

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1747

S.P. 614

March 27, 2007

An Act To Enact the Uniform Power of Attorney Act

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HOBBS of York.
Cosponsored by Representative SIMPSON of Auburn and Representatives: BRYANT of
Windham, CASAVANT of Biddeford, DILL of Cape Elizabeth.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 18-A MRSA Art. 5, Pt. 5**, as amended, is repealed.

3 **Sec. 2. 18-A MRSA Art. 5, Pt. 9** is enacted to read:

4 **PART 9**

5 **UNIFORM POWER OF ATTORNEY ACT**

6 **SUBPART 1**

7 **GENERAL PROVISIONS AND DEFINITIONS**

8 **§5-901. Short title**

9 This Part may be known and cited as "the Uniform Power of Attorney Act."

10 **§5-902. Definitions**

11 As used in this Part, unless the context otherwise indicates, the following terms have
12 the following meanings.

13 (a). "Agent" means a person granted authority to act for a principal under a power of
14 attorney, whether denominated an agent, attorney-in-fact or otherwise. The term includes
15 an original agent, coagent, successor agent and a person to which an agent's authority is
16 delegated.

17 (b). "Durable," with respect to a power of attorney, means not terminated by the
18 principal's incapacity.

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

21 (d). "Good faith" means honesty in fact.

22 (e). "Incapacity" means inability of an individual to manage property or business
23 affairs because the individual:

24 (1). Has an impairment in the ability to receive and evaluate information or make or
25 communicate decisions even with the use of technological assistance; or

26 (2). Is:

27 (i) Missing;

28 (ii) Detained, including incarcerated in a penal system; or

29 (iii) Outside the United States and unable to return.

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

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

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

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

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

21 (k). "Record" means information that is inscribed on a tangible medium or that is
22 stored in an electronic or other medium and is retrievable in perceivable form.

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

24 (1). To execute or adopt a tangible symbol; or

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

27 (m). "State" means a state of the United States, the District of Columbia, Puerto
28 Rico, the United States Virgin Islands or any territory or insular possession subject to the
29 jurisdiction of the United States.

30 (n). "Stocks and bonds" means stocks, bonds, mutual funds and all other types of
31 securities and financial instruments, whether held directly, indirectly or in any other
32 manner. The term does not include commodity futures contracts and call or put options
33 on stocks or stock indexes.

34 **§5-903. Applicability**

35 This Part applies to all powers of attorney except:

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

1 **(b).** A power to make health-care decisions;

2 **(c).** A proxy or other delegation to exercise voting rights or management rights with
3 respect to an entity; and

4 **(d).** A power created on a form prescribed by a government or governmental
5 subdivision, agency or instrumentality for a governmental purpose.

6 **§5-904. Power of attorney is durable**

7 A power of attorney created under this Part is durable unless it expressly provides
8 that it is terminated by the incapacity of the principal.

9 **§5-905. Execution of power of attorney**

10 A power of attorney must be signed by the principal or in the principal's conscious
11 presence by another individual directed by the principal to sign the principal's name on
12 the power of attorney. A signature on a power of attorney is presumed to be genuine if
13 the principal acknowledges the signature before a notary public or other individual
14 authorized by law to take acknowledgments.

15 **§5-906. Validity of power of attorney**

16 **(a).** A power of attorney executed in this State on or after January 1, 2008 is valid if
17 its execution complies with section 5-905.

18 **(b).** A power of attorney executed in this State before January 1, 2008 is valid if its
19 execution complied with the law of this State as it existed at the time of execution.

20 **(c).** A power of attorney executed other than in this State is valid in this State if,
21 when the power of attorney was executed, the execution complied with:

22 **(1).** The law of the jurisdiction that determines the meaning and effect of the power
23 of attorney pursuant to section 5-907; or

24 **(2).** The requirements for a military power of attorney pursuant to 10 United States
25 Code, Section 1044b, as amended.

26 **(d).** Except as otherwise provided by statute other than this Part, a photocopy or
27 electronically transmitted copy of an original power of attorney has the same effect as the
28 original.

29 **§5-907. Meaning and effect of power of attorney**

30 The meaning and effect of a power of attorney is determined by the law of the
31 jurisdiction indicated in the power of attorney and, in the absence of an indication of
32 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

1 **§5-908. Nomination of conservator or guardian; relation of agent to court-**
2 **appointed fiduciary**

3 (a). In a power of attorney, a principal may nominate a conservator of the principal's
4 estate or guardian of the principal's person for consideration by the court if protective
5 proceedings for the principal's estate or person are begun after the principal executes the
6 power of attorney. Except for good cause shown or disqualification, the court shall make
7 its appointment in accordance with the principal's most recent nomination.

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

13 **§5-909. When power of attorney effective**

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

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

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

25 (1). A physician that the principal is incapacitated within the meaning of section 5-
26 902, subsection (e), paragraph (1); or

27 (2). An attorney at law, a judge or an appropriate governmental official that the
28 principal is incapacitated within the meaning of section 5-902, subsection (e),
29 paragraph (2).

30 (d). A person authorized by the principal in the power of attorney to determine that
31 the principal is incapacitated may act as the principal's personal representative pursuant
32 to the federal Health Insurance Portability and Accountability Act of 1996, 42 United
33 States Code, Section 1320d, et seq., as amended, and applicable regulations, to obtain
34 access to the principal's health care information and communicate with the principal's
35 health care provider.

36 **§5-910. Termination of power of attorney or agent's authority**

37 (a). A power of attorney terminates when:

38 (1). The principal dies;

- 1 (2). The principal becomes incapacitated, if the power of attorney is not durable;
2 (3). The principal revokes the power of attorney;
3 (4). The power of attorney provides that it terminates;
4 (5). The purpose of the power of attorney is accomplished; or
5 (6). The principal revokes the agent's authority or the agent dies, becomes
6 incapacitated or resigns and the power of attorney does not provide for another agent
7 to act under the power of attorney.

