act to federal law regulating electronic signatures; creating s. 709.2402, F.S.; providing for powers of attorney executed before the effective date of the act; amending s. 736.0602, F.S.; conforming a cross-reference; repealing s. 709.01, F.S., relating to the authority of an agent when the principal is dead; repealing s. 709.015, F.S., relating to the authority of an agent when the principal is missing; repealing s. 709.08, F.S., relating to durable powers of attorney; repealing s. 709.11, F.S., relating to a deployment-contingent power of attorney; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. The Division of Statutory Revision is requested to create part I of chapter 709, Florida Statutes, consisting of ss. 709.02-709.07, entitled “POWERS OF APPOINTMENT.”

Section 2. The Division of Statutory Revision is requested to create part II of chapter 709, Florida Statutes, consisting of ss. 709.2101-709.2402, entitled “POWERS OF ATTORNEY.”

Section 3. Section 709.2101, Florida Statutes, is created to read:

709.2101 Short title.—This part may be cited as the “Florida Power of Attorney Act.”

Section 4. Section 709.2102, Florida Statutes, is created to read:

709.2102 Definitions.—As used in this part, the term:

(1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney in fact, or otherwise. The term includes an original agent, co-agent, and successor agent.

(2) “Durable” means, with respect to a power of attorney, not terminated by the principal’s incapacity.

(3) “Electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) “Financial institution” has the same meaning as in s. 655.005.

(5) “Incapacity” means the inability of an individual to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(6) “Knowledge” means a person has actual knowledge of the fact, has received a notice or notification of the fact, or has reason to know the fact from all other facts and circumstances known to the person at the time in question. An organization that conducts activities through employees has notice or knowledge of a fact involving a power of attorney only from the time information was received by an employee having responsibility to act on matters involving the power of attorney, or would have had if brought to the employee’s attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act on matters involving the power of attorney and there is reasonable compliance with the routines. Reasonable diligence does not require an employee to communicate information unless the communication is part of the individual’s regular duties or the individual knows that a matter involving the power of attorney would be materially affected by the information.

(7) “Power of attorney” means a writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing.

(8) “Presently exercisable general power of appointment” means, with respect to property or a property interest subject to a power of appointment, power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.

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

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

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

(12) “Sign” means having present intent to authenticate or adopt a record to:

(a) Execute or adopt a tangible symbol; or

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

(13) “Third person” means any person other than the principal, or the agent in the agent’s capacity as agent.

Section 5. Section 709.2103, Florida Statutes, is created to read:

709.2103 Applicability.—This part applies to all powers of attorney except:

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

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

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

(4) A power created by a person other than an individual.

Section 6. Section 709.2104, Florida Statutes, is created to read:

709.2104 Durable power of attorney.—Except as otherwise provided under this part, a power of attorney is durable if it contains the words: “This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes,” or similar words that show the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent incapacity.

Section 7. Section 709.2105, Florida Statutes, is created to read:

709.2105 Qualifications of agent; execution of power of attorney.—

(1) The agent must be a natural person who is 18 years of age or older or a financial institution that has trust powers, has a place of business in this state, and is authorized to conduct trust business in this state.

(2) A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in s. 695.03.

Section 8. Section 709.2106, Florida Statutes, is created to read:

709.2106 Validity of power of attorney.—

(1) A power of attorney executed on or after October 1, 2011, is valid if its execution complies with s. 709.2105.

(2) A power of attorney executed before October 1, 2011, is valid if its execution complied with the law of this state at the time of execution.

(3) A power of attorney executed in another state which does not comply with the execution requirements of this part is valid in this state if, when the power of attorney was executed, the power of attorney and its execution complied with the law of the state of execution. A third person who is requested to accept a power of attorney that is valid in this state solely because of this subsection may in good faith request, and rely upon, without further investigation, an opinion of counsel as to any matter of law concerning the power of attorney, including the due execution and validity of the power of attorney. An opinion of counsel requested under this subsection must be provided at the principal's expense. A third person may accept a power of attorney that is valid in this state solely because of this subsection if the agent does not provide the requested opinion of counsel, and in such case, a third person has no liability for refusing to accept the power of attorney. This subsection does not affect any other rights of a third person who is requested to accept the power of attorney under this part, or any other provisions of applicable law.

