

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1113

Final Reading

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,

1 49-1544, 49-1545, 49-1546, 49-1547, 49-1548, 49-1549,
2 49-1550, 49-1551, 49-1552, 49-1553, 49-1554, 49-1555,
3 49-1556, 49-1557, 49-1558, 49-1559, 49-1560, 49-1561, and
4 49-1562, Reissue Revised Statutes of Nebraska, and
5 sections 30-2664 and 30-2665.01, Revised Statutes
6 Cumulative Supplement, 2010.

7 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) Person means an individual, corporation, business
7 trust, estate, trust, partnership, limited liability company,
8 association, joint venture, public corporation, government or
9 governmental subdivision, agency, or instrumentality, or any other
10 legal or commercial entity;

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

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

1 (10) Principal means an individual who grants authority
2 to an agent in a power of attorney;

3 (11) Property means anything that may be the subject of
4 ownership, whether real or personal, legal or equitable, or any
5 interest or right therein;

6 (12) Record means information that is inscribed on a
7 tangible medium or that is stored in an electronic or other medium
8 and is retrievable in perceivable form;

9 (13) Sign means, with present intent to authenticate or
10 adopt a record:

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

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

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

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

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

25 (1) A power to the extent it is coupled with an interest

1 in the subject of the power, including a power given to or for the
2 benefit of a creditor in connection with a credit transaction;

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

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

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

9 Sec. 4. A power of attorney created after January 1,
10 2013, under the Nebraska Uniform Power of Attorney Act is durable
11 unless it expressly provides that it is terminated by the incapacity
12 of the principal.

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

24 Sec. 6. (1) A power of attorney executed in this state on
25 or after the operative date of this act is valid if its execution

1 complies with section 5 of this act. The county court and the
2 district court of the principal's domicile shall have concurrent
3 jurisdiction to determine the validity and enforceability of a power
4 of attorney.

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

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

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

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

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

20 Sec. 7. The meaning and effect of a power of attorney is
21 determined by the law of the jurisdiction indicated in the power of
22 attorney and, in the absence of an indication of jurisdiction, by the
23 law of the jurisdiction in which the power of attorney was executed.

24 Sec. 8. (1) In a power of attorney, a principal may
25 nominate a conservator or guardian of the principal's estate or

1 guardian of the principal's person for consideration by the court if
2 protective proceedings for the principal's estate or person are begun
3 after the principal executes the power of attorney.

4 (2) If, following execution of a durable power of
5 attorney, a court of the principal's domicile appoints a conservator,
6 guardian of the estate, or other fiduciary charged with the
7 management of all the principal's property or all of his or her
8 property except specified exclusions, the agent shall be accountable
9 to the fiduciary as well as to the principal. The fiduciary shall
10 have the same power to revoke or amend the power of attorney that the
11 principal would have had if he or she were not disabled or
12 incapacitated.

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

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

21 (3) If a power of attorney becomes effective upon the
22 principal's incapacity and the principal has not authorized a person
23 to determine whether the principal is incapacitated, or the person
24 authorized is unable or unwilling to make the determination, the
25 power of attorney becomes effective upon a determination in a writing

1 or other record by:

2 (a) A licensed physician or licensed psychologist that
3 the principal is incapacitated; or

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

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

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

15 (a) The principal dies;

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

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

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

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

21 or

22 (f) The principal revokes the agent's authority or the
23 agent dies, becomes incapacitated, or resigns, and the power of
24 attorney does not provide for another agent to act under the power of
25 attorney.

- 1 (2) An agent's authority terminates when:
- 2 (a) The principal revokes the authority;
- 3 (b) The agent dies, becomes incapacitated, or resigns;
- 4 (c) An action is filed for the dissolution or annulment
5 of the agent's marriage to the principal or their legal separation,
6 unless the power of attorney otherwise provides; or
- 7 (d) The power of attorney terminates.
- 8 (3) Unless the power of attorney otherwise provides, an
9 agent's authority is exercisable until the authority terminates under
10 subsection (2) of this section, notwithstanding a lapse of time since
11 the execution of the power of attorney.
- 12 (4) Termination of an agent's authority or of a power of
13 attorney is not effective as to the agent or another person that,
14 without actual knowledge of the termination, acts in good faith under
15 the power of attorney. An act so performed, unless otherwise invalid
16 or unenforceable, binds the principal and the principal's successors
17 in interest.
- 18 (5) Incapacity of the principal of a power of attorney
19 that is not durable does not revoke or terminate the power of
20 attorney as to an agent or other person that, without actual
21 knowledge of the incapacity, acts in good faith under the power of
22 attorney. An act so performed, unless otherwise invalid or
23 unenforceable, binds the principal and the principal's successors in
24 interest.
- 25 (6) The execution of a power of attorney does not revoke

1 a power of attorney previously executed by the principal unless the
2 subsequent power of attorney provides that the previous power of
3 attorney is revoked or that all other powers of attorney are revoked.

