

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1113

Introduced by Flood, 19.

Read first time January 19, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to power of attorney; to amend section 30-3408,
2 Reissue Revised Statutes of Nebraska, and section
3 30-2201, Revised Statutes Supplement, 2011; to adopt the
4 Nebraska Uniform Power of Attorney Act; to repeal the
5 Uniform Durable Power of Attorney Act and the Nebraska
6 Short Form Act; to harmonize provisions; to provide an
7 operative date; to repeal the original sections; and to
8 outright repeal sections 30-2665, 30-2666, 30-2667,
9 30-2668, 30-2669, 30-2670, 30-2671, 30-2672, 49-1501,
10 49-1502, 49-1503, 49-1504, 49-1505, 49-1506, 49-1507,
11 49-1508, 49-1509, 49-1510, 49-1511, 49-1512, 49-1513,
12 49-1514, 49-1515, 49-1516, 49-1517, 49-1518, 49-1519,
13 49-1520, 49-1521, 49-1522, 49-1523, 49-1524, 49-1525,
14 49-1526, 49-1527, 49-1528, 49-1529, 49-1530, 49-1531,
15 49-1532, 49-1533, 49-1534, 49-1535, 49-1536, 49-1537,
16 49-1538, 49-1539, 49-1540, 49-1541, 49-1542, 49-1543,
17 49-1544, 49-1545, 49-1546, 49-1547, 49-1548, 49-1549,

1 49-1550, 49-1551, 49-1552, 49-1553, 49-1554, 49-1555,
2 49-1556, 49-1557, 49-1558, 49-1559, 49-1560, 49-1561, and
3 49-1562, Reissue Revised Statutes of Nebraska, and
4 sections 30-2664 and 30-2665.01, Revised Statutes
5 Cumulative Supplement, 2010.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 45 of this act may be cited as
2 the Nebraska Uniform Power of Attorney Act.

3 Sec. 2. For purposes of the Nebraska Uniform Power of
4 Attorney Act:

5 (1) Agent means a person granted authority to act for a
6 principal under a power of attorney, whether denominated an agent,
7 attorney in fact, or otherwise. The term includes an original agent,
8 coagent, successor agent, and a person to which an agent's authority
9 is delegated;

10 (2) Business day means any day other than a Saturday,
11 Sunday, or state or nationally observed legal holiday;

12 (3) Durable, with respect to a power of attorney, means
13 not terminated by the principal's incapacity;

14 (4) Electronic means relating to technology having
15 electrical, digital, magnetic, wireless, optical, electromagnetic, or
16 similar capabilities;

17 (5) Good faith means honesty in fact;

18 (6) Incapacity means inability of an individual to manage
19 property or property affairs effectively because the individual:

20 (a) Has an impairment in the ability to receive and
21 evaluate information or make or communicate responsible decisions
22 even with the use of technological assistance for reasons such as
23 mental illness, mental deficiency, physical illness or disability,
24 chronic use of drugs, chronic intoxication, or lack of discretion in
25 managing benefits received from public funds; or

1 (b) Is:
2 (i) Missing;
3 (ii) Detained, including incarcerated in a penal system;
4 or
5 (iii) Outside the United States and unable to return;
6 (7)(a) Knowledge means that subject to subdivision (6)(b)
7 of this section, a person has knowledge of a fact if the person:
8 (i) Has actual knowledge of it;
9 (ii) Has received a notice or notification of it; or
10 (iii) From all the facts and circumstances known to the
11 person at the time in question, has reason to know it.
12 (b) An organization that conducts activities through
13 employees has notice or knowledge of a fact involving a power of
14 attorney only from the time the information was received by an
15 employee having responsibility to act pursuant to the power of
16 attorney, or would have been brought to the employee's attention if
17 the organization had exercised reasonable diligence. An organization
18 exercises reasonable diligence if it maintains reasonable routines
19 for communicating significant information to the employee having
20 responsibility to act pursuant to the power of attorney and there is
21 reasonable compliance with the routines. Reasonable diligence does
22 not require an employee of the organization to communicate
23 information unless the communication is part of the individual's
24 regular duties or the individual knows a matter involving the power
25 of attorney would be materially affected by the information;

1 (8) Person means an individual, corporation, business
2 trust, estate, trust, partnership, limited liability company,
3 association, joint venture, public corporation, government or
4 governmental subdivision, agency, or instrumentality, or any other
5 legal or commercial entity;

6 (9) Power of attorney means a writing or other record
7 that grants authority to an agent to act in the place of the
8 principal, whether or not the term power of attorney is used;

9 (10) Presently exercisable general power of appointment,
10 with respect to property or a property interest subject to a power of
11 appointment, means power exercisable at the time in question to vest
12 absolute ownership in the principal individually, the principal's
13 estate, the principal's creditors, or the creditors of the
14 principal's estate. The term includes a power of appointment not
15 exercisable until the occurrence of a specified event, the
16 satisfaction of an ascertainable standard, or the passage of a
17 specified period only after the occurrence of the specified event,
18 the satisfaction of the ascertainable standard, or the passage of the
19 specified period. The term does not include a power exercisable in a
20 fiduciary capacity or only by will;

21 (11) Principal means an individual who grants authority
22 to an agent in a power of attorney;

23 (12) Property means anything that may be the subject of
24 ownership, whether real or personal, legal or equitable, or any
25 interest or right therein;

1 (13) Record means information that is inscribed on a
2 tangible medium or that is stored in an electronic or other medium
3 and is retrievable in perceivable form;

4 (14) Sign means, with present intent to authenticate or
5 adopt a record:

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

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

9 (15) State means a state of the United States, the
10 District of Columbia, Puerto Rico, the United States Virgin Islands,
11 or any territory or insular possession subject to the jurisdiction of
12 the United States; and

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

18 Sec. 3. The Nebraska Uniform Power of Attorney Act
19 applies to all powers of attorney except:

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

23 (2) A power to make health-care decisions;

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

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

4 Sec. 4. A power of attorney created after January 1,
5 2013, under the Nebraska Uniform Power of Attorney Act is durable
6 unless it expressly provides that it is terminated by the incapacity
7 of the principal.

8 Sec. 5. A power of attorney must be signed by the
9 principal or marked by the principal in accordance with section
10 64-105.02 or signed in the principal's conscious presence by another
11 individual directed by the principal to sign the principal's name on
12 the power of attorney. A signature or mark on a power of attorney is
13 presumed to be genuine if the principal acknowledges the signature
14 before a notary public or other individual authorized by law to take
15 acknowledgements. A power of attorney under the Nebraska Uniform
16 Power of Attorney Act is not valid unless it is acknowledged before a
17 notary public or other individual authorized by law to take
18 acknowledgments.

19 Sec. 6. (1) A power of attorney executed in this state on
20 or after the operative date of this act is valid if its execution
21 complies with section 5 of this act. The county court and the
22 district court of the principal's domicile shall have concurrent
23 jurisdiction to determine the validity and enforceability of a power
24 of attorney.

25 (2) A power of attorney executed in this state before the

1 operative date of this act is valid if its execution complied with
2 the law of this state as it existed at the time of execution.

3 (3) A power of attorney executed other than in this state
4 is valid in this state if, when the power of attorney was executed,
5 the execution complied with:

6 (a) The law of the jurisdiction that determines the
7 meaning and effect of the power of attorney pursuant to section 7 of
8 this act; or

9 (b) The requirements for a military power of attorney
10 pursuant to 10 U.S.C. 1044b, as amended.