8 **(b). An agent's authority terminates when:**

- 9 (1). The principal revokes the authority;
10 (2). The agent dies, becomes incapacitated or resigns;
11 (3). An action is filed for the termination or annulment of the agent's marriage to the
12 principal or their legal separation, unless the power of attorney otherwise provides; or
13 (4). The power of attorney terminates.

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

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

21 (e). Incapacity of the principal of a power of attorney that is not durable does not
22 revoke or terminate the power of attorney as to an agent or other person that, without
23 actual knowledge of the incapacity, acts in good faith under the power of attorney. An
24 act so performed, unless otherwise invalid or unenforceable, binds the principal and the
25 principal's successors in interest.

26 (f). The execution of a power of attorney does not revoke a power of attorney
27 previously executed by the principal unless the subsequent power of attorney provides
28 that the previous power of attorney is revoked or that all other powers of attorney are
29 revoked.

30 **§5-911. Coagents and successor agents**

31 (a). A principal may designate 2 or more persons to act as coagents. Unless the
32 power of attorney otherwise provides, each coagent may exercise its authority
33 independently.

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

- 1 (1). Has the same authority as that granted to the original agent; and
2 (2). May not act until all predecessor agents have resigned, died, become
3 incapacitated, are no longer qualified to serve or have declined to serve.

4 (c). Except as otherwise provided in the power of attorney and subsection (d), an
5 agent that does not participate in or conceal a breach of fiduciary duty committed by
6 another agent, including a predecessor agent, is not liable for the actions of the other
7 agent.

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

14 **§5-912. Reimbursement and compensation of agent**

15 Unless the power of attorney otherwise provides, an agent is entitled to
16 reimbursement of expenses reasonably incurred on behalf of the principal and to
17 compensation that is reasonable under the circumstances.

18 **§5-913. Agent's acceptance**

19 Except as otherwise provided in the power of attorney, a person accepts appointment
20 as an agent under a power of attorney by exercising authority or performing duties as an
21 agent or by any other assertion or conduct indicating acceptance.

22 **§5-914. Agent's duties**

23 (a). Notwithstanding provisions in the power of attorney, an agent that has accepted
24 appointment shall:

- 25 (1). Act in accordance with the principal's reasonable expectations to the extent
26 actually known by the agent and otherwise in the principal's best interest;
27 (2). Act in good faith; and
28 (3). Act only within the scope of authority granted in the power of attorney.

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

- 31 (1). Act loyally for the principal's benefit;
32 (2). Act so as not to create a conflict of interest that impairs the agent's ability to act
33 impartially in the principal's best interest;
34 (3). Act with the care, competence and diligence ordinarily exercised by agents in
35 similar circumstances;
36 (4). Keep a record of all receipts, disbursements and transactions made on behalf of
37 the principal;

- 1 (5). Cooperate with a person that has authority to make health care decisions for the
2 principal to carry out the principal's reasonable expectations to the extent actually
3 known by the agent and, otherwise, act in the principal's best interest; and
- 4 (6). Attempt to preserve the principal's estate plan, to the extent actually known by
5 the agent, if preserving the plan is consistent with the principal's best interest based
6 on all relevant factors, including:
- 7 (i) The value and nature of the principal's property;
8 (ii) The principal's foreseeable obligations and need for maintenance;
9 (iii) Minimization of taxes, including income, estate, inheritance, generation-
10 skipping transfer and gift taxes; and
- 11 (iv) Eligibility for a benefit, a program or assistance under a statute, rule or
12 regulation.
- 13 (c). An agent that acts in good faith is not liable to any beneficiary of the principal's
14 estate plan for failure to preserve the plan.
- 15 (d). An agent that acts with care, competence and diligence for the best interest of
16 the principal is not liable solely because the agent also benefits from the act or has an
17 individual or conflicting interest in relation to the property or affairs of the principal.
- 18 (e). If an agent is selected by the principal because of special skills or expertise
19 possessed by the agent or in reliance on the agent's representation that the agent has
20 special skills or expertise, the special skills or expertise must be considered in
21 determining whether the agent has acted with care, competence and diligence under the
22 circumstances.
- 23 (f). Absent a breach of duty to the principal, an agent is not liable if the value of the
24 principal's property declines.
- 25 (g). An agent that exercises authority to delegate to another person the authority
26 granted by the principal or that engages another person on behalf of the principal is not
27 liable for an act, error of judgment or default of that person if the agent exercises care,
28 competence and diligence in selecting and monitoring the person.
- 29 (h). Except as otherwise provided in the power of attorney, an agent is not required
30 to disclose receipts, disbursements or transactions conducted on behalf of the principal
31 unless ordered by a court or requested by the principal, a guardian, a conservator, another
32 fiduciary acting for the principal, a governmental agency having authority to protect the
33 welfare of the principal or, upon the death of the principal, by the personal representative
34 or successor in interest of the principal's estate. If so requested, within 30 days the agent
35 shall comply with the request or provide a writing or other record substantiating why
36 additional time is needed and shall comply with the request within an additional 30 days.

1 **§5-915. Exoneration of agent**

2 A provision in a power of attorney relieving an agent of liability for breach of duty is
3 binding on the principal 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 committed dishonestly, with an
6 improper motive or with reckless indifference to the purposes of the power of attorney or
7 the best interest of the principal; or

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

10 **§5-916. Judicial relief**

11 (a). The following persons may petition a court to construe a power of attorney or
12 review the agent's conduct and grant appropriate relief:

13 (1). The principal or the agent;

14 (2). A guardian, conservator or other fiduciary acting for the principal;

15 (3). A person authorized to make health care decisions for the principal;

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

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

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

21 (7). A governmental agency having regulatory authority to protect the welfare of the
22 principal;

23 (8). The principal's caregiver or another person that demonstrates sufficient interest
24 in the principal's welfare; and

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

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

29 **§5-917. Agent's liability**

30 An agent that violates this chapter is liable to the principal or the principal's
31 successors in interest for the amount required to:

32 (a). Restore the value of the principal's property to what it would have been had the
33 violation not occurred; and

34 (b). Reimburse the principal or the principal's successors in interest for the
35 attorney's fees and costs paid on the agent's behalf.

