

POWERS OF ATTORNEY AND SIMILAR INSTRUMENTS

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POWERS OF ATTORNEY AND SIMILAR INSTRUMENTS

709.101 Short title.--Sections 709.101-709.402 may be cited as the Florida Power of Attorney Act.

709.102 Definitions.—In this act, 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," with respect to a power of attorney, means not terminated by the principal's incapacity.

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

(4) "Incapacity" means 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.

(5) "Knowledge" means a person (a) has actual knowledge of the fact, (b) has received a notice or notification of the fact, or (c) 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 been 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 of the organization to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter involving the power of attorney would be materially affected by the information.

(6) "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 "power of attorney" is used in that writing.

(7) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means 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.

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

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

(10) "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.

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

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

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

(12) "Third person" means any person other than the principal, or the agent in the agent's capacity as agent.

Section 709.103 Applicability.--This act 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.

709.104 When power of attorney is durable.--A power of attorney created under this act 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, except as otherwise provided by this act.

709.105 Execution of power of attorney.--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.

709.106 Validity of power of attorney.--

(1) A power of attorney executed on or after the effective date of this act is valid if its execution complies with s. 709.105.

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

(3) A power of attorney executed in a state of the United States other than Florida that does not comply with the execution requirements of this act 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 that 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 section must be provided at the principal's expense. A third person may, but is not required to, 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 this instance, a third person shall have no liability for refusing to accept the power of attorney. This subsection does not affect any other rights of a third person requested to accept the power of attorney under this act, or any other provisions of applicable law.

(4) Except as otherwise provided in the power of attorney or by law other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

709.1065 Military powers of attorney.--Notwithstanding anything in this act to the contrary:

(1) A military power of attorney is valid if it is executed in accordance with the requirements for a military power of attorney pursuant to 10 U.S.C. sec. 1044b, as amended.

(2) A deployment-contingent power of attorney may be signed in advance, shall be effective upon the deployment of the principal, and shall be afforded full force and effect by the courts of the State of Florida.

709.107 Meaning and effectiveness of power of attorney.-- The meaning and effectiveness of a power of attorney is governed by this act if:

- (1) The power of attorney is used in this state; or
- (2) The power of attorney states that it is to be governed by the laws of this state.

709.108 When power of attorney effective.--

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

(2) If a power of attorney executed before the effective date of this act is conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)(a), and the power of attorney has not become exercisable prior to the effective date of this act, 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 pursuant to chapter 458 and 459 as of the date of the affidavit. The affidavit executed by a physician must state where the physician is licensed to practice medicine, 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 as defined in s. 744.102(12)(a).

(3) Except as provided in subsection (2) and section 709.1065, a power of attorney is ineffective in this state 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.

709.1085 Qualifications of agent. -- The agent must be a natural person who is 18 years of age or older, or a financial institution as defined in chapter 655 with trust powers having a place of business in this state and authorized to conduct trust business in this state.

709.109 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 under this subsection. 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 their legal separation, unless the power of attorney otherwise provides; or

(c) The power of attorney terminates.

(3) If any person initiates proceedings in any court of competent jurisdiction 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 shall not affect any authority of the agent to make health care decisions for the principal, including, but not limited to, those defined in chapter 765. If the principal has executed a health care advance directive designating a health care surrogate pursuant to chapter 765, the terms of the directive will 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 that, 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.

709.110 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, but is not required to, give notice of the revocation to any agent that 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.

709.111 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 agent (or agents) have resigned, died, 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 that 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 that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent, including a predecessor agent, shall 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 in the circumstances. An agent that 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 any predecessor agent's estate, for any of the predecessor agent's actions or omissions as agent.

(6) If a power of attorney requires two or more persons must act together as co-agents, then notwithstanding the requirement that they act together, one or more of the agents may delegate to any co-agent the authority to conduct banking transactions as provided in section 709.208(1), whether the authority to conduct banking transactions is specifically enumerated or incorporated by reference to section 709.208(1) in the power of attorney.

709.112 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 to the contrary, an agent shall not be paid compensation unless the agent is a qualified agent.

For purposes of this section, "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 as defined in Chapter 655 with trust powers having a place of business in this state, an attorney or certified public accountant, 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.