11 (4) Except as otherwise provided by statute other than
12 the Nebraska Uniform Power of Attorney Act, a photocopy or
13 electronically transmitted copy of an original power of attorney has
14 the same effect as the original.

15 Sec. 7. The meaning and effect of a power of attorney is
16 determined by the law of the jurisdiction indicated in the power of
17 attorney and, in the absence of an indication of jurisdiction, by the
18 law of the jurisdiction in which the power of attorney was executed.

19 Sec. 8. (1) In a power of attorney, a principal may
20 nominate a conservator or guardian of the principal's estate or
21 guardian of the principal's person for consideration by the court if
22 protective proceedings for the principal's estate or person are begun
23 after the principal executes the power of attorney.

24 (2) If, following execution of a durable power of
25 attorney, a court of the principal's domicile appoints a conservator,

1 guardian of the estate, or other fiduciary charged with the
2 management of all the principal's property or all of his or her
3 property except specified exclusions, the agent shall be accountable
4 to the fiduciary as well as to the principal. The fiduciary shall
5 have the same power to revoke or amend the power of attorney that the
6 principal would have had if he or she were not disabled or
7 incapacitated.

8 Sec. 9. (1) A power of attorney is effective when
9 executed unless the principal provides in the power of attorney that
10 it becomes effective at a future date or upon the occurrence of a
11 future event or contingency.

12 (2) If a power of attorney becomes effective upon the
13 occurrence of a future event or contingency, the principal, in the
14 power of attorney, may authorize one or more persons to determine in
15 a writing or other record that the event or contingency has occurred.

16 (3) If a power of attorney becomes effective upon the
17 principal's incapacity and the principal has not authorized a person
18 to determine whether the principal is incapacitated, or the person
19 authorized is unable or unwilling to make the determination, the
20 power of attorney becomes effective upon a determination in a writing
21 or other record by:

22 (a) A licensed physician or licensed psychologist that
23 the principal is incapacitated; or

24 (b) The court or an appropriate governmental official
25 that the principal is incapacitated.

1 (4) A person authorized by the principal in the power of
2 attorney to determine that the principal is incapacitated may act as
3 the principal's personal representative pursuant to the Health
4 Insurance Portability and Accountability Act, sections 1171 to 1179
5 of the Social Security Act, 42 U.S.C. 1320d, as amended, and
6 applicable regulations, to obtain access to the principal's health-
7 care information and communicate with the principal's health-care
8 provider.

9 Sec. 10. (1) A power of attorney terminates when:

10 (a) The principal dies;

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

13 (c) The principal revokes the power of attorney;

14 (d) The power of attorney provides that it terminates;

15 (e) The purpose of the power of attorney is accomplished;

16 or

17 (f) The principal revokes the agent's authority or the
18 agent dies, becomes incapacitated, or resigns, and the power of
19 attorney does not provide for another agent to act under the power of
20 attorney.

21 (2) An agent's authority terminates when:

22 (a) The principal revokes the authority;

23 (b) The agent dies, becomes incapacitated, or resigns;

24 (c) An action is filed for the dissolution or annulment
25 of the agent's marriage to the principal or their legal separation,

1 unless the power of attorney otherwise provides; or

2 (d) The power of attorney terminates.

3 (3) Unless the power of attorney otherwise provides, an
4 agent's authority is exercisable until the authority terminates under
5 subsection (2) of this section, notwithstanding a lapse of time since
6 the execution of the power of attorney.

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

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

19 (6) The execution of a power of attorney does not revoke
20 a power of attorney previously executed by the principal unless the
21 subsequent power of attorney provides that the previous power of
22 attorney is revoked or that all other powers of attorney are revoked.

23 Sec. 11. (1) A principal may designate two or more
24 persons to act as coagents. Unless the power of attorney otherwise
25 provides, each coagent may exercise its authority independently.

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

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

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

12 (3) Except as otherwise provided in the power of attorney
13 and subsection (4) of this section, an agent that does not
14 participate in or conceal a branch of fiduciary duty committed by
15 another agent, including a predecessor agent, is not liable for the
16 actions of the other agent.

17 (4) An agent that has knowledge of a breach or imminent
18 breach of fiduciary duty by another agent shall notify the principal
19 and, if the principal is incapacitated, take any action reasonably
20 appropriate in the circumstances to safeguard the principal's best
21 interest. An agent that fails to notify the principal or take action
22 as required by this subsection is liable for the reasonably
23 foreseeable damages that could have been avoided if the agent had
24 notified the principal or taken such action.

25 Sec. 12. Unless the power of attorney otherwise provides,

1 an agent is entitled to reimbursement of expenses reasonably incurred
2 on behalf of the principal and to compensation that is reasonable
3 under the circumstances.

4 Sec. 13. Except as otherwise provided in the power of
5 attorney, a person accepts appointment as an agent under a power of
6 attorney by exercising authority or performing duties as an agent or
7 by any other assertion or conduct indicating acceptance.

8 Sec. 14. (1) Notwithstanding provisions in the power of
9 attorney, an agent that has accepted appointment shall:

10 (a) Act in accordance with the principal's reasonable
11 expectations to the extent known by the agent and, otherwise, in the
12 principal's best interest;

13 (b) Act in good faith; and

14 (c) Act only within the scope of authority granted, or
15 reasonably implied by, the grant of authority in the power of
16 attorney.

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

19 (a) Act loyally for the principal's benefit;

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

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

25 (d) Keep a record of all receipts, disbursements, and

1 transactions made on behalf of the principal;

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

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

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

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

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

15 (iv) Eligibility for a benefit, a program, or assistance
16 under a statute or regulation.

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

20 (4) An agent that acts with care, competence, and
21 diligence for the best interest of the principal is not liable solely
22 because the agent also benefits from the act or has an individual or
23 conflicting interest in relation to the property or affairs of the
24 principal.

25 (5) If an agent is selected by the principal because of

1 special skills or expertise possessed by the agent or in reliance on
2 the agent's representation that the agent has special skills or
3 expertise, the special skills or expertise must be considered in
4 determining whether the agent has acted with care, competence, and
5 diligence under the circumstances.

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

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

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

1 Sec. 15. (1) A provision in a power of attorney relieving
2 an agent of liability for breach of duty is binding on the principal
3 and the principal's successors in interest except to the extent the
4 provision:

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

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

11 (2) An exculpatory term drafted or caused to be drafted
12 by an agent is invalid as an abuse of fiduciary or confidential
13 relationship unless the agent proves that the exculpatory term is
14 fair under the circumstances and that its existence and contents were
15 adequately communicated to the principal.

16 Sec. 16. (1) The following persons may petition a court
17 to construe a power of attorney or review the agent's conduct and
18 grant appropriate relief:

19 (a) The principal or the agent;

20 (b) A guardian, conservator, or other fiduciary acting
21 for the principal;

22 (c) A person authorized to make health-care decisions for
23 the principal;

24 (d) The principal's spouse, parent, or issue;

25 (e) An individual who would qualify as a presumptive heir

1 of the principal or would otherwise qualify as a devisee under a will
2 that remains unrevoked;

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

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

9 (h) The principal's caregiver or another person that
10 demonstrates sufficient interest in the principal's welfare; and

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

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

16 Sec. 17. An agent that violates the Nebraska Uniform
17 Power of Attorney Act is liable to the principal or the principal's
18 successors in interest for the amount required to:

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

21 (2) In a judicial proceeding involving the administration
22 of a power of attorney, the court, as justice may require, may award
23 costs and expenses, including reasonable attorney's fees to any
24 party, to be paid by another party.