1 **§5-918. Agent's resignation; notice**

2 Unless the power of attorney provides a different method for an agent's resignation,
3 an agent may resign by giving notice to the principal and, if the principal is incapacitated:

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

6 (b). If there is no person described in subsection (a), to:

7 (1). The principal's caregiver;

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

10 (3). A governmental agency having authority to protect the welfare of the principal.

11 **§5-919. Acceptance of and reliance upon acknowledged power of attorney**

12 (a). For purposes of this section and section 5-920, "acknowledged" means
13 purportedly verified before a notary public or other individual authorized to take
14 acknowledgements.

15 (b). A person that in good faith accepts an acknowledged power of attorney without
16 actual knowledge that the signature is not genuine may rely upon the presumption under
17 section 5-905 that the signature is genuine.

18 (c). A person that in good faith accepts an acknowledged power of attorney without
19 actual knowledge that the power of attorney is void, invalid or terminated, that the
20 purported agent's authority is void, invalid or terminated or that the agent is exceeding or
21 improperly exercising the agent's authority may rely upon the power of attorney as if the
22 power of attorney were genuine, valid and still in effect, the agent's authority were
23 genuine, valid and still in effect and the agent had not exceeded and had properly
24 exercised the authority.

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

27 (1). An agent's certification under penalty of perjury of any factual matter
28 concerning the principal, agent or power of attorney;

29 (2). An English translation of the power of attorney if the power of attorney contains,
30 in whole or in part, language other than English; and

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

34 (e). An English translation or an opinion of counsel requested under this section must
35 be provided at the principal's expense unless the request is made more than 7 business
36 days after the power of attorney is presented for acceptance.

1 (f). For purposes of this section and section 5-920, a person that conducts activities
2 through employees is without actual knowledge of a fact relating to a power of attorney, a
3 principal or an agent if the employee conducting the transaction involving the power of
4 attorney is without actual knowledge of the fact.

5 **§5-920. Liability for refusal to accept acknowledged power of attorney**

6 (a). Except as otherwise provided in subsection (b):

7 (1). A person shall either accept an acknowledged power of attorney or request a
8 certification, a translation or an opinion of counsel under section 5-919, subsection
9 (d) no later than 7 business days after presentation of the power of attorney for
10 acceptance;

11 (2). If a person requests a certification, a translation or an opinion of counsel under
12 section 5-919, subsection (d), the person shall accept the power of attorney no later
13 than 5 business days after receipt of the certification, translation or opinion of
14 counsel; and

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

17 (b). A person is not required to accept an acknowledged power of attorney if:

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

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

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

24 (4). A request for a certification, a translation or an opinion of counsel under section
25 5-919, subsection (d) is refused;

26 (5). The person in good faith believes that the power is not valid or that the agent
27 does not have the authority to perform the act requested, whether or not a
28 certification, a translation or an opinion of counsel under section 5-919, subsection
29 (d) has been requested or provided; or

30 (6). The person makes, or has actual knowledge that another person has made, a
31 report to the Department of Health and Human Services stating a good faith belief that
32 the principal may be subject to physical or financial abuse, neglect, exploitation or
33 abandonment by the agent or a person acting for or with the agent.

34 (c). A person that refuses in violation of this section to accept an acknowledged
35 power of attorney is subject to:

36 (1). A court order mandating acceptance of the power of attorney; and

37 (2). Liability for reasonable attorney's fees and costs incurred in any action or
38 proceeding that confirms the validity of the power of attorney or mandates
39 acceptance of the power of attorney.

1 **§5-921. Principles of law and equity**

2 Unless displaced by a provision of this Part, the principles of law and equity
3 supplement this Part.

4 **§5-922. Laws applicable to financial institutions and entities**

5 This Part does not supersede any other law applicable to financial institutions or other
6 entities, and the other law controls if inconsistent with this Part.

7 **§5-923. Remedies under other law**

8 The remedies under this Part are not exclusive and do not abrogate any right or
9 remedy under the law of this state other than this Part.

10 **SUBPART 2**

11 **AUTHORITY**

12 **§5-931. Authority that requires specific grant; grant of general authority**

13 (a). An agent under a power of attorney may do the following on behalf of the
14 principal or with the principal's property only if the power of attorney expressly grants
15 the agent the authority and exercise of the authority is not otherwise prohibited by another
16 agreement or instrument to which the authority or property is subject:

17 (1). Create, amend, revoke or terminate an inter vivos trust;

18 (2). Make a gift;

19 (3). Create or change rights of survivorship;

20 (4). Create or change a beneficiary designation;

21 (5). Delegate authority granted under the power of attorney;

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

24 (7). Exercise fiduciary powers that the principal has authority to delegate; or

25 (8). Disclaim property, including a power of appointment.

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

32 (c). Subject to subsections (a), (b), (d) and (e), if a power of attorney grants to an
33 agent authority to do all acts that a principal could do, the agent has the general authority
34 described in sections 5-934 through 5-946.

1 (d). Unless the power of attorney otherwise provides, a grant of authority to make a
2 gift is subject to section 5-947.

3 (e). Subject to subsections (a), (b) and (d), if the subjects over which authority is
4 granted in a power of attorney are similar or overlap, the broadest authority controls.

5 (f). Authority granted in a power of attorney is exercisable with respect to property
6 that the principal has when the power of attorney is executed or acquires later, whether or
7 not the property is located in this State and whether or not the authority is exercised or the
8 power of attorney is executed in this State.