(4) A military power of attorney is valid if it is executed in accordance with 10 U.S.C. s. 1044b, as amended. A deployment-contingent power of attorney may be signed in advance, is effective upon the deployment of the principal, and shall be afforded full force and effect by the courts of this state.

(5) Except as otherwise provided in the power of attorney, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

Section 9. Section 709.2107, Florida Statutes, is created to read:

709.2107 Meaning and effectiveness of power of attorney.—The meaning and effectiveness of a power of attorney is governed by this part if the power of attorney:

- (1) Is used in this state; or
- (2) States that it is to be governed by the laws of this state.

Section 10. Section 709.2108, Florida Statutes, is created to read:

709.2108 When power of attorney is effective.—

(1) Except as provided in this section, a power of attorney is exercisable when executed.

(2) If a power of attorney executed before October 1, 2011, is conditioned on the principal's lack of capacity and the power of attorney has not become exercisable before that date, the power of attorney is exercisable upon the delivery of the affidavit of a physician who has primary responsibility for the treatment and care of the principal and who is licensed to practice medicine

or osteopathic medicine pursuant to chapter 458 or chapter 459 as of the date of the affidavit. The affidavit executed by the physician must state that the physician is licensed to practice medicine or osteopathic medicine pursuant to chapter 458 or chapter 459, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property.

(3) Except as provided in subsection (2) and s. 709.2106(4), a power of attorney is ineffective if the power of attorney provides that it is to become effective at a future date or upon the occurrence of a future event or contingency.

Section 11. Section 709.2109, Florida Statutes, is created to read:

709.2109 Termination or suspension of power of attorney or agent's authority.—

(1) A power of attorney terminates when:

(a) The principal dies;

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

(c) The principal is adjudicated totally or partially incapacitated by a court, unless the court determines that certain authority granted by the power of attorney is to be exercisable by the agent;

(d) The principal revokes the power of attorney;

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

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

(g) The agent's authority terminates and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority is exercisable until the authority terminates. An agent's authority terminates when:

(a) The agent dies, becomes incapacitated, resigns, or is removed by a court;

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

(c) The power of attorney terminates.

(3) If any person initiates judicial proceedings to determine the principal's incapacity or for the appointment of a guardian advocate, the authority

granted under the power of attorney is suspended until the petition is dismissed or withdrawn or the court enters an order authorizing the agent to exercise one or more powers granted under the power of attorney.

(a) If an emergency arises after initiation of proceedings to determine incapacity and before adjudication regarding the principal's capacity, the agent may petition the court in which the proceeding is pending for authorization to exercise a power granted under the power of attorney. The petition must set forth the nature of the emergency, the property or matter involved, and the power to be exercised by the agent.

(b) Notwithstanding the provisions of this section, unless otherwise ordered by the court, a proceeding to determine incapacity does not affect the authority of the agent to make health care decisions for the principal, including, but not limited to, those provided in chapter 765. If the principal has executed a health care advance directive designating a health care surrogate, the terms of the directive control if the directive and the power of attorney are in conflict unless the power of attorney is later executed and expressly states otherwise.

(4) Termination or suspension of an agent's authority or of a power of attorney is not effective as to an agent who, without knowledge of the termination or suspension, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

Section 12. Section 709.2110, Florida Statutes, is created to read:

709.2110 Revocation of power of attorney.—

(1) A principal may revoke a power of attorney by expressing the revocation in a subsequently executed power of attorney or other writing signed by the principal. The principal may give notice of the revocation to an agent who has accepted authority under the revoked power of attorney.

(2) Except as provided in subsection (1), the execution of a power of attorney does not revoke a power of attorney previously executed by the principal.

Section 13. Section 709.2111, Florida Statutes, is created to read:

709.2111 Co-agents and successor agents.—

(1) A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.