25 Sec. 18. Unless the power of attorney provides a

1 different method for an agent's resignation, an agent may resign by
2 giving notice to the principal and, if the principal is
3 incapacitated:

4 (1) To the conservator or guardian, if one has been
5 appointed for the principal, and a coagent or successor agent; or

6 (2) If there is no person described in subdivision (1) of
7 this section, to:

8 (a) The principal's caregiver;

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

11 (c) A governmental agency having authority to protect the
12 welfare of the principal.

13 Sec. 19. (1) For purposes of this section and section 20
14 of this act, acknowledged means purportedly verified before a notary
15 public or other individual authorized to take acknowledgments.

16 (2) A person that in good faith accepts an acknowledged
17 power of attorney without knowledge that the signature is not genuine
18 may rely upon the presumption under section 5 of this act that the
19 signature is genuine.

20 (3) A person that in good faith accepts an acknowledged
21 power of attorney without knowledge that the power of attorney is
22 void, invalid, or terminated, that the purported agent's authority is
23 void, invalid, or terminated, or that the agent is exceeding or
24 improperly exercising the agent's authority may rely upon the power
25 of attorney as if the power of attorney were genuine, valid, and

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

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

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

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

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

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

20 (6) For purposes of this section and section 20 of this
21 act, a person that conducts activities through employees is without
22 knowledge of a fact relating to a power of attorney, a principal, or
23 an agent if the employee conducting the transaction involving the
24 power of attorney is without knowledge of the fact.

25 Sec. 20. (1) Except as otherwise provided in subsection

1 (2) of this section:

2 (a) A person shall either accept an acknowledged power of
3 attorney or request a certification, a translation, or an opinion of
4 counsel under subsection (4) of section 19 of this act no later than
5 seven business days after presentation of the power of attorney for
6 acceptance:

7 (b) If a person requests a certification, a translation,
8 or an opinion of counsel under subsection (4) of section 19 of this
9 act, the person shall accept the power of attorney no later than five
10 business days after receipt of the certification, translation, or
11 opinion of counsel; and

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

15 (2) A person is not required to accept an acknowledged
16 power of attorney if:

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

19 (b) Engaging in a transaction with the agent or the
20 principal in the same circumstances would be inconsistent with state
21 or federal law;

22 (c) The person has knowledge of the termination of the
23 agent's authority or of the power of attorney before exercise of the
24 power;

25 (d) A request for a certification, a translation, or an

1 opinion of counsel under subsection (4) of section 19 of this act is
2 refused;

3 (e) The person in good faith believes that the power is
4 not valid or that the agent does not have the authority to perform
5 the act requested, whether or not a certification, a translation, or
6 an opinion of counsel under subsection (4) of section 19 of this act
7 has been requested or provided;

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

13 (g) The person brought, or has knowledge that another
14 person has brought, a judicial proceeding for construction of a power
15 of attorney or review of the agent's conduct; or

16 (h) The power of attorney becomes effective upon the
17 occurrence of an event or contingency, and neither a certification
18 nor evidence of the occurrence of the event or contingency is
19 presented to the person being asked to accept the power of attorney.

20 (3) A person may not refuse to accept an acknowledged
21 power of attorney if any of the following applies:

22 (a) The person's reason for refusal is based exclusively
23 upon the date the power of attorney was executed; or

24 (b) The person's refusal is based exclusively on a
25 mandate that an additional or different power of attorney form must

1 be used.

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

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

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

10 Sec. 21. Unless displaced by a provision of the Nebraska
11 Uniform Power of Attorney Act, the principles of law and equity
12 supplement the act.

13 Sec. 22. The Nebraska Uniform Power of Attorney Act does
14 not supersede any other law applicable to financial institutions or
15 other entities, and the other law controls if inconsistent with the
16 act.

17 Sec. 23. The remedies under the Nebraska Uniform Power of
18 Attorney Act are not exclusive and do not abrogate any right or
19 remedy under the law of this state other than the act.

20 Sec. 24. (1) An agent under a power of attorney may do
21 the following on behalf of the principal or with the principal's
22 property only if the power of attorney expressly grants the agent the
23 authority and exercise of the authority is not otherwise prohibited
24 by another agreement or instrument to which the authority or property
25 is subject:

1 (a) Create, amend, revoke, or terminate an inter vivos
2 trust;

3 (b) Make a gift;

4 (c) Create or change rights of survivorship;

5 (d) Create or change a beneficiary designation;

6 (e) Delegate authority granted under the power of
7 attorney;

8 (f) Waive the principal's right to be a beneficiary of a
9 joint and survivor annuity, including a survivor benefit under a
10 retirement plan;

11 (g) Exercise fiduciary powers that the principal has
12 authority to delegate; or

13 (h) Renounce or disclaim property, including the power of
14 appointment.

15 (2) Notwithstanding a grant of authority to do an act
16 described in subsection (1) of this section, unless the power of
17 attorney otherwise provides, an agent that is not an ancestor,
18 spouse, or issue of the principal, may not exercise authority under a
19 power of attorney to create in the agent, or in an individual to whom
20 the agent owes a legal obligation of support, an interest in the
21 principal's property, whether by gift, right of survivorship,
22 beneficiary designation, disclaimer, or otherwise.

23 (3) Subject to subsections (1), (2), (4), and (5) of this
24 section, if a power of attorney grants to an agent authority to do
25 all acts that a principal could do, the agent has the general

1 authority described in sections 27 to 39 of this act.

2 (4) Unless the power of attorney otherwise provides, a
3 grant of authority to make a gift is subject to section 40 of this
4 act.

5 (5) Subject to subsections (1), (2), and (4) of this act,
6 if the subjects over which authority is granted in a power of
7 attorney are similar or overlap, the broadest authority controls.

8 (6) Authority granted in a power of attorney is
9 exercisable with respect to property that the principal has when the
10 power of attorney is executed or acquired later, whether or not the
11 property is located in this state and whether or not the authority is
12 exercised or the power of attorney is executed in this state.

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

17 Sec. 25. (1) An agent has authority described in sections
18 24 to 40 of this act if the power of attorney refers to general
19 authority with respect to the descriptive term for the subjects
20 stated in sections 27 to 40 of this act or cites the section in which
21 the authority is described.

22 (2) A reference in a power of attorney to general
23 authority with respect to the descriptive term for a subject in
24 sections 27 to 40 of this act or a citation to a section within such
25 sections incorporates the entire section described or cited as if it

1 were set out in full in the power of attorney.

2 (3) A principal may modify authority incorporated by
3 reference.