9 (g). An act performed by an agent pursuant to a power of attorney has the same
10 effect and inures to the benefit of and binds the principal and the principal's successors in
11 interest as if the principal had performed the act.

12 **§5-932. Incorporation of authority**

13 (a). An agent has authority described in this subpart if the power of attorney refers to
14 general authority with respect to the descriptive term for the subjects stated in sections 5-
15 934 through 5-947 or cites the section in which the authority is described.

16 (b). A reference in a power of attorney to general authority with respect to the
17 descriptive term for a subject in sections 5-934 through 5-947 or a citation to a section of
18 sections 5-934 through 5-947 incorporates the entire section as if it were set out in full in
19 the power of attorney.

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

21 **§5-933. Construction of authority generally**

22 Except as otherwise provided in the power of attorney, by executing a power of
23 attorney that incorporates by reference a subject described in sections 5-934 through 5-
24 947 or that grants to an agent authority to do all acts that a principal could do pursuant to
25 section 5-931, subsection (c), a principal authorizes the agent, with respect to that subject,
26 to:

27 (a). Demand, receive and obtain by litigation or otherwise, money or another thing of
28 value to which the principal is, may become or claims to be entitled and conserve, invest,
29 disburse or use anything so received or obtained for the purposes intended;

30 (b). Contract in any manner with any person, on terms agreeable to the agent, to
31 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform,
32 restate, release or modify the contract or another contract made by or on behalf of the
33 principal;

34 (c). Execute, acknowledge, seal, deliver, file or record any instrument or
35 communication the agent considers desirable to accomplish a purpose of a transaction,
36 including creating at any time a schedule listing some or all of the principal's property
37 and attaching it to the power of attorney;

1 (d). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
2 propose or accept a compromise with respect to a claim existing in favor of or against the
3 principal or intervene in litigation relating to the claim;

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

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

8 (g). Prepare, execute and file a record, report or other document to safeguard or
9 promote the principal's interest under a statute, rule or regulation;

10 (h). Communicate with any representative or employee of a government or
11 governmental subdivision, agency or instrumentality on behalf of the principal;

12 (i). Access communications intended for and communicate on behalf of the
13 principal, whether by mail, electronic transmission, telephone or other means; and

14 (j). Do any lawful act with respect to the subject and all property related to the
15 subject.

16 **§5-934. Real property**

17 Unless the power of attorney otherwise provides, language in a power of attorney
18 granting general authority with respect to real property authorizes the agent to:

19 (a). Demand, buy, lease, receive, accept as a gift or as security for an extension of
20 credit or otherwise acquire or reject an interest in real property or a right incident to real
21 property;

22 (b). Sell; exchange; convey with or without covenants, representations or warranties;
23 quitclaim; release; surrender; retain title for security; encumber; partition; consent to
24 partitioning; subject to an easement or covenant; subdivide; apply for zoning or other
25 governmental permits; plat or consent to platting; develop; grant an option concerning;
26 lease; sublease; contribute to an entity in exchange for an interest in that entity; or
27 otherwise grant or dispose of an interest in real property or a right incident to real
28 property;

29 (c). Pledge or mortgage an interest in real property or right incident to real property
30 as security to borrow money or pay, renew or extend the time of payment of a debt of the
31 principal or a debt guaranteed by the principal;

32 (d). Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of
33 trust, conditional sale contract, encumbrance, lien or other claim to real property that
34 exists or is asserted;

35 (e). Manage or conserve an interest in real property or a right incident to real
36 property owned or claimed to be owned by the principal, including:

37 (1). Insuring against liability or casualty or other loss;

1 (2). Obtaining or regaining possession of or protecting the interest or right by
2 litigation or otherwise;

3 (3). Paying, assessing, compromising or contesting taxes or assessments or applying
4 for and receiving refunds in connection with them; and

5 (4). Purchasing supplies, hiring assistance or labor and making repairs or alterations
6 to the real property;

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

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

13 (1). Selling or otherwise disposing of them;

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

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

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

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

20 **§5-935. Tangible personal property**

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

24 (a). Demand, buy, receive, accept as a gift or as security for an extension of credit or
25 otherwise acquire or reject ownership or possession of tangible personal property or an
26 interest in tangible personal property;

27 (b). Sell; exchange; convey with or without covenants, representations or warranties;
28 quitclaim; release; surrender; create a security interest in; grant options concerning; lease;
29 sublease; or otherwise dispose of tangible personal property or an interest in tangible
30 personal property;

31 (c). Grant a security interest in tangible personal property or an interest in tangible
32 personal property as security to borrow money or pay, renew or extend the time of
33 payment of a debt of the principal or a debt guaranteed by the principal;

34 (d). Release, assign, satisfy or enforce by litigation or otherwise a security interest,
35 lien or other claim on behalf of the principal with respect to tangible personal property or
36 an interest in tangible personal property;

1 (e). Manage or conserve tangible personal property or an interest in tangible personal
2 property on behalf of the principal, including:

3 (1). Insuring against liability or casualty or other loss;

4 (2). Obtaining or regaining possession of or protecting the property or interest by
5 litigation or otherwise;

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

8 (4). Moving the property from place to place;

9 (5). Storing the property for hire or on a gratuitous bailment; and

10 (6). Using and making repairs, alterations or improvements to the property; and

11 (7). Changing the form of title of an interest in tangible personal property.

12 **§5-936. Stocks and bonds**

13 Unless the power of attorney otherwise provides, language in a power of attorney
14 granting general authority with respect to stocks and bonds authorizes the agent to:

15 (a). Buy, sell and exchange stocks and bonds;

16 (b). Establish, continue, modify or terminate an account with respect to stocks and
17 bonds;

18 (c). Pledge stocks and bonds as security to borrow, pay, renew or extend the time of
19 payment of a debt of the principal;

20 (d). Receive certificates and other evidences of ownership with respect to stocks and
21 bonds; and

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

24 **§5-937. Commodities and options**

25 Unless the power of attorney otherwise provides, language in a power of attorney
26 granting general authority with respect to commodities and options authorizes the agent
27 to:

28 (a). Buy, sell, exchange, assign, settle and exercise commodity futures contracts and
29 call or put options on stocks or stock indexes traded on a regulated option exchange; and

30 (b). Establish, continue, modify and terminate option accounts.