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

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

13 (a) Has the same authority as that granted to the
14 original agent; and

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

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

23 (4) An agent that has actual knowledge of a breach or
24 imminent breach of fiduciary duty by another agent shall notify the
25 principal and, if the principal is incapacitated, take any action

1 reasonably appropriate in the circumstances to safeguard the
2 principal's best interest. An agent that fails to notify the
3 principal or take action as required by this subsection is liable for
4 the reasonably foreseeable damages that could have been avoided if
5 the agent had notified the principal or taken such action.

6 Sec. 12. Unless the power of attorney otherwise provides,
7 an agent is entitled to reimbursement of expenses reasonably incurred
8 on behalf of the principal and to compensation that is reasonable
9 under the circumstances.

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

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

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

19 (b) Act in good faith; and

20 (c) Act only within the scope of authority granted, or
21 reasonably implied by, the grant of authority in the power of
22 attorney.

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

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

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

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

6 (d) Keep a record of all receipts, disbursements, and
7 transactions made on behalf of the principal;

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

12 (f) Attempt to preserve the principal's estate plan, to
13 the extent known by the agent, if preserving the plan is consistent
14 with the principal's best interest based on all relevant factors,
15 including:

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

17 (ii) The principal's foreseeable obligations and need for
18 maintenance;

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

21 (iv) Eligibility for a benefit, a program, or assistance
22 under a statute or regulation.

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

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

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

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

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

20 (8) Except as otherwise provided in the power of
21 attorney, an agent is not required to disclose receipts,
22 disbursements, or transactions conducted on behalf of the principal
23 unless ordered by a court or requested by the principal, a guardian,
24 a conservator, another fiduciary or agent acting for the principal, a
25 governmental agency having authority to protect the welfare of the

1 principal, or, upon the death of the principal, by the personal
2 representative or successor in interest of the principal's estate. If
3 so requested, within thirty days the agent shall comply with the
4 request or provide a writing or other record substantiating why
5 additional time is needed and shall comply with the request within an
6 additional thirty days.

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

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

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

17 (2) An exculpatory term drafted or caused to be drafted
18 by an agent is invalid as an abuse of fiduciary or confidential
19 relationship unless the agent proves that the exculpatory term is
20 fair under the circumstances and that its existence and contents were
21 adequately communicated to the principal.

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

25 (a) The principal or the agent;

1 (b) A guardian, conservator, or other fiduciary acting
2 for the principal;

3 (c) A person authorized to make health care decisions for
4 the principal;

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

6 (e) An individual who would qualify as a presumptive heir
7 of the principal or would otherwise qualify as a devisee under a will
8 that remains unrevoked;

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

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

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

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

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

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

25 (1) Restore the value of the principal's property to what

1 it would have been had the violation not occurred; and

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

6 Sec. 18. Unless the power of attorney provides a
7 different method for an agent's resignation, an agent may resign by
8 giving notice to the principal and, if the principal is
9 incapacitated:

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

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

14 (a) The principal's caregiver;

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

17 (c) A governmental agency having authority to protect the
18 welfare of the principal.

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

22 (2) A person that in good faith accepts an acknowledged
23 power of attorney without actual knowledge that the signature is not
24 genuine may rely upon the presumption under section 5 of this act
25 that the signature is genuine.

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

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

13 (a) An agent's certification under penalty of perjury of
14 any factual matter concerning the principal, agent, or power of
15 attorney;

16 (b) An English translation of the power of attorney if
17 the power of attorney contains, in whole or in part, language other
18 than English; and

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

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

1 (6) For purposes of this section and section 20 of this
2 act, a person that conducts activities through employees is without
3 actual knowledge of a fact relating to a power of attorney, a
4 principal, or an agent if the employee conducting the transaction
5 involving the power of attorney is without actual knowledge of the
6 fact.

