

HOUSE BILL NO. 374

INTRODUCED BY K. HANSEN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO POWERS OF ATTORNEY;
5 ADOPTING THE UNIFORM POWER OF ATTORNEY ACT TO REPLACE THE STATUTORY FORM POWER
6 OF ATTORNEY ACT; PROVIDING CAUSES OF ACTION AND PENALTIES FOR THE INTENTIONAL
7 DISSIPATION OF AN ESTATE THROUGH THE USE OF A POWER OF ATTORNEY; AMENDING SECTIONS
8 72-3-917, 72-5-501, 72-5-502, 72-31-222, 72-31-223, 72-31-224, 72-31-225, 72-31-226, 72-31-227, 72-31-228,
9 72-31-229, 72-31-230, 72-31-231, 72-31-232, 72-31-233, 72-31-234, 72-31-235, 72-31-236, AND 72-31-238,
10 MCA; AND REPEALING SECTIONS 72-31-201 AND 72-31-237, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Short title.** This part may be cited as the "Uniform Power of Attorney Act".

15
16 NEW SECTION. **Section 2. Definitions.** As used in this part, the following definitions apply:

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

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

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

23 (4) "Good faith" means honesty in fact.

24 (5) "Incapacity" means inability of an individual to manage property or business affairs because the
25 individual:

26 (a) has an impairment in the ability to receive and evaluate information or make or communicate
27 decisions even with the use of technological assistance; or

28 (b) is:

29 (i) missing; or

30 (ii) outside the United States and unable to return.



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

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

6 (8) (a) "Presently exercisable general power of appointment", with respect to property or a property
7 interest subject to a power of appointment, means power exercisable at the time in question to vest absolute
8 ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the
9 principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified
10 event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence
11 of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period.

12 (b) The term does not include a power exercisable in a fiduciary capacity or only by will.

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

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

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

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

19 (a) to execute or adopt a tangible symbol; or

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

21 (13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States
22 Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

26

27 **NEW SECTION. Section 3. Applicability.** This part applies to all powers of attorney except:

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

30 (2) a power to make health care decisions;

1 (3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity;
2 and

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

5
6 **NEW SECTION. Section 4. Execution of power of attorney.** A power of attorney must be signed by
7 the principal or in the principal's conscious presence by another individual directed by the principal to sign the
8 principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the
9 principal acknowledges the signature before a notary public or other individual authorized by law to take
10 acknowledgments.

11
12 **NEW SECTION. Section 5. Validity of power of attorney.** (1) A power of attorney executed in this
13 state on or after [the effective date of this act] is valid if its execution complies with [section 4].

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

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

18 (a) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant
19 to [section 6]; or

20 (b) the requirements for a military power of attorney pursuant to 10 U.S.C. 1044b.

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

23
24 **NEW SECTION. Section 6. Meaning and effect of power of attorney.** The meaning and effect of a
25 power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the
26 absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.

27
28 **NEW SECTION. Section 7. Nomination of conservator or guardian -- relation of agent to**
29 **court-appointed fiduciary.** (1) In a power of attorney, a principal may nominate a conservator or guardian of the
30 principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for

1 the principal's estate or person are begun after the principal executes the power of attorney. Except for good
2 cause shown or disqualification, the court shall make its appointment in accordance with the principal's most
3 recent nomination.

4 (2) If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the
5 principal's estate or other fiduciary charged with the management of some or all of the principal's property, the
6 agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the
7 agent's authority continues unless limited, suspended, or terminated by the court.

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

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

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

19 (a) a physician that the principal is incapacitated within the meaning of [section 2(5)(a)]; or

20 (b) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated
21 within the meaning of [section 2(5)(b)].

22 (4) A person authorized by the principal in the power of attorney to determine that the principal is
23 incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and
24 Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and
25 applicable regulations to obtain access to the principal's health care information and communicate with the
26 principal's health care provider.

27
28 **NEW SECTION. Section 9. Termination of power of attorney or agent's authority.** (1) A power of
29 attorney terminates when:

30 (a) the principal dies;

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

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

8 (a) the principal revokes the authority;
9 (b) the agent dies, becomes incapacitated, or resigns;
10 (c) an action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal
11 separation unless the power of attorney otherwise provides; or
12 (d) the power of attorney terminates.