31 **§5-938. Banks and other financial institutions**

32 Unless the power of attorney otherwise provides, language in a power of attorney
33 granting general authority with respect to banks and other financial institutions authorizes
34 the agent to:

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

3 (b). Establish, modify and terminate an account or other banking arrangement with a
4 bank, trust company, savings and loan association, credit union, thrift company,
5 brokerage firm or other financial institution selected by the agent;

6 (c). Contract for services available from a financial institution, including renting a
7 safe deposit box or space in a vault;

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

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

12 (f). Enter a safe deposit box or vault and withdraw or add to the contents;

13 (g). Borrow money and pledge as security personal property of the principal
14 necessary to borrow money or pay, renew or extend the time of payment of a debt of the
15 principal or a debt guaranteed by the principal;

16 (h). Make, assign, draw, endorse, discount, guarantee and negotiate promissory
17 notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or
18 payable to the principal or the principal's order, transfer money, receive the cash or other
19 proceeds of those transactions and accept a draft drawn by a person upon the principal
20 and pay it when due;

21 (i). Receive for the principal and act upon a sight draft, warehouse receipt or other
22 document of title, whether tangible or electronic, or other negotiable or nonnegotiable
23 instrument;

24 (j). Apply for, receive and use letters of credit, credit and debit cards, electronic
25 transaction authorizations and traveler's checks from a financial institution and give an
26 indemnity or other agreement in connection with letters of credit; and

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

29 **§5-939. Operating entity or business**

30 Subject to the terms of a document or an agreement governing an entity or an entity
31 ownership interest, and unless the power of attorney otherwise provides, language in a
32 power of attorney granting general authority with respect to operation of an entity or
33 business authorizes the agent to:

34 (a). Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

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

- 1 (c). Enforce the terms of an ownership agreement;
- 2 (d). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
3 propose or accept a compromise with respect to litigation to which the principal is a party
4 because of an ownership interest;
- 5 (e). Exercise in person or by proxy, or enforce by litigation or otherwise, a right,
6 power, privilege or option the principal has or claims to have as the holder of stocks and
7 bonds;
- 8 (f). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
9 propose or accept a compromise with respect to litigation to which the principal is a party
10 concerning stocks and bonds;
- 11 (g). With respect to an entity or business owned solely by the principal:
- 12 (1). Continue, modify, renegotiate, extend and terminate a contract made by or on
13 behalf of the principal with respect to the entity or business before execution of the
14 power of attorney;
- 15 (2). Determine:
- 16 (i) The location of its operation;
- 17 (ii) The nature and extent of its business;
- 18 (iii) The methods of manufacturing, selling, merchandising, financing,
19 accounting and advertising employed in its operation;
- 20 (iv) The amount and types of insurance carried; and
- 21 (v) The mode of engaging, compensating and dealing with its employees and
22 accountants, attorneys or other advisors;
- 23 (3). Change the name or form of organization under which the entity or business is
24 operated and enter into an ownership agreement with other persons to take over all or
25 part of the operation of the entity or business; and
- 26 (4). Demand and receive money due or claimed by the principal or on the principal's
27 behalf in the operation of the entity or business and control and disburse the money in
28 the operation of the entity or business;
- 29 (h). Put additional capital into an entity or business in which the principal has an
30 interest;
- 31 (i). Join in a plan of reorganization, consolidation, conversion, domestication or
32 merger of the entity or business;
- 33 (j). Sell or liquidate all or part of an entity or business;
- 34 (k). Establish the value of an entity or business under a buy-out agreement to which
35 the principal is a party;

1 (l). Prepare, sign, file and deliver reports, compilations of information, returns or
2 other papers with respect to an entity or business and make related payments; and

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

8 **§5-940. Insurance and annuities**

9 Unless the power of attorney otherwise provides, language in a power of attorney
10 granting general authority with respect to insurance and annuities authorizes the agent to:

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

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

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

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

21 (e). Surrender and receive the cash surrender value on a contract of insurance or
22 annuity;

23 (f). Exercise an election;

24 (g). Exercise investment powers available under a contract of insurance or annuity;

25 (h). Change the manner of paying premiums on a contract of insurance or annuity;

26 (i). Change or convert the type of insurance or annuity with respect to which the
27 principal has or claims to have authority described in this section;

28 (j). Apply for and procure a benefit or assistance under a statute or regulation to
29 guarantee or pay premiums of a contract of insurance on the life of the principal;

30 (k). Collect, sell, assign, hypothecate, borrow against or pledge the interest of the
31 principal in a contract of insurance or annuity;

32 (l). Select the form and timing of the payment of proceeds from a contract of
33 insurance or annuity; and

34 (m). Pay, from proceeds or otherwise, compromise or contest, and apply for refunds
35 in connection with, a tax or assessment levied by a taxing authority with respect to a

1 contract of insurance or annuity or its proceeds or liability accruing by reason of the tax
2 or assessment.

3 **§5-941. Estates, trusts and other beneficial interests**

4 (a). As used in this section, “estate, trust and other beneficial interest” means a trust,
5 probate estate, guardianship, conservatorship, escrow or custodianship or a fund from
6 which the principal is, may become or claims to be entitled to a share or payment.