(2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the power of attorney otherwise provides, a successor agent:

- (a) Has the same authority as that granted to the original agent; and
- (b) May not act until the predecessor agents have resigned, have died, have become incapacitated, are no longer qualified to serve, or have declined to serve.
- (3) Except as otherwise provided in the power of attorney and subsection (4), an agent who does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions or omissions of the other agent.
- (4) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent, including a predecessor agent, must take any action reasonably appropriate in the circumstances to safeguard the principal's best interests. If the agent in good faith believes that the principal is not incapacitated, giving notice to the principal is a sufficient action. An agent who fails to take action as required by this subsection is liable to the principal for the principal's reasonably foreseeable damages that could have been avoided if the agent had taken such action.
- (5) A successor agent does not have a duty to review the conduct or decisions of a predecessor agent. Except as provided in subsection (4), a successor agent does not have a duty to institute any proceeding against a predecessor agent, or to file any claim against a predecessor agent's estate, for any of the predecessor agent's actions or omissions as agent.
- (6) If a power of attorney requires that two or more persons act together as co-agents, notwithstanding the requirement that they act together, one or more of the agents may delegate to a co-agent the authority to conduct banking transactions as provided in s. 709.2208(1), whether the authority to conduct banking transactions is specifically enumerated or incorporated by reference to that section in the power of attorney.

Section 14. Section 709.2112, Florida Statutes, is created to read:

709.2112 Reimbursement and compensation of agent.—

- (1) Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.
- (2) Unless the power of attorney otherwise provides, a qualified agent is entitled to compensation that is reasonable under the circumstances.
- (3) Notwithstanding any provision in the power of attorney, an agent may not be paid compensation unless the agent is a qualified agent.
- (4) For purposes of this section, the term "qualified agent" means an agent who is the spouse of the principal, an heir of the principal within the meaning of s. 732.103, a financial institution that has trust powers and a place of business in this state, an attorney or certified public accountant who

is licensed in this state, or a natural person who is a resident of this state and who has never been an agent for more than three principals at the same time.

Section 15. Section 709.2113, Florida Statutes, is created to read:

709.2113 Agent’s acceptance of appointment.—Except as otherwise provided in the power of attorney, a person accepts appointment as an agent by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. The scope of an agent’s acceptance is limited to those aspects of the power of attorney for which the agent’s assertions or conduct reasonably manifests acceptance.

Section 16. Section 709.2114, Florida Statutes, is created to read:

709.2114 Agent’s duties.—

(1) An agent is a fiduciary. Notwithstanding the provisions in the power of attorney, an agent who has accepted appointment:

(a) Must act only within the scope of authority granted in the power of attorney. In exercising that authority, the agent:

1. May not act contrary to the principal’s reasonable expectations actually known by the agent;

2. Must act in good faith;

3. May not act in a manner that is contrary to the principal’s best interest, except as provided in paragraph (2)(d) and s. 709.2202; and

4. Must attempt to preserve the principal’s estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal’s best interest based on all relevant factors, including:

a. The value and nature of the principal’s property;

b. The principal’s foreseeable obligations and need for maintenance;

c. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

d. Eligibility for a benefit, a program, or assistance under a statute or rule; and

e. The principal’s personal history of making or joining in making gifts;

(b) May not delegate authority to a third person except as provided in s. 518.112;

(c) Must keep a record of all receipts, disbursements, and transactions made on behalf of the principal; and

(d) Must create and maintain an accurate inventory each time the agent accesses the principal's safe-deposit box, if the power of attorney authorizes the agent to access the box.

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

(a) Act loyally for the sole benefit of the principal;

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

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

(d) Cooperate with a person who has authority to make health care decisions for the principal in order to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.

(3) An agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

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

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

(6) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, transactions conducted on behalf of the principal, or safe-deposit box inventories, unless ordered by a court or requested by the principal, a court-appointed guardian, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If requested, the agent must comply with the request within 60 days or provide a writing or other record substantiating why additional time is needed and comply with the request within an additional 60 days.

Section 17. Section 709.2115, Florida Statutes, is created to read:

709.2115 Exoneration of agent.—A power of attorney may provide that the agent is not liable for any acts or decisions made by the agent in good faith and under the power of attorney, except to the extent the provision:

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

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

Section 18. Section 709.2116, Florida Statutes, is created to read:

709.2116 Judicial relief; conflicts of interests.—

(1) A court may construe or enforce a power of attorney, review the agent's conduct, terminate the agent's authority, remove the agent, and grant other appropriate relief.