7 Sec. 20. (1) Except as otherwise provided in subsection
8 (2) of this section:

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

14 (b) If a person requests a certification, a translation,
15 or an opinion of counsel under subsection (4) of section 19 of this
16 act, the person shall accept the power of attorney no later than five
17 business days after receipt of the certification, translation, or
18 opinion of counsel; and

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

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

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

1 (b) Engaging in a transaction with the agent or the
2 principal in the same circumstances would be inconsistent with state
3 or federal law;

4 (c) The person has actual knowledge of the termination of
5 the agent's authority or of the power of attorney before exercise of
6 the power;

7 (d) A request for a certification, a translation, or an
8 opinion of counsel under subsection (4) of section 19 of this act is
9 refused;

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

15 (f) The person makes, or has actual knowledge that
16 another person has made, a report to the local adult protective
17 services office stating a good faith belief that the principal may be
18 subject to physical or financial abuse, neglect, exploitation, or
19 abandonment by the agent or a person acting for or with the agent;

20 (g) The person brought, or has actual knowledge that
21 another person has brought, a judicial proceeding for construction of
22 a power of attorney or review of the agent's conduct; or

23 (h) The power of attorney becomes effective upon the
24 occurrence of an event or contingency, and neither a certification
25 nor evidence of the occurrence of the event or contingency is

1 presented to the person being asked to accept the power of attorney.

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

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

6 (b) The person's refusal is based exclusively on a
7 mandate that an additional or different power of attorney form must
8 be used.

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

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

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

17 Sec. 21. Unless displaced by a provision of the Nebraska
18 Uniform Power of Attorney Act, the principles of law and equity
19 supplement the act.

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

24 Sec. 23. The remedies under the Nebraska Uniform Power of
25 Attorney Act are not exclusive and do not abrogate any right or

1 remedy under the law of this state other than the act.

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

8 (a) Create, amend, revoke, or terminate an inter vivos
9 trust;

10 (b) Make a gift;

11 (c) Create or change rights of survivorship;

12 (d) Create or change a beneficiary designation;

13 (e) Delegate authority granted under the power of
14 attorney;

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

18 (g) Exercise fiduciary powers that the principal has
19 authority to delegate; or

20 (h) Renounce or disclaim property, including the power of
21 appointment.

22 (2) Notwithstanding a grant of authority to do an act
23 described in subsection (1) of this section, unless the power of
24 attorney otherwise provides, an agent that is not an ancestor,
25 spouse, or issue of the principal, may not exercise authority under a

1 power of attorney to create in the agent, or in an individual to whom
2 the agent owes a legal obligation of support, an interest in the
3 principal's property, whether by gift, right of survivorship,
4 beneficiary designation, disclaimer, or otherwise.

5 (3) Subject to subsections (1), (2), (4), and (5) of this
6 section, if a power of attorney grants to an agent authority to do
7 all acts that a principal could do, the agent has the general
8 authority described in sections 27 to 39 of this act.

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

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

15 (6) Authority granted in a power of attorney is
16 exercisable with respect to property that the principal has when the
17 power of attorney is executed or acquired later, whether or not the
18 property is located in this state and whether or not the authority is
19 exercised or the power of attorney is executed in this state.

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

24 Sec. 25. (1) An agent has authority described in sections
25 24 to 40 of this act if the power of attorney refers to general

1 authority with respect to the descriptive term for the subjects
2 stated in sections 27 to 40 of this act or cites the section in which
3 the authority is described.

4 (2) A reference in a power of attorney to general
5 authority with respect to the descriptive term for a subject in
6 sections 27 to 40 of this act or a citation to a section within such
7 sections incorporates the entire section described or cited as if it
8 were set out in full in the power of attorney.

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

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

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

21 (2) Contract in any manner with any person, on terms
22 agreeable to the agent, to accomplish a purpose of a transaction and
23 perform, rescind, cancel, terminate, reform, restate, release, or
24 modify the contract or another contract made by or on behalf of the
25 principal;

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

6 (4) Initiate, participate in, submit to alternative
7 dispute resolution, settle, oppose, or propose or accept a compromise
8 with respect to a claim existing in favor of or against the principal
9 or intervene in litigation relating to the claim;

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

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

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

19 (8) Communicate with any representative or employee of a
20 government or governmental subdivision, agency, or instrumentality,
21 on behalf of the principal;

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

25 (10) Do any lawful act with respect to the subject and

1 all property related to the subject.