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

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

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

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

26
27 **NEW SECTION. Section 10. Coagents or successor agents.** (1) A principal may designate two or
28 more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise
29 its authority independently.

30 (2) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes

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

4 (a) has the same authority as that granted to the original agent; and

5 (b) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer
6 qualified to serve, or have declined to serve.

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

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

15
16 **NEW SECTION. Section 11. Reimbursement and compensation of agent.** Unless the power of
17 attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf
18 of the principal and to compensation that is reasonable under the circumstances.

19
20 **NEW SECTION. Section 12. Agent's acceptance.** Except as otherwise provided in the power of
21 attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or
22 performing duties as an agent or by any other assertion or conduct indicating acceptance.

23
24 **NEW SECTION. Section 13. Agent's duties.** (1) Notwithstanding provisions in the power of attorney,
25 an agent that has accepted appointment shall:

26 (a) act in accordance with the principal's reasonable expectations to the extent actually known by the
27 agent and, otherwise, in the principal's best interest;

28 (b) act in good faith; and

29 (c) act only within the scope of authority granted in the power of attorney.

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

- 1 (a) act loyally for the principal's benefit;
- 2 (b) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the
3 principal's best interest;
- 4 (c) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
- 5 (d) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- 6 (e) cooperate with a person that has authority to make health care decisions for the principal to carry
7 out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the
8 principal's best interest; and
- 9 (f) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving
10 the plan is consistent with the principal's best interest based on all relevant factors, including:
- 11 (i) the value and nature of the principal's property;
- 12 (ii) the principal's foreseeable obligations and need for maintenance;
- 13 (iii) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift
14 taxes; and
- 15 (iv) eligibility for a benefit, a program, or assistance under a statute or regulation.
- 16 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure
17 to preserve the plan.
- 18 (4) An agent that acts with care, competence, and diligence for the best interest of the principal is not
19 liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to
20 the property or affairs of the principal.
- 21 (5) If an agent is selected by the principal because of special skills or expertise possessed by the agent
22 or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or
23 expertise must be considered in determining whether the agent has acted with care, competence, and diligence
24 under the circumstances.
- 25 (6) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property
26 declines.
- 27 (7) An agent that exercises authority to delegate to another person the authority granted by the principal
28 or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of
29 that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.
- 30 (8) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts,

1 disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by
2 the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having
3 authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative
4 or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the
5 request or provide a writing or other record substantiating why additional time is needed and shall comply with
6 the request within an additional 30 days.

7
8 **NEW SECTION. Section 14. Exoneration of agent.** A provision in a power of attorney relieving an
9 agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to
10 the extent the provision:

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

13 (2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.
14

15 **NEW SECTION. Section 15. Judicial relief.** (1) The following persons may petition a court to construe
16 a power of attorney or review the agent's conduct and grant appropriate relief:

17 (a) the principal or the agent;

18 (b) a guardian, conservator, or other fiduciary acting for the principal;

19 (c) a person authorized to make health care decisions for the principal;

20 (d) the principal's spouse, parent, or descendant;

21 (e) an individual who would qualify as a presumptive heir of the principal;

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

25 (g) a governmental agency having regulatory authority to protect the welfare of the principal;

26 (h) the principal's caregiver or another person that demonstrates sufficient interest in the principal's
27 welfare; and

28 (i) a person asked to accept the power of attorney.

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

1

2 **NEW SECTION. Section 16. Agent's liability.** An agent that violates this part is liable to the principal
3 or the principal's successors in interest for the amount required to:

4 (1) restore the value of the principal's property to what it would have been had the violation not occurred;
5 and

6 (2) reimburse the principal or the principal's successors in interest for the attorney fees and costs paid
7 on the agent's behalf.