709.113 Agent's acceptance.--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.

709.114 Agent's duties.--

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

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

1. Shall not act contrary to the principal's reasonable expectations actually known by the agent;
 2. Shall act in good faith;
 3. Shall not act in a manner that is contrary to the principal's best interest, except as provided in ss. 709.114(2)(d) and 709.202; and
 4. Shall 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:
 - (I) The value and nature of the principal's property;
 - (II) The principal's foreseeable obligations and need for maintenance;
 - (III) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
 - (IV) Eligibility for a benefit, a program, or assistance under a statute or regulation; and
 - (V) The principal's personal history of making or joining in making gifts.
- (b) Shall not delegate authority to a third person except as provided in s. 518.112.
- (c) Shall keep a record of all receipts, disbursements, and transactions made on behalf of the principal; and
- (d) Shall create and then 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 that 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 that has authority to make health-care decisions for the principal 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 that 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 so requested, within 60 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 60 days.

709.1145 Actions involving an alleged conflict of interest.--

(1) If an agent's exercise of a power is challenged in any 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 shall have the burden of proving, by clear and convincing evidence that:

(a) The agent acted solely in the interest of the principal, or that:

(b) 1. The agent acted in good faith in the principal's best interest;
and

2. The conflict of interest was expressly authorized in the power of attorney.

(2) For purposes of this section:

(a) A provision authorizing an agent to engage in a transaction affected by conflict of interest that 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 that 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 when acting in a fiduciary capacity for someone other than the principal.

709.115 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.

709.116 Judicial relief.--

(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 to the extent that the health care of the principal is affected by the actions of the agent;

(d) Any other interested person as long as the person demonstrated 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; and

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

(3) In any proceeding commenced by the filing of 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, and challenges to the proper exercise of authority by the agent, the court shall award taxable costs as in chancery actions, including reasonable attorneys' fees.

709.117 Agent's liability.--An agent that violates this act 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.

709.118 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, if the principal is incapacitated to the court-appointed guardian, if one has been appointed for the principal, and to any co-agent, or if none, the next successor agent.

709.119 Acceptance of and reliance upon power of attorney.--

(1) (a) A third person that in good faith accepts a power of attorney which appears to be executed in accordance with this act may rely upon the power of attorney and may enforce an authorized transaction against the principal's property, 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 with trust powers acting as agent was 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 but need not require the agent to execute an affidavit stating where the principal is domiciled; that the principal is not deceased; that there has been no revocation, 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. A third person may also require 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 (agent) ("Affiant"), who swore or affirmed that:

1. Affiant is the agent named in the 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 the 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, partial or complete termination of the power of attorney or of the Affiant's authority.
4. The Affiant is acting within the scope of authority granted in the power of attorney.

5. The 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 Power of Attorney if Affiant has knowledge that affiant's authority has been revoked, terminated, suspended, or is no longer valid.

(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 that is asked to accept a power of attorney that appears to be executed in accordance with s.709.105 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. 709.120(1), Florida Statutes, for acceptance or rejection of the power of attorney.

(5) Third persons that 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 prior to receipt of written notice as provided in s. 709.121, Florida Statutes. A third person that 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 shall be 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 then dead, alive or incompetent. Homestead property held as tenants by the entirety shall not be conveyed by a power of attorney regulated by this provision until one year following 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 shall be a conclusive presumption of the fact.

709.120 Liability for refusal to accept power of attorney.—

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

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

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

1. With respect to banking transactions, if the power of attorney expressly contains authority to conduct banking transactions pursuant to s. 709.208(1), Florida Statutes; or

2. With respect to security transactions, if the power of attorney expressly contains authority to conduct security transactions pursuant to s. 709.208(2), Florida Statutes.

(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 exercise of the power;

(c) A timely request by the third person for an affidavit, English translation, or opinion of counsel under s. 709.119(4), Florida Statutes, is refused by the agent;

(d) Except as otherwise provided in paragraph (b), the third person in good faith believes that the power is not valid or that the agent does not have the 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 that refuses in violation of this section 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.

709.121 Notice.--

(1) A notice, including, but not limited to, 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 shall contain the name, address, and the last four digits of the taxpayer identification number of the principal and shall be directed to an officer or a manager of the financial institution in Florida.

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

709.201 Construction of authority generally.--Except as otherwise limited by this section or other applicable law, the agent has full authority to perform, without prior court approval, every act authorized and specifically enumerated in the power of attorney.