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

10 (1). Accept, receive, receipt for, sell, assign, pledge or exchange a share in or
11 payment from the fund;

12 (2). Demand or obtain money or another thing of value to which the principal is, may
13 become or claims to be entitled by reason of the fund, by litigation or otherwise;

14 (3). Exercise for the benefit of the principal a presently exercisable general power of
15 appointment held by the principal;

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

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

23 (6). Conserve, invest, disburse or use anything received for an authorized purpose;
24 and

25 (7). Transfer an interest of the principal in real property, stocks and bonds, accounts
26 with financial institutions or securities intermediaries, insurance, annuities and other
27 property to the trustee of a revocable trust created by the principal as settler.

28 **§5-942. Claims and litigation**

29 Unless the power of attorney otherwise provides, language in a power of attorney
30 granting general authority with respect to claims and litigation authorizes the agent to:

31 (a). Assert and maintain before a court or administrative agency a claim, claim for
32 relief, cause of action, counterclaim, offset, recoupment or defense, including an action to
33 recover property or other thing of value, recover damages sustained by the principal,
34 eliminate or modify tax liability or seek an injunction, specific performance or other
35 relief;

36 (b). Bring an action to determine adverse claims or intervene or otherwise participate
37 in litigation;

1 (c). Seek an attachment, garnishment, order of arrest or other preliminary,
2 provisional or intermediate relief and use an available procedure to effect or satisfy a
3 judgment, order or decree;

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

7 (e). Submit to alternative dispute resolution, settle and propose or accept a
8 compromise;

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

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

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

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

25 **§5-943. Personal and family maintenance**

26 (a). Unless the power of attorney otherwise provides, language in a power of
27 attorney granting general authority with respect to personal and family maintenance
28 authorizes the agent to:

29 (1). Perform the acts necessary to maintain the customary standard of living of the
30 principal, the principal's spouse and the following individuals, whether living when
31 the power of attorney is executed or later born:

32 (i) The principal's children;

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

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

36 (2). Make periodic payments of child support and other family maintenance required
37 by a court or governmental agency or an agreement to which the principal is a party;

38 (3). Provide living quarters for the individuals described in paragraph (1) by:

- 1 (i) Purchase, lease or other contract; or
2 (ii) Paying the operating costs, including interest, amortization payments,
3 repairs, improvements and taxes, for premises owned by the principal or
4 occupied by those individuals;
- 5 (4). Provide normal domestic help, usual vacations and travel expenses and funds for
6 shelter, clothing, food, appropriate education, including postsecondary and vocational
7 education, and other current living costs for the individuals described in paragraph
8 (1);
- 9 (5). Pay expenses for necessary health care and custodial care on behalf of the
10 individuals described in paragraph (1);
- 11 (6). Act as the principal's personal representative pursuant to the federal Health
12 Insurance Portability and Accountability Act of 1996, 42 United States Code, Section
13 1320d et seq., as amended, and applicable regulations, in making decisions related to
14 the past, present or future payment for the provision of health care consented to by
15 the principal or anyone authorized under the law of this State to consent to health care
16 on behalf of the principal;
- 17 (7). Continue any provision made by the principal for automobiles or other means of
18 transportation, including registering, licensing, insuring and replacing them, for the
19 individuals described in paragraph (1);
- 20 (8). Maintain credit and debit accounts for the convenience of the individuals
21 described in paragraph (1) and open new accounts; and
- 22 (9). Continue payments incidental to the membership or affiliation of the principal in
23 a religious institution, club, society, order or other organization or to continue
24 contributions to those organizations.
- 25 (b). Authority with respect to personal and family maintenance is neither dependent
26 upon, nor limited by, authority that an agent may or may not have with respect to gifts
27 under this Part.

28 **§5-944. Benefits from governmental programs or civil or military service**

- 29 (a). As used in this section, "benefit from governmental programs or civil or military
30 service" means any benefit, program or assistance provided under a statute, rule or
31 regulation including Social Security, Medicare and Medicaid.
- 32 (b). Unless the power of attorney otherwise provides, language in a power of
33 attorney granting general authority with respect to benefits from governmental programs
34 or civil or military service authorizes the agent to:
- 35 (1). Execute vouchers in the name of the principal for allowances and
36 reimbursements payable by the United States or a foreign government or by a state or
37 subdivision of a state to the principal, including allowances and reimbursements for
38 transportation of the individuals described in section 5-943, subsection (a), paragraph
39 (1) and for shipment of their household effects;

- 1 (2). Take possession and order the removal and shipment of property of the principal
2 from a post, warehouse, depot, dock or other place of storage or safekeeping, either
3 governmental or private, and execute and deliver a release, voucher, receipt, bill of
4 lading, shipping ticket, certificate or other instrument for that purpose;
- 5 (3). Enroll in, apply for, select, reject, change, amend or discontinue, on the
6 principal's behalf, a benefit or program;
- 7 (4). Prepare, file and maintain a claim of the principal for a benefit or assistance,
8 financial or otherwise, to which the principal may be entitled under a statute, rule or
9 regulation;
- 10 (5). Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
11 propose or accept a compromise with respect to litigation concerning any benefit or
12 assistance the principal may be entitled to receive under a statute, rule or regulation;
13 and
- 14 (6). Receive the financial proceeds of a claim described in subsection (4) and
15 conserve, invest, disburse or use for a lawful purpose anything so received.

16 **§5-945. Retirement plans**

17 (a). As used in this section, "retirement plan" means a plan or account created by an
18 employer, the principal or another individual to provide retirement benefits or deferred
19 compensation of which the principal is a participant, beneficiary or owner, including a
20 plan or account under the following sections of the federal Internal Revenue Code:

- 21 (1). An individual retirement account under the Internal Revenue Code, Section 408,
22 26 United States Code, Section 408, as amended;
- 23 (2). A Roth individual retirement account under the Internal Revenue Code, Section
24 408A, 26 United States Code, Section 408A, as amended;
- 25 (3). A deemed individual retirement account under the Internal Revenue Code,
26 Section 408(q), 26 United States Code, Section 408(q), as amended;
- 27 (4). An annuity or mutual fund custodial account under the Internal Revenue Code,
28 Section 403(b), 26 United States Code, Section 403(b), as amended;
- 29 (5). A pension, profit-sharing, stock bonus or other retirement plan qualified under
30 the Internal Revenue Code, Section 401(a), 26 United States Code, Section 401(a), as
31 amended;
- 32 (6). A plan under the Internal Revenue Code, Section 457(b), 26 United States Code,
33 Section 457(b), as amended; and
- 34 (7). A nonqualified deferred compensation plan under the Internal Revenue Code,
35 Section 409A, 26 United States Code, Section 409A, as amended.