(2) The following persons may petition the court:

(a) The principal or the agent, including any nominated successor agent.

(b) A guardian, conservator, trustee, or other fiduciary acting for the principal or the principal's estate.

(c) A person authorized to make health care decisions for the principal if the health care of the principal is affected by the actions of the agent.

(d) Any other interested person if the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that the court's intervention is necessary.

(e) A governmental agency having regulatory authority to protect the welfare of the principal.

(f) A person asked to honor the power of attorney.

(3) In any proceeding commenced by filing a petition under this section, including, but not limited to, the unreasonable refusal of a third person to allow an agent to act pursuant to the power of attorney, and in challenges to the proper exercise of authority by the agent, the court shall award reasonable attorney's fees and costs.

(4) If an agent's exercise of a power is challenged in a judicial proceeding brought by or on behalf of the principal on the grounds that the exercise of the power was affected by a conflict of interest, and evidence is presented that the agent or an affiliate of the agent had a personal interest in the exercise of the power, the agent or affiliate has the burden of proving, by clear and convincing evidence that the agent acted:

(a) Solely in the interest of the principal; or

(b) In good faith in the principal's best interest, and the conflict of interest was expressly authorized in the power of attorney.

(5) For purposes of subsection (4):

(a) A provision authorizing an agent to engage in a transaction affected by a conflict of interest which is inserted into a power of attorney as the result of the abuse of a fiduciary or confidential relationship with the principal by the agent or the agent's affiliate is invalid.

(b) Affiliates of an agent include:

1. The agent's spouse;
2. The agent's descendants, siblings, parents, or their spouses;
3. A corporation or other entity in which the agent, or a person who owns a significant interest in the agent, has an interest that might affect the agent's best judgment;
4. A person or entity that owns a significant interest in the agent; or
5. The agent acting in a fiduciary capacity for someone other than the principal.

Section 19. Section 709.2117, Florida Statutes, is created to read:

709.2117 Agent's liability.—An agent who violates this part is liable to the principal or the principal's successors in interest for the amount required to:

- (1) Restore the value of the principal's property to what it would have been had the violation not occurred; and
- (2) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid from the principal's funds on the agent's behalf in defense of the agent's actions.

Section 20. Section 709.2118, Florida Statutes, is created to read:

709.2118 Agent's resignation.—Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal, to the guardian if the principal is incapacitated and one has been appointed for the principal, and to any co-agent, or if none, the next successor agent.

Section 21. Section 709.2119, Florida Statutes, is created to read:

709.2119 Acceptance of and reliance upon power of attorney.—

(1)(a) A third person who in good faith accepts a power of attorney that appears to be executed in the manner required by law at the time of its execution may rely upon the power of attorney and the actions of the agent which are reasonably within the scope of the agent's authority and may enforce any obligation created by the actions of the agent as if:

- 1. The power of attorney were genuine, valid, and still in effect;
- 2. The agent’s authority were genuine, valid, and still in effect; and
- 3. The authority of the officer executing for or on behalf of a financial institution that has trust powers and acting as agent is genuine, valid, and still in effect.

(b) For purposes of this subsection, and without limiting what constitutes good faith, a third person does not accept a power of attorney in good faith if the third person has notice that:

- 1. The power of attorney is void, invalid, or terminated; or
- 2. The purported agent’s authority is void, invalid, suspended, or terminated.

(2) A third person may require:

(a) An agent to execute an affidavit stating where the principal is domiciled; that the principal is not deceased; that there has been no revocation, or partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney; that there has been no suspension by initiation of proceedings to determine incapacity, or to appoint a guardian, of the principal; and, if the affiant is a successor agent, the reasons for the unavailability of the predecessor agents, if any, at the time the authority is exercised.