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

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

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

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

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

25 (5) Manage or conserve an interest in real property or a

1 right incident to real property owned or claimed to be owned by the
2 principal, including:

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

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

6 (c) Paying, assessing, compromising, or contesting taxes
7 or assessments or applying for and receiving refunds in connection
8 with them; and

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

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

15 (7) Participate in a reorganization with respect to real
16 property or an entity that owns an interest in or right incident to
17 real property and receive, and hold, and act with respect to stocks
18 and bonds or other property received in a plan of reorganization,
19 including:

20 (a) Selling or otherwise disposing of them;

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

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

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

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

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

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

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

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

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

24 (5) Manage or conserve tangible personal property or an
25 interest in tangible personal property on behalf of the principal,

1 including:

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

3 (b) Obtaining or regaining possession of or protecting

4 the property or interest, by litigation or otherwise;

5 (c) Paying, assessing, compromising, or contesting taxes

6 or assessments or applying for and receiving refunds in connection

7 with taxes or assessments;

8 (d) Moving the property from place to place;

9 (e) Storing the property for hire or on a gratuitous

10 bailment; and

11 (f) Using and making repairs, alterations, or

12 improvements to the property; and

13 (6) Change the form of title of an interest in tangible

14 personal property.

15 Sec. 29. Unless the power of attorney otherwise provides,

16 language in a power of attorney granting general authority with

17 respect to stocks and bonds authorizes the agent to:

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

19 (2) Establish, continue, modify, or terminate an account

20 with respect to stocks and bonds;

21 (3) Pledge stocks and bonds as security to borrow, pay,

22 renew, or extend the time of payment of a debt of the principal;

23 (4) Receive certificates and other evidences of ownership

24 with respect to stocks and bonds; and

25 (5) Exercise voting rights with respect to stocks and

1 bonds in person or by proxy, enter into voting trusts, and consent to
2 limitations on the right to vote.

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

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

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

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

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

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

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

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

1 (5) Receive statements of account, vouchers, notices, and
2 similar documents from a financial institution and act with respect
3 to them;

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

6 (7) Borrow money and pledge as security personal property
7 of the principal necessary to borrow money or pay, renew, or extend
8 the time of payment of a debt of the principal or a debt guaranteed
9 by the principal;

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

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

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

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

1 Sec. 32. Subject to the terms of a document or an
2 agreement governing an entity or an entity ownership interest, and
3 unless the power of attorney otherwise provides, language in a power
4 of attorney granting general authority with respect to operation of
5 an entity or business authorizes the agent to:

6 (1) Operate, buy, sell, enlarge, reduce, or terminate an
7 ownership interest;

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

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

12 (4) 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 because
15 of an ownership interest;

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

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

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

25 (a) Continue, modify, renegotiate, extend, and terminate

1 a contract made by or on behalf of the principal with respect to the
2 entity or business before execution of the power of attorney;

3 (b) Determine:

4 (i) The location of its operation;

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

6 (iii) The methods of manufacturing, selling,
7 merchandising, financing, accounting, and advertising employed in its
8 operation;

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

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

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

16 (d) Demand and receive money due or claimed by the
17 principal or on the principal's behalf in the operation of the entity
18 or business and control and disburse the money in the operation of
19 the entity or business;

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

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

24 (10) Sell or liquidate all or part of an entity or
25 business;

1 (11) Establish the value of an entity or business under a
2 buyout agreement to which the principal is a party;

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

6 (13) Pay, compromise, or contest taxes, assessments,
7 finances, or penalties and perform any other act to protect the
8 principal from illegal or unnecessary taxation, assessments, fines,
9 or penalties, with respect to an entity or business, including
10 attempts to recover, in any manner permitted by law, money paid
11 before or after the execution of the power of attorney.

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

15 (1) Continue, pay the premium or make a contribution on,
16 modify, exchange, rescind, release, or terminate a contract procured
17 by or on behalf of the principal which insures or provides an annuity
18 to either the principal or another person, whether or not the
19 principal is a beneficiary under the contract;

20 (2) Procure new, different, and additional contracts of
21 insurance and annuities for the principal and the principal's spouse,
22 children, and other dependents, and select the amount, type of
23 insurance or annuity, and mode of payment;

24 (3) Pay the premium or make a contribution on, modify,
25 exchange, rescind, release, or terminate a contract of insurance or

1 annuity procured by the agent;

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

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

6 (6) Exercise an election;

7 (7) Exercise investment powers available under a contract
8 of insurance or annuity;

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

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

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

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

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

22 (13) Pay, from proceeds or otherwise, compromise or
23 contest, and apply for refunds in connection with, a tax or
24 assessment levied by a taxing authority with respect to a contract of
25 insurance or annuity or its proceeds or liability accruing by reason

1 of the tax or assessment.