36 (b). Unless the power of attorney otherwise provides, language in a power of
37 attorney granting general authority with respect to retirement plans authorizes the agent
38 to:

- 1 (1). Select the form and timing of payments under a retirement plan and withdraw
2 benefits from a plan;
- 3 (2). Make a rollover, including a direct trustee-to-trustee rollover, of benefits from
4 one retirement plan to another;
- 5 (3). Establish a retirement plan in the principal's name;
- 6 (4). Make contributions to a retirement plan;
- 7 (5). Exercise investment powers available under a retirement plan; and
- 8 (6). Borrow from, sell assets to or purchase assets from a retirement plan.

9 **§5-946. Taxes**

10 Unless the power of attorney otherwise provides, language in a power of attorney
11 granting general authority with respect to taxes authorizes the agent to:

12 (a). Prepare, sign and file federal, state, local and foreign income, gift, payroll,
13 property, Federal Insurance Contributions Act and other tax returns, claims for refunds,
14 requests for extension of time, petitions regarding tax matters and any other tax-related
15 documents, including receipts, offers, waivers, consents, including consents and
16 agreements under the Internal Revenue Code, Section 2032A, 26 United States Code,
17 Section 2032A, as amended, closing agreements and any power of attorney required by
18 the federal Internal Revenue Service or other taxing authority with respect to a tax year
19 upon which the statute of limitations has not run and the following 25 tax years;

20 (b). Pay taxes due, collect refunds, post bonds, receive confidential information and
21 contest deficiencies determined by the federal Internal Revenue Service or other taxing
22 authority;

23 (c). Exercise any election available to the principal under federal, state, local or
24 foreign tax law; and

25 (d). Act for the principal in all tax matters for all periods before the federal Internal
26 Revenue Service or other taxing authority.

27 **§5-947. Gifts**

28 (a). As used in this section, a gift "for the benefit of" a person includes a gift to a
29 trust, an account under the Uniform Transfers to Minors Act and a tuition savings account
30 or prepaid tuition plan as defined under the Internal Revenue Code, Section 529, 26
31 United States Code, Section 529, as amended.

32 (b). Unless the power of attorney otherwise provides, language in a power of
33 attorney granting general authority with respect to gifts authorizes the agent only to:

34 (1). Make outright to, or for the benefit of, a person, a gift of any of the principal's
35 property, including by the exercise of a presently exercisable general power of
36 appointment held by the principal, in an amount per donee not to exceed the annual
37 dollar limits of the federal gift tax exclusion under the Internal Revenue Code,
38 Section 2503(b), 26 United States Code, Section 2503(b), as amended, without regard

1 to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse
2 agrees to consent to a split gift pursuant to the Internal Revenue Code, Section 2513,
3 26 United States Code, Section 2513, as amended, in an amount per donee not to
4 exceed twice the annual federal gift tax exclusion limit; and

5 (2). Consent, pursuant to the Internal Revenue Code, Section 2513, 26 United States
6 Code, Section 2513, as amended, to the splitting of a gift made by the principal's
7 spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions
8 for both spouses.

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

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

14 (2). The principal's foreseeable obligations and need for maintenance;

15 (3). Minimization of taxes, including income, estate, inheritance, generation-
16 skipping transfer and gift taxes;

17 (4). Eligibility for a benefit, a program or assistance under a statute, rule or
18 regulation; and

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

20 SUBPART 3

21 STATUTORY FORMS

22 §5-951. Statutory form power of attorney

23 A document substantially in the following form may be used to create a statutory
24 form power of attorney that has the meaning and effect prescribed by this Part.

25 STATE OF MAINE

26 STATUTORY FORM POWER OF ATTORNEY

27 IMPORTANT INFORMATION

28 This power of attorney authorizes another person (your agent) to make decisions
29 concerning your property for you (the principal). Your agent will be able to make
30 decisions and act with respect to your property (including your money) whether or not
31 you are able to act for yourself. The meaning of authority over subjects listed on this
32 form is explained in the Uniform Power of Attorney Act, the Maine Revised Statutes,
33 Title 18-A, article 5, Part 9.

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

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

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

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

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

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

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

12 **DESIGNATION OF AGENT**

13 I(name of Principal)..... name
14 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 as my successor agent:

20 Name of Successor Agent:

21 Successor Agent's Address:

22 Successor Agent's Telephone Number:

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

25 Name of Second Successor Agent:

26 Second Successor Agent's Address:

27 Second Successor Agent's Telephone Number:

28 **GRANT OF GENERAL AUTHORITY**

29 I grant my agent and any successor agent general authority to act for me with respect to
30 the following subjects as defined in the Uniform Power of Attorney Act, the Maine
31 Revised Statutes, Title 18-A, article 5, Part 9:

1 (INITIAL each subject you want to include in the agent's general authority. If you wish
2 to grant general authority over all of the subjects you may initial "All Proceeding Subjects"
3 instead of initialing each subject.)