(1) As a confirmation of the law in effect in this state when this act became effective, such authorization may include, without limitation, the 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 either into or out of the principal's or nominee's name; or

(b) Convey or mortgage homestead property, provided that if the principal is married, the agent may not mortgage or convey homestead property without joinder of the spouse of the principal or the spouse's legal 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, the agent may make all health care decisions on behalf of the principal, including, but not limited to, those set forth in chapter 765, Florida Statutes.

(2) 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.

(3) Subject to s. 709.202, Florida Statutes, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(4) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or 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.

(5) 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.

709.202 Authorities that require separate signed enumeration.--

(1) Notwithstanding s. 709.201, Florida Statutes, an agent may exercise the following authority only if the principal signed or initialed next to each specific enumeration of the authority, and exercise of the authority is consistent with the agent's duties under s. 709.114, Florida Statutes, 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 that 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, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

- (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 Internal Revenue Code section 2503(b), 26 U.S.C. §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 Internal Revenue Code

section 2513, 26 U.S.C. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to Internal Revenue Code section 2513, 26 U.S.C. §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 anything in subsection (1) to the contrary, if a power of attorney is otherwise sufficient to grant an agent authorization to conduct banking transactions as provided in s. 709.208(1), Florida Statutes, to conduct investment transactions as provided in s. 709.208(2), Florida Statutes, or otherwise to make additions to or withdrawals from an account of the principal, then 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 form, shall not be 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 authorization. A bank or other financial institution has no duty to inquire as to the appropriateness of the agent's exercise of that authority and shall not be liable to the principal or any other person for actions taken in good faith reliance on the appropriateness of the agent's actions. Nothing in this paragraph shall be construed as eliminating 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 prior to the effective date of this act.

709.208 Banks and other financial institutions.--

(1) A power of attorney that specifically provides the agent with "authority to conduct banking transactions as provided in section 709.208(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 cashiers checks, official checks, counter checks, bank drafts, money orders and similar instruments;
- (f) Endorse and negotiate checks, cashiers 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; and
- (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 provides the agent with "authority to conduct investment transactions as provided in section 709.208(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; and
- (f) Sell commodity futures contracts and call and put options on stocks and stock indexes.

For purposes of this subsection, "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, but not limited to, 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, a 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.

709.301 Principles of law and equity.-- The common law of agency and principles of equity supplement this act, except to the extent modified by this act or another statute of this state.

709.302 Laws applicable to financial institutions and entities.--This act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this act.

709.303 Remedies under other law.--The remedies under this act are not exclusive and do not abrogate any right or remedy under the law of this state other than this act.

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

709.402 Effect on existing powers of attorney.--Except as otherwise provided in this act, on the effective date of this act:

- (1) This act applies to a power of attorney created before, on, or after the effective date of this act and to acts of the agent on or after the effective date of this act;
- (2) An act of the agent before the effective date of this act is not affected by this act.

709.502 Power of appointment; method of release.-- Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for spouses of

married donees to join such donees in the execution of releases, in whole or part, of powers of appointment.

709.503 Power of appointment; property held in trust.-- If property subject to a power of appointment is held in trust by a person, firm or corporation other than the donee or donees of the power, a written release, in whole or in part, of a power to appoint the same shall be delivered to such trustee or trustees before the written release becomes legally effective. In no other instance shall a delivery of a release, in whole or in part, of a power of appointment be necessary to the validity of such release.

709.504 Power of appointment; effect of release.--Any power of appointment wholly released by a written instrument signed by the donee or donees of such power shall be, in legal effect, completely revoked, and shall not, after such release, be subject to being exercised in any manner whatsoever. Any power of appointment partially released by a written instrument signed by the donee or donees of such power shall be,, in legal effect, as to such released part, completely revoked, and shall not after such release be subject to being exercised in any manner whatsoever as to such released part.

709.505 Powers of appointment; validation of prior releases.--All releases, in whole or in part, of powers of appointment heretofore executed in a manner that conforms with the provisions of this law be and they are hereby validated and shall be given the same force and effect as if executed subsequently to the effective date of this law.

709.506 Powers of appointment included in law.--Powers of appointment referred to in this law shall include not only those recognized as such by general law but also those designated as such under the tax law of the United States.

709.507 Power of appointment; effect of release on title to property.--No such release, in whole or in part, of a power of appointment shall affect the title to property of any bona fide purchaser for value who does not have notice or knowledge of such release.

Section 4. Except as otherwise expressly provided in this act, this act shall take effect October 1, 2011.