8

9 **NEW SECTION. Section 17. Agent's resignation -- notice.** Unless the power of attorney provides a
10 different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the
11 principal is incapacitated:

12 (1) to the conservator or guardian, if one has been appointed for the principal, and a coagent or
13 successor agent; or

14 (2) if there is no person described in subsection (1), to:

15 (a) the principal's caregiver;

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

17 or

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

19

20 **NEW SECTION. Section 18. Acceptance of and reliance upon acknowledged power of attorney.**

21 (1) For purposes of [section 19] and this section, "acknowledged" means purportedly verified before a notary
22 public or other individual authorized to take acknowledgements.

23 (2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge
24 that the signature is not genuine may rely upon the presumption under [section 4] that the signature is genuine.

25 (3) A person that in good faith accepts an acknowledged power of attorney without actual knowledge
26 that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or
27 terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power
28 of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine,
29 valid, and still in effect, and the agent had not exceeded and had properly exercised the authority.

30 (4) A person that is asked to accept an acknowledged power of attorney may request, and rely upon,

1 without further investigation:

2 (a) an agent's certification under penalty of perjury of any factual matter concerning the principal, agent,
3 or power of attorney;

4 (b) an English translation of the power of attorney if the power of attorney contains, in whole or in part,
5 language other than English; and

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

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

11 (6) For purposes of [section 19] and this section, a person that conducts activities through employees
12 is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee
13 conducting the transaction involving the power of attorney is without actual knowledge of the fact.

14
15 **NEW SECTION. Section 19. Liability for refusal to accept acknowledged power of attorney.** (1)

16 Except as otherwise provided in subsection (2):

17 (a) a person shall either accept an acknowledged power of attorney or request a certification, a
18 translation, or an opinion of counsel under [section 18(4)] no later than 7 business days after presentation of the
19 power of attorney for acceptance;

20 (b) if a person requests a certification, a translation, or an opinion of counsel under [section 18(4)], the
21 person shall accept the power of attorney no later than 5 business days after receipt of the certification,
22 translation, or opinion of counsel; and

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

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

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

28 (b) engaging in a transaction with the agent or the principal in the same circumstances would be
29 inconsistent with federal law;

30 (c) the person has actual knowledge of the termination of the agent's authority or of the power of attorney

1 before exercise of the power;

2 (d) a request for a certification, a translation, or an opinion of counsel under [section 18(4)] is refused;

3 (e) the person in good faith believes that the power is not valid or that the agent does not have the
4 authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under
5 [section 18(4)] has been requested or provided; or

6 (f) the person makes or has actual knowledge that another person has made a report to the local office
7 of the department of public health and human services stating a good faith belief that the principal may be subject
8 to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with
9 the agent.

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

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

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

15

16 **NEW SECTION. Section 20. Principles of law and equity.** Unless displaced by a provision of this part,
17 the principles of law and equity supplement this part.

18

19 **NEW SECTION. Section 21. Laws applicable to financial institutions and entities.** This part does
20 not supersede any other law applicable to financial institutions or other entities, and the other law controls if
21 inconsistent with this part.

22

23 **NEW SECTION. Section 22. Remedies under other law.** The remedies under this part are not
24 exclusive and do not abrogate any right or remedy under the law of this state other than this part.

25

26 **NEW SECTION. Section 23. Authority that requires specific grant -- grant of general authority.**

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

30 (a) create, amend, revoke, or terminate an inter vivos trust;

- 1 (b) make a gift;
- 2 (c) create or change rights of survivorship;
- 3 (d) create or change a beneficiary designation;
- 4 (e) delegate authority granted under the power of attorney;
- 5 (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit
- 6 under a retirement plan;
- 7 (g) exercise fiduciary powers that the principal has authority to delegate; or
- 8 (h) disclaim property, including a power of appointment.
- 9 (2) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of
- 10 attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not
- 11 exercise authority under a power of attorney to create in the agent or in an individual to whom the agent owes
- 12 a legal obligation of support an interest in the principal's property, whether by gift, right of survivorship, beneficiary
- 13 designation, disclaimer, or otherwise.
- 14 (3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do
- 15 all acts that a principal could do, the agent has the general authority described in 72-31-224 through 72-31-236.
- 16 (4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to
- 17 [section 43].
- 18 (5) Subject to subsections (1), (2), and (4), if the subjects over which authority is granted in a power of
- 19 attorney are similar or overlap, the broadest authority controls.
- 20 (6) Authority granted in a power of attorney is exercisable with respect to property that the principal has
- 21 when the power of attorney is executed or acquires later, whether or not the property is located in this state and
- 22 whether or not the authority is exercised or the power of attorney is executed in this state.
- 23 (7) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the
- 24 benefit of and binds the principal and the principal's successors in interest as if the principal had performed the
- 25 act.