(b) An officer of a financial institution acting as agent to execute a separate affidavit, or include in the form of the affidavit, the officer’s title and a statement that the officer has full authority to perform all acts and enter into all transactions authorized by the power of attorney for and on behalf of the financial institution in its capacity as agent. A written affidavit executed by the agent under this subsection may, but need not, be in the following form:

STATE OF.....

COUNTY OF.....

Before me, the undersigned authority, personally appeared ...(attorney in fact)... (“Affiant”), who swore or affirmed that:

- 1. Affiant is the attorney in fact named in the Durable Power of Attorney executed by ...(principal)... (“Principal”) on ...(date)....
- 2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in ...(insert name of state, territory, or foreign country)....

- 3. To the best of Affiant’s knowledge after diligent search and inquiry:
 - a. The Principal is not deceased;
 - b. Affiant’s authority has not been suspended by initiation of proceedings to determine incapacity or to appoint a guardian or a guardian advocate; and
 - c. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant’s authority.
- 4. Affiant is acting within the scope of authority granted in the power of attorney.
- 5. Affiant is the successor to ...(insert name of predecessor agent)..., who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act, if applicable.
- 6. Affiant agrees not to exercise any powers granted by the Durable Power of Attorney if Affiant attains knowledge that it has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

.....
 ...(Affiant)...

Sworn to (or affirmed) and subscribed before me this day of ...(month) ... (year)..., by ...(name of person making statement)...

...(Signature of Notary Public-State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known OR Produced Identification

...(Type of Identification Produced)...

(3) A third person who is asked to accept a power of attorney that appears to be executed in accordance with s. 709.2103 may in good faith request, and rely upon, without further investigation:

(a) A verified English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;

(b) An opinion of counsel as to any matter of law concerning the power of attorney if the third person making the request provides in a writing or other record the reason for the request; or

(c) The affidavit described in subsection (2).

(4) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made after the time specified in s. 709.2120(1) for acceptance or rejection of the power of attorney.

(5) Third persons who act in reliance upon the authority granted to an agent and in accordance with the instructions of the agent shall be held harmless by the principal from any loss suffered or liability incurred as a result of actions taken before the receipt of notice as provided in s. 709.2121. A third person who acts in good faith upon any representation, direction, decision, or act of the agent is not liable to the principal or the principal's estate, beneficiaries, or joint owners for those acts.

(6) The acts of an agent under a power of attorney are as valid and binding on the principal or the principal's estate as if the principal were alive and competent if, in connection with any activity pertaining to hostilities in which the United States is then engaged, the principal is officially listed or reported by a branch of the United States Armed Forces in a missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s. 5561, regardless of whether the principal is dead, alive, or incompetent. Homestead property held as tenants by the entireties may not be conveyed by a power of attorney regulated under this provision until 1 year after the first official report or listing of the principal as missing or missing in action. An affidavit of an officer of the Armed Forces having maintenance and control of the records pertaining to those missing or missing in action that the principal has been in that status for a given period is conclusive presumption of the fact.

Section 22. Section 709.2120, Florida Statutes, is created to read:

709.2120 Refusal to accept power of attorney.—

(1) Except as provided in subsection (2):

(a) A third person must accept or reject a power of attorney within a reasonable time. A third person who rejects a power of attorney must state in writing the reason for the rejection.

(b) Four days, excluding Saturdays, Sundays, and legal holidays, are presumed to be a reasonable time for a financial institution to accept or reject a power of attorney with respect to:

1. A banking transaction, if the power of attorney expressly contains authority to conduct banking transactions pursuant to s. 709.2208(1); or

2. A security transaction, if the power of attorney expressly contains authority to conduct security transactions pursuant to s. 709.2208(2).

(c) A third person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

(2) A third person is not required to accept a power of attorney if:

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

(b) The third person has knowledge of the termination or suspension of the agent's authority or of the power of attorney before exercising the power;

(c) A timely request by the third person for an affidavit, English translation, or opinion of counsel under s. 709.2119(4) is refused by the agent;

(d) Except as provided in paragraph (b), the third person believes in good faith that the power is not valid or that the agent does not have authority to perform the act requested; or

(e) The third person makes, or has knowledge that another person has made, a report to the local adult protective services office stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(3) A third person who, in violation of this section, refuses to accept a power of attorney is subject to:

(a) A court order mandating acceptance of the power of attorney; and

(b) Liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms, for the purpose tendered, the validity of the power of attorney or mandates acceptance of the power of attorney.