4 Sec. 26. Except as otherwise provided in the power of
5 attorney, by executing a power of attorney that incorporates by
6 reference a subject described in sections 27 to 40 of this act or
7 that grants to an agent authority to do all acts that a principal
8 could do pursuant to subsection (3) of section 24 of this act, a
9 principal authorizes the agent, with respect to that subject, to:

10 (1) Demand, receive, and obtain by litigation or
11 otherwise, money or another thing of value to which the principal is,
12 may become, or claims to be entitled, and conserve, invest, disburse,
13 or use anything so received or obtained for the purposes intended;

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

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

24 (4) Initiate, participate in, submit to alternative
25 dispute resolution, settle, oppose, or propose or accept a compromise

1 with respect to a claim existing in favor of or against the principal
2 or intervene in litigation relating to the claim;

3 (5) Seek on the principal's behalf the assistance of a
4 court or other governmental agency to carry out an act authorized in
5 the power of attorney;

6 (6) Engage, compensate, and discharge an attorney,
7 accountant, discretionary investment manager, expert witness, or
8 other advisor;

9 (7) Prepare, execute, and file a record, report, or other
10 document to safeguard or promote the principal's interest under a
11 statute or regulation;

12 (8) Communicate with any representative or employee of a
13 government or governmental subdivision, agency, or instrumentality,
14 on behalf of the principal;

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

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

20 Sec. 27. Unless the power of attorney otherwise provides,
21 language in a power of attorney granting general authority with
22 respect to real property authorizes the agent to:

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

1 (2) Sell; exchange; convey with or without covenants,
2 representations, or warranties; quitclaim; release; surrender; retain
3 title for security; encumber; partition; consent to partitioning;
4 subject to an easement or covenant; subdivide; apply for zoning or
5 other governmental permits; plat or consent to platting; develop;
6 grant an option concerning; lease; sublease; contribute to an entity
7 in exchange for an interest in that entity; or otherwise grant or
8 dispose of an interest in real property or a right incident to real
9 property;

10 (3) Pledge or mortgage an interest in real property or
11 right incident to real property as security to borrow money or pay,
12 renew, or extend the time of payment of a debt of the principal or a
13 debt guaranteed by the principal;

14 (4) Release, assign, satisfy, or enforce by litigation or
15 otherwise a mortgage, deed of trust, conditional sales contract,
16 encumbrance, lien, or other claim to real property which exists or is
17 asserted;

18 (5) Manage or conserve an interest in real property or a
19 right incident to real property owned or claimed to be owned by the
20 principal, including:

21 (a) Insuring against liability or casualty or other loss;

22 (b) Obtaining or regaining possession of or protecting
23 the interest or right by litigation or otherwise;

24 (c) Paying, assessing, compromising, or contesting taxes
25 or assessments or applying for and receiving refunds in connection

1 with them; and

2 (d) Purchasing supplies, hiring assistance or labor, and
3 making repairs or alterations to the real property;

4 (6) Use, develop, alter, replace, remove, erect, or
5 install structures or other improvements upon real property in or
6 incident to which the principal has, or claims to have, an interest
7 or right;

8 (7) Participate in a reorganization with respect to real
9 property or an entity that owns an interest in or right incident to
10 real property and receive, and hold, and act with respect to stocks
11 and bonds or other property received in a plan of reorganization,
12 including:

13 (a) Selling or otherwise disposing of them;

14 (b) Exercising or selling an option, right of conversion,
15 or similar right with respect to them; and

16 (c) Exercising any voting rights in person or by proxy;

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

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

22 Sec. 28. Unless the power of attorney otherwise provides,
23 language in a power of attorney granting general authority with
24 respect to tangible personal property authorizes the agent to:

25 (1) Demand, buy, receive, accept as a gift or as security

1 for an extension of credit, or otherwise acquire or reject ownership
2 or possession of tangible personal property or an interest in
3 tangible personal property;

4 (2) Sell; exchange; convey with or without covenants,
5 representations, or warranties; quitclaim; release; surrender; create
6 a security interest in; grant options concerning; lease; sublease;
7 or, otherwise dispose of tangible personal property or an interest in
8 tangible personal property;

9 (3) Grant a security interest in tangible personal
10 property or an interest in tangible personal property as security to
11 borrow money or pay, renew, or extend the time of payment of a debt
12 of the principal or a debt guaranteed by the principal;

13 (4) Release, assign, satisfy, or enforce by litigation or
14 otherwise, a security interest, lien, or other claim on behalf of the
15 principal, with respect to tangible personal property or an interest
16 in tangible personal property;

17 (5) Manage or conserve tangible personal property or an
18 interest in tangible personal property on behalf of the principal,
19 including:

20 (a) Insuring against liability or casualty or other loss;

21 (b) Obtaining or regaining possession of or protecting
22 the property or interest, by litigation or otherwise;

23 (c) Paying, assessing, compromising, or contesting taxes
24 or assessments or applying for and receiving refunds in connection
25 with taxes or assessments;

- 1 (d) Moving the property from place to place;
2 (e) Storing the property for hire or on a gratuitous
3 bailment; and
4 (f) Using and making repairs, alterations, or
5 improvements to the property; and
6 (6) Change the form of title of an interest in tangible
7 personal property.

8 Sec. 29. Unless the power of attorney otherwise provides,
9 language in a power of attorney granting general authority with
10 respect to stocks and bonds authorizes the agent to:

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

21 Sec. 30. Unless the power of attorney otherwise provides,
22 language in a power of attorney granting general authority with
23 respect to commodities and options authorizes the agent to:

- 24 (1) Buy, sell, exchange, assign, settle, and exercise
25 commodity futures contracts and call or put options on stocks or

1 stock indexes traded on a regulated option exchange; and

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

4 Sec. 31. Unless the power of attorney otherwise provides,
5 language in a power of attorney granting authority with respect to
6 banks and other financial institutions authorizes the agent to:

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

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

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

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

19 (5) Receive statements of account, vouchers, notices, and
20 similar documents from a financial institution and act with respect
21 to them;

22 (6) Enter a safe deposit box or vault and withdraw or add
23 to the contents;

24 (7) Borrow money and pledge as security personal property
25 of the principal necessary to borrow money or pay, renew, or extend

1 the time of payment of a debt of the principal or a debt guaranteed
2 by the principal;

3 (8) Make, assign, draw, endorse, discount, guarantee, and
4 negotiate promissory notes, checks, drafts, and other negotiable or
5 nonnegotiable paper of the principal or payable to the principal or
6 the principal's order, transfer money, receive the cash or other
7 proceeds of those transactions, and accept a draft drawn by a person
8 upon the principal and pay it when due;

9 (9) Receive for the principal and act upon a sight draft,
10 warehouse receipt, or other document of title whether tangible or
11 electronic, or other negotiable or nonnegotiable instrument;

12 (10) Apply for, receive, and use letters of credit,
13 credit and debit cards, electronic transaction authorizations, and
14 traveler's checks from a financial institution and give an indemnity
15 or other agreement in connection with letters of credit; and

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

19 Sec. 32. Subject to the terms of a document or an
20 agreement governing an entity or an entity ownership interest, and
21 unless the power of attorney otherwise provides, language in a power
22 of attorney granting general authority with respect to operation of
23 an entity or business authorizes the agent to:

24 (1) Operate, buy, sell, enlarge, reduce, or terminate an
25 ownership interest;

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

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

5 (4) Initiate, participate in, submit to alternative
6 dispute resolution, settle, oppose, or propose or accept a compromise
7 with respect to litigation to which the principal is a party because
8 of an ownership interest;

9 (5) Exercise in person or by proxy, or enforce by
10 litigation or otherwise, a right, power, privilege, or option the
11 principal has or claims to have as the holder of stocks and bonds;

12 (6) Initiate, participate in, submit to alternative
13 dispute resolution, settle, oppose, or propose or accept a compromise
14 with respect to litigation to which the principal is a party
15 concerning stocks and bonds;

16 (7) With respect to an entity or business owned solely by
17 the principal:

18 (a) Continue, modify, renegotiate, extend, and terminate
19 a contract made by or on behalf of the principal with respect to the
20 entity or business before execution of the power of attorney;

21 (b) Determine:

22 (i) The location of its operation;

23 (ii) The nature and extent of its business;

24 (iii) The methods of manufacturing, selling,
25 merchandising, financing, accounting, and advertising employed in its

1 operation;

2 (iv) The amount and types of insurance carried; and

3 (v) The mode of engaging, compensating, and dealing with
4 its employees and accountants, attorneys, or other advisors;

5 (c) Change the name or form of organization under which
6 the entity or business is operated and enter into an ownership
7 agreement with other persons to take over all or part of the
8 operation of the entity or business; and

9 (d) Demand and receive money due or claimed by the
10 principal or on the principal's behalf in the operation of the entity
11 or business and control and disburse the money in the operation of
12 the entity or business;

13 (8) Put additional capital into an entity or business in
14 which the principal has an interest;

15 (9) Join in a plan of reorganization, consolidation,
16 conversion, domestication, or merger of the entity or business;

17 (10) Sell or liquidate all or part of an entity or
18 business;

19 (11) Establish the value of an entity or business under a
20 buy-out agreement to which the principal is a party;

21 (12) Prepare, sign, file, and deliver reports,
22 compilations of information, returns, or other papers with respect to
23 an entity or business and make related payments; and

24 (13) Pay, compromise, or contest taxes, assessments,
25 finances, or penalties and perform any other act to protect the

1 principal from illegal or unnecessary taxation, assessments, fines,
2 or penalties, with respect to an entity or business, including
3 attempts to recover, in any manner permitted by law, money paid
4 before or after the execution of the power of attorney.

5 Sec. 33. Unless the power of attorney otherwise provides,
6 language in a power of attorney granting general authority with
7 respect to insurance and annuities authorizes the agent to:

8 (1) Continue, pay the premium or make a contribution on,
9 modify, exchange, rescind, release, or terminate a contract procured
10 by or on behalf of the principal which insures or provides an annuity
11 to either the principal or another person, whether or not the
12 principal is a beneficiary under the contract;

13 (2) Procure new, different, and additional contracts of
14 insurance and annuities for the principal and the principal's spouse,
15 children, and other dependents, and select the amount, type of
16 insurance or annuity, and mode of payment;

17 (3) Pay the premium or make a contribution on, modify,
18 exchange, rescind, release, or terminate a contract of insurance or
19 annuity procured by the agent;

20 (4) Apply for and receive a loan secured by a contract of
21 insurance or annuity;

22 (5) Surrender and receive the cash surrender value on a
23 contract of insurance or annuity;

24 (6) Exercise an election;

25 (7) Exercise investment powers available under a contract

1 of insurance or annuity;

2 (8) Change the manner of paying premiums on a contract of
3 insurance or annuity;

4 (9) Change or convert the type of insurance or annuity
5 with respect to which the principal has or claims to have authority
6 described in this section;

7 (10) Apply for and procure a benefit or assistance under
8 a statute or regulation to guarantee or pay premiums of a contract of
9 insurance on the life of the principal;

10 (11) Collect, sell, assign, hypothecate, borrow against,
11 or pledge the interest of the principal in a contract of insurance or
12 annuity;

13 (12) Select the form and timing of the payment of
14 proceeds from a contract of insurance or annuity; and

15 (13) Pay, from proceeds or otherwise, compromise or
16 contest, and apply for refunds in connection with, a tax or
17 assessment levied by a taxing authority with respect to a contract of
18 insurance or annuity or its proceeds or liability accruing by reason
19 of the tax or assessment.

20 Sec. 34. (1) For purposes of this section, estate, trust,
21 or other beneficial interest means a trust, probate estate,
22 guardianship, conservatorship, escrow, or custodianship or a fund
23 from which the principal is, may become, or claims to be, entitled to
24 a share or payment.

25 (2) Unless the power of attorney otherwise provides,

1 language in a power of attorney granting general authority with
2 respect to estates, trusts, and other beneficial interests authorizes
3 the agent to:

4 (a) Accept, receive, receipt for, sell, assign, pledge,
5 or exchange a share in or payment from an estate, trust, or other
6 beneficial interest;

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

11 (c) Exercise for the benefit of the principal a presently
12 exercisable general power of appointment held by the principal;

13 (d) Initiate, participate in, submit to alternative
14 dispute resolution, settle, oppose, or propose or accept a compromise
15 with respect to litigation to ascertain the meaning, validity, or
16 effect of a deed, will, declaration of trust, or other instrument or
17 transaction affecting the interest of the principal;

18 (e) Initiate, participate in, submit to alternative
19 dispute resolution, settle, oppose, or propose or accept a compromise
20 with respect to litigation to remove, substitute, or surcharge a
21 fiduciary;

22 (f) Conserve, invest, disburse, or use anything received
23 for an authorized purpose; and

24 (g) Transfer an interest of the principal in real
25 property, stocks and bonds, accounts with financial institutions or

1 securities intermediaries, insurance, annuities, and other property
2 to the trustee of a revocable trust created by the principal as
3 settlor.

4 Sec. 35. Unless the power of attorney otherwise provides,
5 language in a power of attorney granting general authority with
6 respect to claims and litigation authorizes the agent to:

7 (1) Assert and maintain before a court or administrative
8 agency a claim, claim for relief, cause of action, counterclaim,
9 offset, recoupment, or defense, including an action to recover
10 property or other thing of value, recover damages sustained by the
11 principal, eliminate or modify tax liability, or seek an injunction,
12 specific performance, or other relief;

13 (2) Bring an action to determine adverse claims or
14 intervene or otherwise participate in litigation;

15 (3) Seek an attachment, garnishment, order of arrest, or
16 other preliminary, provisional, or intermediate relief and use an
17 available procedure to effect or satisfy a judgment, order, or
18 decree;

19 (4) Make or accept a tender, offer of judgment, or
20 admission of facts, submit a controversy on an agreed statement of
21 facts, consent to examination, and bind the principal in litigation;

22 (5) Submit to alternative dispute resolution, settle, and
23 propose or accept a compromise;

24 (6) Waive the issuance and service of process upon the
25 principal, accept service of process, appear for the principal,

1 designate persons upon which process directed to the principal may be
2 served, execute and file or deliver stipulations on the principal's
3 behalf, verify pleadings, seek appellate review, procure and give
4 surety and indemnity bonds, contract and pay for the preparation and
5 printing of records and briefs, receive, execute, and file or deliver
6 a consent, waiver, release, confession of judgment, satisfaction of
7 judgment, notice, agreement, or other instrument in connection with
8 the prosecution, settlement, or defense of a claim or litigation;

9 (7) Act for the principal with respect to bankruptcy or
10 insolvency, whether voluntary or involuntary, concerning the
11 principal or some other person, or with respect to a reorganization,
12 receivership, or application for the appointment of a receiver or
13 trustee which affects an interest of the principal in property or
14 other thing of value;

15 (8) Pay a judgment, award, or order against the principal
16 or a settlement made in connection with a claim or litigation; and

17 (9) Receive money or other thing of value paid in
18 settlement of or as proceeds of a claim or litigation.