2 Sec. 34. (1) For purposes of this section, estate, trust,
3 or other beneficial interest means a trust, probate estate,
4 guardianship, conservatorship, escrow, or custodianship or a fund
5 from which the principal is, may become, or claims to be, entitled to
6 a share or payment.

7 (2) Unless the power of attorney otherwise provides,
8 language in a power of attorney granting general authority with
9 respect to estates, trusts, and other beneficial interests authorizes
10 the agent to:

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

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

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

20 (d) Initiate, participate in, submit to alternative
21 dispute resolution, settle, oppose, or propose or accept a compromise
22 with respect to litigation to ascertain the meaning, validity, or
23 effect of a deed, will, declaration of trust, or other instrument or
24 transaction affecting the interest of the principal;

25 (e) Initiate, participate in, submit to alternative

1 dispute resolution, settle, oppose, or propose or accept a compromise
2 with respect to litigation to remove, substitute, or surcharge a
3 fiduciary;

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

6 (g) Transfer an interest of the principal in real
7 property, stocks and bonds, accounts with financial institutions or
8 securities intermediaries, insurance, annuities, and other property
9 to the trustee of a revocable trust created by the principal as
10 settlor.

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

14 (1) Assert and maintain before a court or administrative
15 agency a claim, claim for relief, cause of action, counterclaim,
16 offset, recoupment, or defense, including an action to recover
17 property or other thing of value, recover damages sustained by the
18 principal, eliminate or modify tax liability, or seek an injunction,
19 specific performance, or other relief;

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

22 (3) Seek an attachment, garnishment, order of arrest, or
23 other preliminary, provisional, or intermediate relief and use an
24 available procedure to effect or satisfy a judgment, order, or
25 decree;

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

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

6 (6) Waive the issuance and service of process upon the
7 principal, accept service of process, appear for the principal,
8 designate persons upon which process directed to the principal may be
9 served, execute and file or deliver stipulations on the principal's
10 behalf, verify pleadings, seek appellate review, procure and give
11 surety and indemnity bonds, contract and pay for the preparation and
12 printing of records and briefs, receive, execute, and file or deliver
13 a consent, waiver, release, confession of judgment, satisfaction of
14 judgment, notice, agreement, or other instrument in connection with
15 the prosecution, settlement, or defense of a claim or litigation;

16 (7) Act for the principal with respect to bankruptcy or
17 insolvency, whether voluntary or involuntary, concerning the
18 principal or some other person, or with respect to a reorganization,
19 receivership, or application for the appointment of a receiver or
20 trustee which affects an interest of the principal in property or
21 other thing of value;

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

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

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

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

9 (i) The principal's children;

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

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

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

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

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

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

23 (d) Provide normal domestic help, usual vacations and
24 travel expenses, and funds for shelter, clothing, food, appropriate
25 education, including postsecondary and vocational education, and

1 other current living costs for the individuals described in
2 subdivision (1)(a) of this subsection;

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

6 (f) Act as the principal's personal representative
7 pursuant to the Health Insurance Portability and Accountability Act,
8 sections 1171 to 1179 of the Social Security Act, 42 U.S.C. 1320d, as
9 amended, and applicable regulations, in making decisions related to
10 the past, present, or future payment for the provision of health care
11 consented to by the principal or anyone authorized under the law of
12 this state to consent to health care on behalf of the principal;

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

17 (h) Maintain credit and debit accounts for the
18 convenience of the individuals described in subdivision (1)(a) of
19 this subsection and open new accounts; and

20 (i) Continue payments incidental to the membership or
21 affiliation of the principal in a religious institution, club,
22 society, order, or other organization or to continue contributions to
23 those organizations.

24 (2) Authority with respect to personal and family
25 maintenance is neither dependent upon, nor limited by, authority that

1 an agent may or may not have with respect to gifts under the Nebraska
2 Uniform Power of Attorney Act.