Section 23. Section 709.2121, Florida Statutes, is created to read:

709.2121 Notice.—

(1) A notice, including a notice of revocation, notice of partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney, notice of death of the principal, notice of suspension by initiation of proceedings to determine incapacity or to appoint a guardian, or other notice, is not effective until written notice is provided to the agent or any third persons relying upon a power of attorney.

(2) Notice must be in writing and must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message.

(3) Notice to a financial institution must contain the name, address, and the last four digits of the principal's taxpayer identification number and be directed to an officer or a manager of the financial institution in this state.

(4) Notice is effective when given, except that notice upon a financial institution, brokerage company, or title insurance company is not effective until 5 days, excluding Saturdays, Sundays, and legal holidays, after it is received.

Section 24. Section 709.2201, Florida Statutes, is created to read:

709.2201 Authority of agent.—

(1) Except as provided in this section or other applicable law, an agent may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority. General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, are not express grants of specific authority and do not grant any authority to the agent. Court approval is not required for any action of the agent in furtherance of an express grant of specific authority.

(2) As a confirmation of the law in effect in this state when this part became effective, such authorization may include, without limitation, authority to:

(a) Execute stock powers or similar documents on behalf of the principal and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities into or out of the principal's or nominee's name.

(b) Convey or mortgage homestead property. However, if the principal is married, the agent may not mortgage or convey homestead property without joinder of the principal's spouse or the spouse's guardian. Joinder by a spouse may be accomplished by the exercise of authority in a power of attorney executed by the joining spouse, and either spouse may appoint the other as his or her agent.

(c) If such authority is specifically granted in a durable power of attorney, make all health care decisions on behalf of the principal, including, but not limited to, those set forth in chapter 765.

(3) Notwithstanding the provisions of this section, an agent may not:

(a) Perform duties under a contract that requires the exercise of personal services of the principal;

(b) Make any affidavit as to the personal knowledge of the principal;

(c) Vote in any public election on behalf of the principal;

- (d) Execute or revoke any will or codicil for the principal; or
- (e) Exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary.
- (4) Subject to s. 709.2202, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.
- (5) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed and to property that the principal acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.
- (6) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

Section 25. Section 709.2202, Florida Statutes, is created to read:

709.2202 Authority that requires separate signed enumeration.—

(1) Notwithstanding s. 709.2201, an agent may exercise the following authority only if the principal signed or initialed next to each specific enumeration of the authority, the exercise of the authority is consistent with the agent's duties under s. 709.2114, and the exercise is not otherwise prohibited by another agreement or instrument:

- (a) Create an inter vivos trust;
- (b) With respect to a trust created by or on behalf of the principal, amend, modify, revoke, or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by the settlor's agent;
- (c) Make a gift, subject to subsection (3);
- (d) Create or change rights of survivorship;
- (e) Create or change a beneficiary designation;
- (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- (g) Disclaim property and powers of appointment.

(2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent who is not an ancestor, spouse, or descendant of the principal may not exercise authority to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

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

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

(b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

(4) Notwithstanding subsection (1), if a power of attorney is otherwise sufficient to grant an agent authority to conduct banking transactions, as provided in s. 709.2208(1), conduct investment transactions as provided in s. 709.2208(2), or otherwise make additions to or withdrawals from an account of the principal, making a deposit to or withdrawal from an insurance policy, retirement account, individual retirement account, benefit plan, bank account, or any other account held jointly or otherwise held in survivorship or payable on death, is not considered to be a change to the survivorship feature or beneficiary designation, and no further specific authority is required for the agent to exercise such authority. A bank or other financial institution does not have a duty to inquire as to the appropriateness of the agent's exercise of that authority and is not liable to the principal or any other person for actions taken in good faith reliance on the appropriateness of the agent's actions. This subsection does not eliminate the agent's fiduciary duties to the principal with respect to any exercise of the power of attorney.