19 Sec. 36. (1) Unless the power of attorney otherwise
20 provides, language in a power of attorney granting general authority
21 with respect to personal and family maintenance authorizes the agent
22 to:

23 (a) Perform the acts necessary to maintain the customary
24 standard of living of the principal, the principal's spouse, and the
25 following individuals, whether living when the power of attorney is

1 executed or later born:

2 (i) The principal's children;

3 (ii) Other individuals legally entitled to be supported
4 by the principal; and

5 (iii) The individuals whom the principal has customarily
6 supported or indicated the intent to support;

7 (b) Make periodic payments of child support and other
8 family maintenance required by a court or governmental agency or an
9 agreement to which the principal is a party;

10 (c) Provide living quarters for the individuals described
11 in subdivision (1)(a) of this subsection by:

12 (i) Purchase, lease, or other contract; or

13 (ii) Paying the operating costs, including interest,
14 amortization payments, repairs, improvements, and taxes, for premises
15 owned by the principal or occupied by those individuals;

16 (d) Provide normal domestic help, usual vacations and
17 travel expenses, and funds for shelter, clothing, food, appropriate
18 education, including postsecondary and vocational education, and
19 other current living costs for the individuals described in
20 subdivision (1)(a) of this subsection;

21 (e) Pay expenses for necessary health care and custodial
22 care on behalf of the individuals described in subdivision (1)(a) of
23 this subsection;

24 (f) Act as the principal's personal representative
25 pursuant to the Health Insurance Portability and Accountability Act,

1 Sections 1171 to 1179 of the Social Security Act, 42 U.S.C. 1320d, as
2 amended, and applicable regulations, in making decisions related to
3 the past, present, or future payment for the provision of health care
4 consented to by the principal or anyone authorized under the law of
5 this state to consent to health care on behalf of the principal;

6 (g) Continue any provision made by the principal for
7 automobiles or other means of transportation, including registering,
8 licensing, insuring, and replacing them, for the individuals
9 described in subdivision (1)(a) of this subsection;

10 (h) Maintain credit and debit accounts for the
11 convenience of the individuals described in subdivision (1)(a) of
12 this subsection and open new accounts; and

13 (i) Continue payments incidental to the membership or
14 affiliation of the principal in a religious institution, club,
15 society, order, or other organization or to continue contributions to
16 those organizations.

17 (2) Authority with respect to personal and family
18 maintenance is neither dependent upon, nor limited by, authority that
19 an agent may or may not have with respect to gifts under the Nebraska
20 Uniform Power of Attorney Act.

21 Sec. 37. (1) For purposes of this section, benefits from
22 governmental programs or civil or military service means any benefit,
23 program, or assistance provided under a statute or regulation
24 including social security, medicare, and medicaid.

25 (2) Unless the power of attorney otherwise provides,

1 language in a power of attorney granting general authority with
2 respect to benefits from governmental programs or civil or military
3 service authorizes the agent to:

4 (a) Execute vouchers in the name of the principal for
5 allowances and reimbursements payable by the United States or a
6 foreign government or by a state or subdivision of a state to the
7 principal, including allowances and reimbursements for transportation
8 of the individuals described in subdivision (1)(a) of section 36 of
9 this act and for shipment of their household effects;

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

16 (c) Enroll in, apply for, select, reject, change, amend,
17 or discontinue, on the principal's behalf, a benefit or program;

18 (d) Prepare, file, and maintain a claim of the principal
19 for a benefit or assistance, financial or otherwise, to which the
20 principal may be entitled under a statute or regulation;

21 (e) Initiate, participate in, submit to alternative
22 dispute resolution, settle, oppose, or propose or accept a compromise
23 with respect to litigation concerning any benefit or assistance the
24 principal may be entitled to receive under a statute or regulation;
25 and

1 (f) Receive the financial proceeds of a claim described
2 in subdivision (2)(d) of this section and conserve, invest, disburse,
3 or use for a lawful purpose anything so received.

4 Sec. 38. (1) For purposes of this section, retirement
5 plan means a plan or account created by an employer, the principal,
6 or another individual to provide retirement benefits or deferred
7 compensation of which the principal is a participant, beneficiary, or
8 owner, including a plan or account under the following sections of
9 the Internal Revenue Code:

10 (a) An individual retirement account under section 408 of
11 the Internal Revenue Code, 26 U.S.C. 408;

12 (b) A Roth individual retirement account under section
13 408A of the Internal Revenue Code, 26 U.S.C. 408A;

14 (c) A deemed individual retirement account under section
15 408(q) of the Internal Revenue Code, 26 U.S.C. 408(q);

16 (d) An annuity or mutual fund custodial account under
17 section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

18 (e) A pension, profit-sharing, stock bonus, or other
19 retirement plan qualified under section 401(a) of the Internal
20 Revenue Code, 26 U.S.C. 401(a);

21 (f) A plan under section 457(b) of the Internal Revenue
22 Code, 26 U.S.C. 457(b); and

23 (g) A nonqualified deferred compensation plan under
24 section 409A of the Internal Revenue Code, 26 U.S.C. 409A.

25 (2) Unless the power of attorney otherwise provides,

1 language in a power of attorney granting general authority with
2 respect to retirement plans authorizes the agent to:

3 (a) Select the form and timing of payments under a
4 retirement plan and withdraw benefits from a plan;

5 (b) Make a rollover, including a direct trustee-to-
6 trustee rollover, of benefits from one retirement plan to another;

7 (c) Establish a retirement plan in the principal's name,
8 including a beneficiary individual retirement plan;

9 (d) Make contributions to a retirement plan;

10 (e) Exercise investment powers available under a
11 retirement plan; and

12 (f) Borrow from, sell assets to, or purchase assets from
13 a retirement plan.

14 Sec. 39. Unless the power of attorney otherwise provides,
15 language in a power of attorney granting general authority with
16 respect to taxes authorizes the agent to:

17 (1) Prepare, sign, and file federal, state, local, and
18 foreign income, gift, payroll, property, Federal Insurance
19 Contributions Act, and other tax returns, claims for refunds,
20 requests for extension of time, petitions regarding tax matters, and
21 any other tax-related documents, including receipts, offers, waivers,
22 consents, including consents and agreements under section 2032A of
23 the Internal Revenue Code, 26 U.S.C. 2032A, closing agreements, and
24 any power of attorney required by the Internal Revenue Service or
25 other taxing authority with respect to a tax year upon which the

1 statute of limitations has not run and the following twenty-five tax
2 years;

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

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

8 (4) Act for the principal in all tax matters for all
9 periods before the Internal Revenue Service, or other taxing
10 authority.

11 Sec. 40. (1) For purposes of this section, a gift for the
12 benefit of a person includes a gift to a trust, an account under the
13 Nebraska Uniform Transfers to Minors Act and a tuition savings
14 account or prepaid tuition plan as defined under section 529 of the
15 Internal Revenue Code, 26 U.S.C. 529.

16 (2) Subject to section 24 of this act and unless the
17 power of attorney otherwise provides, language in a power of attorney
18 granting general authority with respect to gifts authorizes the agent
19 only to:

20 (a) Make outright to, or for the benefit of, a person, a
21 gift of any of the principal's property, including by the exercise of
22 a presently exercisable general power of appointment held by the
23 principal, in an amount per donee not to exceed the annual dollar
24 limits of the federal gift tax exclusion under section 2503(b) of the
25 Internal Revenue Code, 26 U.S.C. 2503(b), without regard to whether

1 the federal gift tax exclusion applies to the gift, or if the
2 principal's spouse agrees to consent to a split gift pursuant to
3 section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, in an
4 amount per donee not to exceed twice the annual federal gift tax
5 exclusion limit; and

6 (b) Consent, pursuant to section 2513 of the Internal
7 Revenue Code, 26 U.S.C. 2513, to the splitting of a gift made by the
8 principal's spouse in an amount per donee not to exceed the aggregate
9 annual gift tax exclusions for both spouses.