26

27 **NEW SECTION. Section 24. Incorporation of authority.** (1) An agent has authority described in

28 72-31-224 through 72-31-236, [sections 23 and 43], and this section if the power of attorney refers to general

29 authority with respect to the descriptive term for the subjects stated in 72-31-224 through 72-31-236 and [section

30 43] or cites the section in which the authority is described.

1 (2) A reference in a power of attorney to general authority with respect to the descriptive term for a
2 subject in 72-31-224 through 72-31-236 and [section 43] or a citation to a section of 72-31-224 through 72-31-236
3 and [section 43] incorporates the entire section as if it were set out in full in the power of attorney.

4 (3) A principal may modify authority incorporated by reference.
5

6 **Section 25.** Section 72-3-917, MCA, is amended to read:

7 **"72-3-917. Distribution to person under disability.** (1) A personal representative may discharge the
8 personal representative's obligation to distribute to any person under legal disability by distributing in a manner
9 expressly provided in the will.

10 (2) Unless contrary to an express provision in the will, the personal representative may discharge the
11 personal representative's obligation to distribute to a minor or person under other disability as authorized by
12 72-5-104, ~~72-5-501~~, or any other statute. If the personal representative knows that a conservator has been
13 appointed or that a proceeding for appointment of a conservator is pending, the personal representative is
14 authorized to distribute only to the conservator.

15 (3) (a) If the heir or devisee is under disability other than minority, the personal representative is
16 authorized to distribute to:

17 (i) an attorney-in-fact who has authority under a power of attorney to receive property for that person;

18 or

19 (ii) the spouse, parent, or other close relative with whom the person under disability resides if the
20 distribution is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the
21 court authorizes a larger amount or greater value.

22 (b) Any person receiving money or property for the disabled person is obligated to apply the money or
23 property to the support of the disabled person, but the receiving person may not accept any pay except by way
24 of reimbursement for out-of-pocket expenses for goods and services necessary for the support of the disabled
25 person. Excess sums must be preserved for future support of the disabled person. The personal representative
26 is not responsible for the proper application of money or property distributed pursuant to this subsection (3)."
27

28 **Section 26.** Section 72-5-501, MCA, is amended to read:

29 **"72-5-501. When health care power of attorney not affected by disability.** (1) A durable health care
30 power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact

1 or agent in writing and the writing contains the words, "This health care power of attorney is not affected by
 2 subsequent disability or incapacity of the principal or lapse of time" or "This health care power of attorney
 3 becomes effective upon the disability or incapacity of the principal" or similar words showing the intent of the
 4 principal that the authority conferred must be exercisable notwithstanding the principal's subsequent disability
 5 or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of
 6 the instrument. ~~All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period
 7 of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal
 8 and the principal's successors in interest as if the principal were alive, competent, and not disabled. Unless the
 9 instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the
 10 execution of the instrument.~~

11 (2) If a ~~conservator~~ guardian is appointed for the principal, the attorney-in-fact or agent, during the
 12 continuance of the appointment, is accountable to the ~~conservator~~ guardian as well as the principal. The
 13 ~~conservator~~ guardian has the same power to revoke or amend the health care power of attorney that the principal
 14 would have had if the principal were not disabled or incapacitated. A principal may nominate, by a durable health
 15 care power of attorney, the ~~conservator of the principal's estate or~~ guardian of the principal's person for
 16 consideration by the court if protective proceedings for the principal's person or estate are later commenced. The
 17 court shall make its appointment in accordance with the principal's most recent nomination in a durable health
 18 care power of attorney except for good cause or disqualification."