(5) This section does not apply to a power of attorney executed before October 1, 2011.

Section 26. Section 709.2208, Florida Statutes, is created to read:

709.2208 Banks and other financial institutions.—

(1) A power of attorney that includes the statement that the agent has "authority to conduct banking transactions as provided in section 709.2208(1), Florida Statutes" grants general authority to the agent to engage in the following transactions with financial institutions without additional specific enumeration in the power of attorney:

(a) Establish, continue, modify, or terminate an account or other banking arrangement with a financial institution.

(b) Contract for services available from a financial institution, including renting a safe-deposit box or space in a vault.

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

(d) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(e) Purchase cashier's checks, official checks, counter checks, bank drafts, money orders, and similar instruments.

(f) Endorse and negotiate checks, cashier's checks, official checks, drafts, and other negotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.

(g) Apply for, receive, and use debit cards, electronic transaction authorizations, and traveler's checks from a financial institution.

(h) Use, charge, or draw upon any line of credit, credit card, or other credit established by the principal with a financial institution.

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

(2) A power of attorney that specifically includes the statement that the agent has "authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes" grants general authority to the agent with respect to securities held by financial institutions to take the following actions without additional specific enumeration in the power of attorney:

(a) Buy, sell, and exchange investment instruments.

(b) Establish, continue, modify, or terminate an account with respect to investment instruments.

(c) Pledge investment instruments as security to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(d) Receive certificates and other evidences of ownership with respect to investment instruments.

(e) Exercise voting rights with respect to investment instruments in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

(f) Sell commodity futures contracts and call and put options on stocks and stock indexes.

For purposes of this subsection, the term "investment instruments" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner,

including shares or interests in a private investment fund, including, but not limited to, a private investment fund organized as a limited partnership, a limited liability company, a statutory or common law business trust, a statutory trust, or a real estate investment trust, joint venture, or any other general or limited partnership; derivatives or other interests of any nature in securities such as options, options on futures, and variable forward contracts; mutual funds; common trust funds; money market funds; hedge funds; private equity or venture capital funds; insurance contracts; and other entities or vehicles investing in securities or interests in securities whether registered or otherwise, except commodity futures contracts and call and put options on stocks and stock indexes.

Section 27. Section 709.2301, Florida Statutes, is created to read:

709.2301 Principles of law and equity.—The common law of agency and principles of equity supplement this part, except as modified by this part or other state law.

Section 28. Section 709.2302, Florida Statutes, is created to read:

709.2302 Laws applicable to financial institutions and entities.—This part does not supersede any other law applicable to financial institutions or other entities, and that law controls if inconsistent with this part.

Section 29. Section 709.2303, Florida Statutes, is created to read:

709.2303 Remedies under other law.—The remedies under this part are not exclusive and do not abrogate any right or remedy under any other law other than this part.

Section 30. Section 709.2401, Florida Statutes, is created to read:

709.2401 Relation to electronic signatures in federal law.—This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, or authorize electronic delivery of any of the notices described in s. 103(b) of that act.

Section 31. Section 709.2402, Florida Statutes, is created to read:

709.2402 Effect on existing powers of attorney.—Except as otherwise provided in this part:

(1) With respect to formalities of execution, this part applies to a power of attorney created on or after October 1, 2011.

(2) With respect to all matters other than formalities of execution, this part applies to a power of attorney regardless of the date of creation.

(3) With respect to a power of attorney existing on October 1, 2011, this part does not invalidate such power of attorney and it shall remain in effect.

If a right was acquired under any other law before October 1, 2011, that law continues to apply to the right even if it has been repealed or superseded.

(4) An act of an agent occurring before October 1, 2011, is not affected by this part.

Section 32. Subsection (5) of section 736.0602, Florida Statutes, is amended to read:

736.0602 Revocation or amendment of revocable trust.—

(5) A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only as authorized by s. 709.2202 ~~709.08~~.

Section 33. Sections 709.01, 709.015, 709.08, and 709.11 Florida Statutes, are repealed.

Section 34. This act shall take effect October 1, 2011.

Approved by the Governor June 21, 2011.

Filed in Office Secretary of State June 21, 2011.