10 (3) An agent may make a gift of the principal's property
11 only as the agent determines is consistent with the principal's
12 objectives if actually known by the agent and, if unknown, as the
13 agent determines is consistent with the principal's best interest
14 based on all relevant factors, including:

15 (a) The value and nature of the principal's property;

16 (b) The principal's foreseeable obligations and need for
17 maintenance;

18 (c) Minimization of taxes, including income, estate,
19 inheritance, generation-skipping transfer, and gift taxes;

20 (d) Eligibility for a benefit, a program, or assistance
21 under a statute or regulation; and

22 (e) The principal's personal history of making or joining
23 in making gifts.

24 Sec. 41. A document substantially in the following form
25 may be used to create a statutory form power of attorney that has the

1 meaning and effect prescribed by the Nebraska Uniform Power of
2 Attorney Act.

3 NEBRASKA

4 STATUTORY FORM POWER OF ATTORNEY

5 IMPORTANT INFORMATION

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

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

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

19 This form will not revoke a power of attorney previously
20 executed by you unless you add that the previous power of attorney is
21 revoked or that all other powers of attorney are revoked by this
22 power of attorney.

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

25 This form provides for designation of one agent. If you

1 wish to name more than one agent you may name a coagent in the
2 Special Instructions. Coagents are not required to act together
3 unless you include that requirement in the Special Instructions.

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

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

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

12 DESIGNATION OF AGENT

13 I (name of principal)
14 name the following person as my agent:

15 Name of Agent:

16 Agent's Address:

17 Agent's Telephone Number:

18 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

21 Name of Successor Agent:

22 Successor Agent's Address:

23 Successor Agent's Telephone Number:

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

1 Name of Second Successor Agent:

2 Second Successor Agent's Address:

3 Second Successor Agent's Telephone Number:

4 Release of Information

5 I agree to, authorize, and allow full release of
6 information, by any governmental agency, business, creditor, or third
7 party who may have information pertaining to my assets or income, to
8 my agent named herein.

9 GRANT OF GENERAL AUTHORITY

10 I grant my agent and any successor agent general
11 authority to act for me with respect to the following subjects as
12 defined in the Nebraska Uniform Power of Attorney Act:

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

17 (.....) Real Property

18 (.....) Tangible Personal Property

19 (.....) Stocks and Bonds

20 (.....) Commodities and Options

21 (.....) Banks and Other Financial Institutions

22 (.....) Operation of Entity or Business

23 (.....) Insurance and Annuities

24 (.....) Estates, Trusts, and Other Beneficial Interests

25 (.....) Claims and Litigation

1 (.....) Personal and Family Maintenance
2 (.....) Benefits from Governmental Programs or Civil or
3 Military Service
4 (.....) Retirement Plans
5 (.....) Taxes
6 (.....) All Preceding Subjects
7 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)
8 My agent MAY NOT do any of the following specific acts
9 for me UNLESS I have INITIALED the specific authority listed below:
10 (CAUTION: Granting any of the following will give your
11 agent the authority to take actions that could significantly reduce
12 your property or change how your property is distributed at your
13 death. INITIAL ONLY the specific authority you WANT to give your
14 agent.)
15 (.....) Create, amend, revoke, or terminate an inter
16 vivos trust
17 (.....) Make a gift, subject to the limitations of the
18 Nebraska Uniform Power of Attorney Act and any special instructions
19 in this power of attorney
20 (.....) Create or change rights of survivorship
21 (.....) Create or change a beneficiary designation
22 (.....) Delegate to another person to exercise the
23 authority granted under this power of attorney
24 (.....) Waive the principal's right to be a beneficiary
25 of a joint and survivor annuity, including a survivor benefit under a

1 retirement plan

2 (.....) Exercise fiduciary powers that the principal has
3 authority to delegate

4 (.....) Renounce or disclaim an interest in property,
5 including a power of appointment

6 LIMITATION ON AGENT'S AUTHORITY

7 Except as otherwise authorized by the Power of Personal
8 and Family Maintenance, an agent MAY NOT use my property to benefit
9 the agent or a person to whom the agent owes an obligation of support
10 unless I have included that authority in the Special Instructions or
11 the Grant of Specific Authority.

12 SPECIAL INSTRUCTIONS (OPTIONAL)

13 You may give special instructions on the following lines:

14

15

16

17

18

19

20 EFFECTIVE DATE

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

23 NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

24 If it becomes necessary for a court to appoint a
25 [conservator or guardian] of my estate or [guardian] of my person, I

1 nominate the following person(s) for appointment:

2 Name of Nominee for [conservator or guardian] of my
 3 estate:

4

5 Nominee's Address:

6 Nominee's Telephone Number:

7 Name of Nominee for [guardian] of my person:

8 Nominee's Address:

9 Nominee's Telephone Number:

10 RELIANCE ON THIS POWER OF ATTORNEY

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

14 SIGNATURE AND ACKNOWLEDGMENT

15

16 Your Signature Date

17

18 Your Name Printed

19

20

21 Your Address

22

23 Your Telephone Number

24 State of

1 [County] of

2 This document was acknowledged before me on

3 (Date)

4 by

5 (Name of Principal)

6 (Seal, if any)

7 Signature of Notary

8 My commission expires:

9 [This document prepared by:

10

11 ]

12 IMPORTANT INFORMATION FOR AGENT

13 Agent's Duties

14 When you accept the authority granted under this power of
 15 attorney, a special legal relationship is created between you and the
 16 principal. This relationship imposes upon you legal duties that
 17 continue until you resign or the power of attorney is terminated or
 18 revoked. You must:

19 1. do what you know the principal reasonably expects you
 20 to do with the principal's property or, if you do not know the
 21 principal's expectations, act in the principal's best interest;

22 2. act in good faith;

23 3. do nothing beyond the authority granted in this power

1 of attorney; and

2 4. disclose your identity as an agent whenever you act
3 for the principal by writing or printing the name of the principal
4 and signing your own name as "agent" in the following manner:

5 (Principal's Name) by (Your Signature) as Agent

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

8 1. act loyally for the principal's benefit;

9 2. avoid conflicts that would impair your ability to act
10 in the principal's best interest;

11 3. act with care, competence, and diligence;

12 4. keep a record of all receipts, disbursements, and
13 transactions made on behalf of the principal;

14 5. cooperate with any person that has authority to make
15 health-care decisions for the principal to do what you know the
16 principal reasonably expects or, if you do not know the principal's
17 expectations, to act in the principal's best interest; and

18 6. attempt to preserve the principal's estate plan if you
19 know the plan and preserving the plan is consistent with the
20 principal's best interest.

21 Termination of Agent's Authority

22 You must stop acting on behalf of the principal if you
23 learn of any event that terminates this power of attorney or your
24 authority under this power of attorney. Events that terminate a power
25 of attorney or your authority to act under a power of attorney

1 include:

2 1. death of the principal;

3 2. the principal's revocation of the power of attorney or
4 your authority;

5 3. the occurrence of a termination event stated in the
6 power of attorney;

7 4. the purpose of the power of attorney being fully
8 accomplished; or

9 5. if you are married to the principal, a legal action
10 filed with a court to end your marriage, or for your legal
11 separation, unless the Special Instructions in this power of attorney
12 state that such an action will not terminate your authority.