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

7 (2) Unless the power of attorney otherwise provides,
8 language in a power of attorney granting general authority with
9 respect to benefits from governmental programs or civil or military
10 service authorizes the agent to:

11 (a) Execute vouchers in the name of the principal for
12 allowances and reimbursements payable by the United States or a
13 foreign government or by a state or subdivision of a state to the
14 principal, including allowances and reimbursements for transportation
15 of the individuals described in subdivision (1)(a) of section 36 of
16 this act and for shipment of their household effects;

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

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

25 (d) Prepare, file, and maintain a claim of the principal

1 for a benefit or assistance, financial or otherwise, to which the
2 principal may be entitled under a statute or regulation;

3 (e) Initiate, participate in, submit to alternative
4 dispute resolution, settle, oppose, or propose or accept a compromise
5 with respect to litigation concerning any benefit or assistance the
6 principal may be entitled to receive under a statute or regulation;
7 and

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

11 Sec. 38. (1) For purposes of this section, retirement
12 plan means a plan or account created by an employer, the principal,
13 or another individual to provide retirement benefits or deferred
14 compensation of which the principal is a participant, beneficiary, or
15 owner, including a plan or account under the following sections of
16 the Internal Revenue Code:

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

19 (b) A Roth individual retirement account under section
20 408A of the Internal Revenue Code, 26 U.S.C. 408A;

21 (c) A deemed individual retirement account under section
22 408(q) of the Internal Revenue Code, 26 U.S.C. 408(q);

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

25 (e) A pension, profit-sharing, stock bonus, or other

1 retirement plan qualified under section 401(a) of the Internal
2 Revenue Code, 26 U.S.C. 401(a);

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

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

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

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

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

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

16 (d) Make contributions to a retirement plan;

17 (e) Exercise investment powers available under a
18 retirement plan; and

19 (f) Borrow from, sell assets to, or purchase assets from
20 a retirement plan.

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

24 (1) Prepare, sign, and file federal, state, local, and
25 foreign income, gift, payroll, property, Federal Insurance

1 Contributions Act, and other tax returns, claims for refunds,
2 requests for extension of time, petitions regarding tax matters, and
3 any other tax-related documents, including receipts, offers, waivers,
4 consents, including consents and agreements under section 2032A of
5 the Internal Revenue Code, 26 U.S.C. 2032A, closing agreements, and
6 any power of attorney required by the Internal Revenue Service or
7 other taxing authority with respect to a tax year upon which the
8 statute of limitations has not run and the following twenty-five tax
9 years;

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

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

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

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

23 (2) Subject to section 24 of this act and unless the
24 power of attorney otherwise provides, language in a power of attorney
25 granting general authority with respect to gifts authorizes the agent

1 only to:

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

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

17 (3) An agent may make a gift of the principal's property
18 only as the agent determines is consistent with the principal's
19 objectives if actually known by the agent and, if unknown, as the
20 agent determines is consistent with the principal's best interest
21 based on all relevant factors, including:

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

23 (b) The principal's foreseeable obligations and need for
24 maintenance;

25 (c) Minimization of taxes, including income, estate,

1 inheritance, generation-skipping transfer, and gift taxes;

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

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

6 Sec. 41. A document substantially in the following form
7 may be used to create a statutory form power of attorney that has the
8 meaning and effect prescribed by the Nebraska Uniform Power of
9 Attorney Act.

10 NEBRASKA

11 STATUTORY FORM POWER OF ATTORNEY

12 IMPORTANT INFORMATION

13 This power of attorney authorizes another person (your
14 agent) to make decisions concerning your property for you (the
15 principal). Your agent will be able to make decisions and act with
16 respect to your property (including your money) whether or not you
17 are able to act for yourself. The meaning of authority over subjects
18 listed on this form is explained in the Nebraska Uniform Power of
19 Attorney Act.

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

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

1 This form will not revoke a power of attorney previously
2 executed by you unless you add that the previous power of attorney is
3 revoked or that all other powers of attorney are revoked by this
4 power of attorney.

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

7 This form provides for designation of one agent. If you
8 wish to name more than one agent you may name a coagent in the
9 Special Instructions. Coagents are not required to act together
10 unless you include that requirement in the Special Instructions.

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

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

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

19 DESIGNATION OF AGENT

20 I (name of principal)
21 name the following person as my agent:

22 Name of Agent:

23 Agent's Address:

24 Agent's Telephone Number:

25 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

3 Name of Successor Agent:

4 Successor Agent's Address:

5 Successor Agent's Telephone Number:

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

8 Name of Second Successor Agent:

9 Second Successor Agent's Address:

10 Second Successor Agent's Telephone Number:

11 Release of Information

12 I agree to, authorize, and allow full release of
13 information, by any governmental agency, business, creditor, or third
14 party who may have information pertaining to my assets or income, to
15 my agent named herein.