4 () Real Property

5 () Tangible Personal Property

6 () Stocks and Bonds

7 () Commodities and Options

8 () Banks and Other Financial Institutions

9 () Operation of Entity or Business

10 () Insurance and Annuities

11 () Estates, Trusts and Other Beneficial Interests

12 () Claims and Litigation

13 () Personal and Family Maintenance

14 () Benefits from Governmental Programs or Civil or Military Service

15 () Retirement Plans

16 () Taxes

17 () All Proceeding Subjects

18 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

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

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

25 () Create, amend, revoke or terminate an inter vivos trust

26 () Make a gift, subject to the limitations of the Uniform Power of Attorney Act, the
27 Maine Revised Statutes, Title 18-A, section 5-947 and any special instructions in this
28 power of attorney

29 () Create or change rights of survivorship

30 () Create or change a beneficiary designation

31 () Authorize another person to exercise the authority granted under this power of
32 attorney

33 () Waive the principal's right to be a beneficiary of a joint and survivor annuity,
34 including a survivor benefit under a retirement plan

35 () Exercise fiduciary powers that the principal has authority to delegate

36 () Disclaim or refuse an interest in property, including a power of appointment

37 **LIMITATION OF AGENT'S AUTHORITY**

1 An agent that is not my ancestor, spouse or descendant MAY NOT use my property to
2 benefit the agent or a person to whom the agent owes an obligation of support unless I
3 have included that authority in the Special Instructions.

4 You may give special instructions on the following lines:

5 **SPECIAL INSTRUCTIONS (OPTIONAL)**

6
7
8
9
10
11
12
13
14

15 **EFFECTIVE DATE**

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

18 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

19 If it becomes necessary for a court to appoint a conservator of my estate or guardian of
20 my person, I nominate the following person(s) for appointment:

21 Name of Nominee for conservator of my estate:
22 Nominee's Address:
23 Nominee's Telephone Number:
24 Name of Nominee for guardian of my person:
25 Nominee's Address:
26 Nominee's Telephone Number:

27 **RELIANCE ON THIS POWER OF ATTORNEY**

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

30 **SIGNATURE AND ACKNOWLEDGMENT**

1
2 Your Signature Date
3
4 Your Name Printed
5
6 Your Address
7
8 Your Telephone Number
9 State of
10 County of
11 This document was acknowledged before me on
12 (Date)
13 by
14 (name of Principal)
15 (Seal, if any)
16 Signature of Notary/Attorney
17 My commission expires:

18 This document prepared by:
19
20

21 **IMPORTANT INFORMATION FOR AGENT**

22 **Agent's Duties**

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

27 (1) do what you know the principal reasonably expects you to do with the principal's
28 property or, if you do not know the principal's expectations, act in the principal's best
29 interest;

30 (2) act in good faith;

31 (3) do nothing beyond the authority granted in this power of attorney; and

32 (4) disclose your identity as an agent whenever you act for the principal by writing or
33 printing the name of the principal and signing your own name as "agent" in the following
34 manner:

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

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

2 (1) act loyally for the principal's benefit;

3 (2) avoid conflicts that would impair your ability to act in the principal's best interest;

4 (3) act with care, competence and diligence;

5 (4) keep a record of all receipts, disbursements and transactions made on behalf of the
6 principal;

7 (5) cooperate with any person that has authority to make health care decisions for the
8 principal to do what you know the principal reasonably expects or, if you do not know the
9 principal's expectations, to act in the principal's best interest; and

10 (6) attempt to preserve the principal's estate plan if you know the plan and preserving the
11 plan is consistent with the principal's best interest.

12 **Termination of Agent's Authority**

13 You must stop acting on behalf of the principal if you learn of any event that terminates
14 this power of attorney or your authority under this power of attorney. Events that
15 terminate a power of attorney or your authority to act under a power of attorney include:

16 (1) death of the principal;

17 (2) the principal's revocation of the power of attorney or your authority;

18 (3) the occurrence of a termination event stated in the power of attorney;

19 (4) the purpose of the power of attorney is fully accomplished; and

20 (5) if you are married to the principal, a legal action is filed with a court to end your
21 marriage, or for your legal separation, unless the Special Instructions in this power of
22 attorney state that such an action will not terminate your authority.

23 **Liability of Agent**

24 The meaning of the authority granted to you is defined in the Uniform Power of Attorney
25 Act, the Maine Revised Statutes, Title 18-A, article 5, Part 9. If you violate the Uniform
26 Power of Attorney Act or act outside the authority granted, you may be liable for any
27 damages caused by your violation.

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

30 **§5-952. Agent's certification**

31 The following optional form may be used by an agent to certify facts concerning a
32 power of attorney.

1 (Seal, if any)
2 Signature of Notary/Attorney
3 My commission expires:

4 This document prepared by:

5

6 **SUBPART 4**

7 **MISCELLANEOUS PROVISIONS**

8 **§5-961. Uniformity of application and construction**

9 In applying and construing this uniform act, consideration must be given to the need
10 to promote uniformity of the law with respect to its subject matter among the states that
11 enact it.

12 **§5-962. Relation to Electronic Signatures in Global and National Commerce Act**

13 This Part modifies, limits and supersedes the federal Electronic Signatures in Global
14 and National Commerce Act, 15 United States Code, Section 7001 et seq., but does not
15 modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section
16 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b)
17 of that Act, 15 United States Code, Section 7003(b).

18 **§5-963. Effect on existing powers of attorney**

19 Except as otherwise provided in this Part, on January 1, 2008:

20 (a). This Part applies to a power of attorney created before, on or after January 1,
21 2008;

22 (b). This Part applies to a judicial proceeding concerning a power of attorney
23 commenced on or after January 1, 2008; and

24 (c). This Part applies to a judicial proceeding concerning a power of attorney
25 commenced before January 1, 2008, unless the court finds that application of a provision
26 of this Part would substantially interfere with the effective conduct of the judicial
27 proceeding or prejudice the rights of a party, in which case that provision does not apply
28 and the superseded law applies.

29 An act done before January 1, 2008 is not affected by this Part.

30 **§5-964. Effective date**

31 This Part takes effect January 1, 2008.