13 Liability of Agent

14 The meaning of the authority granted to you is defined in
15 the Nebraska Uniform Power of Attorney Act. If you violate the
16 Nebraska Uniform Power of Attorney Act or act outside the authority
17 granted, you may be liable for any damages caused by your violation.

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

20 OPTIONAL SIGNATURE OF AGENT

21 I HAVE READ AND ACCEPT THE DUTIES AND LIABILITIES OF THE
22 AGENT AS SPECIFIED IN THIS POWER OF ATTORNEY

23 Agent's Signature:

24 Date:

25 Sec. 42. The following optional form may be used by an

1 agent to certify facts concerning a power of attorney.

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

4 State of

5 [County] of

6 I,

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

11 I further certify that to my knowledge:

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

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

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

21 (4)

22

23

24 (Insert other relevant statements)

25 SIGNATURE AND ACKNOWLEDGMENT

19 Sec. 43. In applying and construing the Nebraska Uniform
20 Power of Attorney Act, consideration must be given to the need to
21 promote uniformity of the law with respect to its subject matter
22 among the states that enact it.

1 Sec. 44. The Nebraska Uniform Power of Attorney Act
2 modifies, limits, and supersedes the federal Electronic Signatures in
3 Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does
4 not modify, limit, or supersede section 101(c) of such act, 15 U.S.C.
5 7001(c), or authorize electronic delivery of any of the notices
6 described in section 103(b) of such act, 15 U.S.C. 7003(b).

7 Sec. 45. Except as otherwise provided in the Nebraska
8 Uniform Power of Attorney Act, on the operative date of this act:

9 (1) The act applies to a power of attorney created
10 before, on, or after the operative date of this act;

11 (2) The act applies to a judicial proceeding concerning a
12 power of attorney commenced on or after the operative date of this
13 act;

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

20 (4) An act done before the operative date of this act is
21 not affected by the act.

22 Sec. 46. Section 30-2201, Revised Statutes Supplement,
23 2011, is amended to read:

24 30-2201 Sections 30-2201 to 30-2902 and sections 1 to 45
25 of this act and 30-3901 to 30-3923 shall be known and may be cited as

1 the Nebraska Probate Code.

2 Sec. 47. Section 30-3408, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 30-3408 (1) A power of attorney for health care executed
5 on or after September 9, 1993, shall be in a form which complies with
6 sections 30-3401 to 30-3432 and may be in the form provided in this
7 subsection.

8 POWER OF ATTORNEY FOR HEALTH CARE

9 I appoint, whose address
10 is, and whose telephone number is, as my
11 attorney in fact for health care. I appoint, whose
12 address is, and whose telephone
13 number is, as my successor attorney in fact for health
14 care. I authorize my attorney in fact appointed by this document to
15 make health care decisions for me when I am determined to be
16 incapable of making my own health care decisions. I have read the
17 warning which accompanies this document and understand the
18 consequences of executing a power of attorney for health care.

19 I direct that my attorney in fact comply with the
20 following instructions or
21 limitations:
22

23 I direct that my attorney in fact comply with the
24 following instructions on life-sustaining treatment:
25 (optional)

1

2 I direct that my attorney in fact comply with the
3 following instructions on artificially administered nutrition and
4 hydration: (optional)

5 I HAVE READ THIS POWER OF ATTORNEY FOR HEALTH CARE. I
6 UNDERSTAND THAT IT ALLOWS ANOTHER PERSON TO MAKE LIFE AND DEATH
7 DECISIONS FOR ME IF I AM INCAPABLE OF MAKING SUCH DECISIONS. I ALSO
8 UNDERSTAND THAT I CAN REVOKE THIS POWER OF ATTORNEY FOR HEALTH CARE
9 AT ANY TIME BY NOTIFYING MY ATTORNEY IN FACT, MY PHYSICIAN, OR THE
10 FACILITY IN WHICH I AM A PATIENT OR RESIDENT. I ALSO UNDERSTAND THAT
11 I CAN REQUIRE IN THIS POWER OF ATTORNEY FOR HEALTH CARE THAT THE FACT
12 OF MY INCAPACITY IN THE FUTURE BE CONFIRMED BY A SECOND PHYSICIAN.

13

14 (Signature of person making designation/date)

15 DECLARATION OF WITNESSES

16 We declare that the principal is personally known to us,
17 that the principal signed or acknowledged his or her signature on
18 this power of attorney for health care in our presence, that the
19 principal appears to be of sound mind and not under duress or undue
20 influence, and that neither of us nor the principal's attending
21 physician is the person appointed as attorney in fact by this
22 document.

23 Witnessed By:

24

25 (Signature of Witness/Date)

(Printed Name of Witness)

1

2 (Signature of Witness/Date) (Printed Name of Witness)

3 OR

4 State of Nebraska,)

5)ss.

6 County of)

7 On this day of 20...., before
 8 me,, a notary public in and for County,
 9 personally came, personally to me known to be the
 10 identical person whose name is affixed to the above power of attorney
 11 for health care as principal, and I declare that he or she appears in
 12 sound mind and not under duress or undue influence, that he or she
 13 acknowledges the execution of the same to be his or her voluntary act
 14 and deed, and that I am not the attorney in fact or successor
 15 attorney in fact designated by this power of attorney for health
 16 care.

17 Witness my hand and notarial seal at in such
 18 county the day and year last above written.

19 Signature of Notary Public

20 Seal

21 (2) A power of attorney for health care may be included
 22 in a durable power of attorney drafted under the ~~Uniform Durable~~
 23 ~~Power of Attorney Act~~ Nebraska Uniform Power of Attorney Act or in
 24 any other form if the power of attorney for health care included in
 25 such durable power of attorney or any other form fully complies with

1 the terms of section 30-3404.

2 (3) A power of attorney for health care executed prior to
3 January 1, 1993, shall be effective if it fully complies with the
4 terms of section 30-3404.

5 (4) A power of attorney for health care which is executed
6 in another state and is valid under the laws of that state shall be
7 valid according to its terms.

8 Sec. 48. This act becomes operative on January 1, 2013.

9 Sec. 49. Original section 30-3408, Reissue Revised
10 Statutes of Nebraska, and section 30-2201, Revised Statutes
11 Supplement, 2011, are repealed.

12 Sec. 50. The following sections are outright repealed:
13 Sections 30-2665, 30-2666, 30-2667, 30-2668, 30-2669, 30-2670,
14 30-2671, 30-2672, 49-1501, 49-1502, 49-1503, 49-1504, 49-1505,
15 49-1506, 49-1507, 49-1508, 49-1509, 49-1510, 49-1511, 49-1512,
16 49-1513, 49-1514, 49-1515, 49-1516, 49-1517, 49-1518, 49-1519,
17 49-1520, 49-1521, 49-1522, 49-1523, 49-1524, 49-1525, 49-1526,
18 49-1527, 49-1528, 49-1529, 49-1530, 49-1531, 49-1532, 49-1533,
19 49-1534, 49-1535, 49-1536, 49-1537, 49-1538, 49-1539, 49-1540,
20 49-1541, 49-1542, 49-1543, 49-1544, 49-1545, 49-1546, 49-1547,
21 49-1548, 49-1549, 49-1550, 49-1551, 49-1552, 49-1553, 49-1554,
22 49-1555, 49-1556, 49-1557, 49-1558, 49-1559, 49-1560, 49-1561, and
23 49-1562, Reissue Revised Statutes of Nebraska, and sections 30-2664
24 and 30-2665.01, Revised Statutes Cumulative Supplement, 2010.