16 GRANT OF GENERAL AUTHORITY

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

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

24 (.....) Real Property

25 (.....) Tangible Personal Property

- 1 (.....) Stocks and Bonds
- 2 (.....) Commodities and Options
- 3 (.....) Banks and Other Financial Institutions
- 4 (.....) Operation of Entity or Business
- 5 (.....) Insurance and Annuities
- 6 (.....) Estates, Trusts, and Other Beneficial Interests
- 7 (.....) Claims and Litigation
- 8 (.....) Personal and Family Maintenance
- 9 (.....) Benefits from Governmental Programs or Civil or

10 Military Service

- 11 (.....) Retirement Plans
- 12 (.....) Taxes
- 13 (.....) All Preceding Subjects

14 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

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

22 (.....) Create, amend, revoke, or terminate an inter
23 vivos trust

24 (.....) Make a gift, subject to the limitations of the
25 Nebraska Uniform Power of Attorney Act and any special instructions

1 in this power of attorney

2 (.....) Create or change rights of survivorship

3 (.....) Create or change a beneficiary designation

4 (.....) Delegate to another person to exercise the
5 authority granted under this power of attorney

6 (.....) Waive the principal's right to be a beneficiary
7 of a joint and survivor annuity, including a survivor benefit under a
8 retirement plan

9 (.....) Exercise fiduciary powers that the principal has
10 authority to delegate

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

13 LIMITATION ON AGENT'S AUTHORITY

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

19 SPECIAL INSTRUCTIONS (OPTIONAL)

20 You may give special instructions on the following lines:

- 21
- 22
- 23
- 24
- 25

1
2

EFFECTIVE DATE

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

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

6 If it becomes necessary for a court to appoint a
7 [conservator or guardian] of my estate or [guardian] of my person, I
8 nominate the following person(s) for appointment:

9 Name of Nominee for [conservator or guardian] of my
10 estate:

11

12 Nominee's Address:

13 Nominee's Telephone Number:

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

15 Nominee's Address:

16 Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

22
23

Your Signature

Date

24

25 Your Name Printed

1
.....

2
.....

3 Your Address

4
.....

5 Your Telephone Number

6 State of

7 [County] of

8 This document was acknowledged before me on

9 (Date)

10 by

11 (Name of Principal)

12 (Seal, if any)

13 Signature of Notary

14 My commission expires:

15 [This document prepared by:

16
.....]

17

18 IMPORTANT INFORMATION FOR AGENT

19 Agent's Duties

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

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

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

6 2. act in good faith;

7 3. do nothing beyond the authority granted in this power
8 of attorney; and

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

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

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

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

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

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

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

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

25 6. attempt to preserve the principal's estate plan if you

1 know the plan and preserving the plan is consistent with the
2 principal's best interest.

3 Termination of Agent's Authority

4 You must stop acting on behalf of the principal if you
5 learn of any event that terminates this power of attorney or your
6 authority under this power of attorney. Events that terminate a power
7 of attorney or your authority to act under a power of attorney
8 include:

- 9 1. death of the principal;
10 2. the principal's revocation of the power of attorney or
11 your authority;
12 3. the occurrence of a termination event stated in the
13 power of attorney;
14 4. the purpose of the power of attorney being fully
15 accomplished; or
16 5. if you are married to the principal, a legal action
17 filed with a court to end your marriage, or for your legal
18 separation, unless the Special Instructions in this power of attorney
19 state that such an action will not terminate your authority.

20 Liability of Agent

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

25 If there is anything about this document or your duties

1 that you do not understand, you should seek legal advice.

2 OPTIONAL SIGNATURE OF AGENT

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

5 Agent's Signature:

6 Date:

7 Sec. 42. The following optional form may be used by an
8 agent to certify facts concerning a power of attorney.

9 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF
10 ATTORNEY AND AGENT'S AUTHORITY

11 State of

12 [County] of

13 I,

14 (Name of Agent), certify under penalty of perjury
15 that (Name of Principal) granted me
16 authority as an agent or successor agent in a power of attorney
17 dated

18 I further certify that to my knowledge:

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

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

1 My commission expires:

2 This document prepared by:

3

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

8 Sec. 44. The Nebraska Uniform Power of Attorney Act
9 modifies, limits, and supersedes the federal Electronic Signatures in
10 Global and National Commerce Act, 15 U.S.C. 7001 et seq., but does
11 not modify, limit, or supersede section 101(c) of such act, 15 U.S.C.
12 7001(c), or authorize electronic delivery of any of the notices
13 described in section 103(b) of such act, 15 U.S.C. 7003(b).

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

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

18 (2) The act applies to a judicial proceeding concerning a
19 power of attorney commenced on or after the operative date of this
20 act;

21 (3) The act applies to a judicial proceeding concerning a
22 power of attorney commenced before the operative date of this act
23 unless the court finds that application of a provision of the act
24 would substantially interfere with the effective conduct of the
25 judicial proceeding or prejudice the rights of a party, in which case

1 that provision does not apply and the superseded law applies; and

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

4 Sec. 46. Section 30-2201, Revised Statutes Supplement,
5 2011, is amended to read:

6 30-2201 Sections 30-2201 to 30-2902 and 30-3901 to
7 30-3923 and sections 1 to 45 of this act shall be known and may be
8 cited as the Nebraska Probate Code.

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

11 30-3408 (1) A power of attorney for health care executed
12 on or after September 9, 1993, shall be in a form which complies with
13 sections 30-3401 to 30-3432 and may be in the form provided in this
14 subsection.

15 POWER OF ATTORNEY FOR HEALTH CARE

16 I appoint, whose address
17 is, and whose telephone number is, as my
18 attorney in fact for health care. I appoint, whose
19 address is, and whose telephone
20 number is, as my successor attorney in fact for health
21 care. I authorize my attorney in fact appointed by this document to
22 make health care decisions for me when I am determined to be
23 incapable of making my own health care decisions. I have read the
24 warning which accompanies this document and understand the
25 consequences of executing a power of attorney for health care.

1 I direct that my attorney in fact comply with the
 2 following instructions or
 3 limitations:
 4

5 I direct that my attorney in fact comply with the
 6 following instructions on life-sustaining treatment:
 7 (optional)
 8

9 I direct that my attorney in fact comply with the
 10 following instructions on artificially administered nutrition and
 11 hydration: (optional)

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

20

21 (Signature of person making designation/date)

22 DECLARATION OF WITNESSES

23 We declare that the principal is personally known to us,
 24 that the principal signed or acknowledged his or her signature on
 25 this power of attorney for health care in our presence, that the

1 principal appears to be of sound mind and not under duress or undue
2 influence, and that neither of us nor the principal's attending
3 physician is the person appointed as attorney in fact by this
4 document.

5 Witnessed By:

6

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

8

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

10 OR

11 State of Nebraska,)

12)ss.

13 County of)

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

24 Witness my hand and notarial seal at in such

1 county the day and year last above written.

2 Signature of Notary Public

3 Seal

4 (2) A power of attorney for health care may be included
5 in a durable power of attorney drafted under the ~~Uniform Durable~~
6 ~~Power of Attorney Act~~ Nebraska Uniform Power of Attorney Act or in
7 any other form if the power of attorney for health care included in
8 such durable power of attorney or any other form fully complies with
9 the terms of section 30-3404.

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

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

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

17 Sec. 49. Original section 30-3408, Reissue Revised
18 Statutes of Nebraska, and section 30-2201, Revised Statutes
19 Supplement, 2011, are repealed.

20 Sec. 50. The following sections are outright repealed:

- 21 Sections 30-2665, 30-2666, 30-2667, 30-2668, 30-2669, 30-2670,
- 22 30-2671, 30-2672, 49-1501, 49-1502, 49-1503, 49-1504, 49-1505,
- 23 49-1506, 49-1507, 49-1508, 49-1509, 49-1510, 49-1511, 49-1512,
- 24 49-1513, 49-1514, 49-1515, 49-1516, 49-1517, 49-1518, 49-1519,
- 25 49-1520, 49-1521, 49-1522, 49-1523, 49-1524, 49-1525, 49-1526,

1 49-1527, 49-1528, 49-1529, 49-1530, 49-1531, 49-1532, 49-1533,
2 49-1534, 49-1535, 49-1536, 49-1537, 49-1538, 49-1539, 49-1540,
3 49-1541, 49-1542, 49-1543, 49-1544, 49-1545, 49-1546, 49-1547,
4 49-1548, 49-1549, 49-1550, 49-1551, 49-1552, 49-1553, 49-1554,
5 49-1555, 49-1556, 49-1557, 49-1558, 49-1559, 49-1560, 49-1561, and
6 49-1562, Reissue Revised Statutes of Nebraska, and sections 30-2664
7 and 30-2665.01, Revised Statutes Cumulative Supplement, 2010.