19

20 **Section 27.** Section 72-5-502, MCA, is amended to read:

21 **"72-5-502. Power Health care power of attorney not revoked until notice.** ~~(1) The death of a principal
 22 who has executed a written power of attorney, durable or otherwise, does not revoke or terminate the agency as
 23 to the attorney-in-fact, agent, or other person who, without actual knowledge of the death of the principal, acts
 24 in good faith under the power of attorney or agency. Any action taken, unless otherwise invalid or unenforceable,
 25 binds the successors in interest of the principal.~~

26 ~~—————(2)(1)~~ The disability or incapacity of a principal who has previously executed a health care power of
 27 attorney that is not a durable health care power does not revoke or terminate the agency as to the attorney-in-fact
 28 or other person who, without actual knowledge of the disability or incapacity of the principal, acts in good faith
 29 under the power. ~~Any action taken, unless otherwise invalid or unenforceable, binds the principal and the
 30 principal's successors in interest.~~

1 ~~(3)~~(2) As to acts undertaken in good faith reliance on a health care power of attorney, an affidavit
 2 executed by the attorney-in-fact or agent stating that the attorney-in-fact or agent did not have, at the time of
 3 exercising the power, actual knowledge of the termination of the power by revocation or of the principal's ~~death,~~
 4 disability; or incapacity is ~~conclusive~~ proof of the nonrevocation or nontermination of the power at that time. If the
 5 exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit when
 6 authenticated for record is likewise recordable.

7 ~~(4)~~(3) This section does not affect any provision in a health care power of attorney for its termination by
 8 expiration of time or occurrence of an event other than express revocation or a change in the principal's capacity."
 9

10 **Section 28.** Section 72-31-222, MCA, is amended to read:

11 "**72-31-222. ~~Durable power~~ Power of attorney is durable.** A power of attorney ~~legally sufficient~~ created
 12 under this part is durable ~~to the extent that durable powers are permitted by other law of this state and the power~~
 13 ~~of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled,~~
 14 ~~incapacitated, or incompetent."~~ showing the intent of the principal that the power granted may be exercised
 15 ~~notwithstanding later disability; unless it expressly provides that it is terminated by the incapacity, or incompetency~~
 16 of the principal."

17
 18 **Section 29.** Section 72-31-223, MCA, is amended to read:

19 "**72-31-223. ~~Construction of powers authority generally.~~ By** ~~Except as otherwise provided in the~~
 20 power of attorney, by executing a statutory power of attorney with respect to that incorporates a subject listed
 21 described in 72-31-201(4) 72-31-224 through 72-31-236 and [section 43] or that grants to an agent authority to
 22 do all acts that a principal could do pursuant to [section 23(3)], the a principal, except as limited or extended by
 23 the principal in the power of attorney, empowers authorizes the agent, for with respect to that subject, to:

24 (1) demand, receive, and obtain, by litigation or otherwise, money or ~~other~~ another thing of value to which
 25 the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received
 26 for the purposes intended;

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

30 (3) execute, acknowledge, seal, file, and ~~deliver a deed, revocation, mortgage, lease, notice, check,~~

1 ~~release, or other~~ record any instrument or communication the agent considers desirable to accomplish a purpose
 2 of a transaction, including creating at any time a schedule listing some or all of the principal's property and
 3 attaching it to the power of attorney;

4 (4) ~~prosecute, defend~~ initiate, participate in, submit to arbitration alternative dispute resolution, settle,
 5 and oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal
 6 or intervene in litigation relating to the claim;

7 (5) seek on the principal's behalf the assistance of a court or other governmental agency to carry out an
 8 act authorized by the power of attorney;

9 (6) engage, compensate, and discharge an attorney, accountant, discretionary investment manager,
 10 expert witness, or other ~~assistant~~ advisor;

11 ~~(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;~~

12 ~~(8)~~(7) prepare, execute, and file a record, report, or other document ~~the agent considers desirable to~~
 13 safeguard or promote the principal's interest under a statute or ~~governmental~~ regulation;

14 ~~(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted~~
 15 ~~by the power of attorney; and~~

16 (8) communicate with any representative or employee of a government or governmental subdivision,
 17 agency, or instrumentality on behalf of the principal;

18 (9) access communications intended for and communicate on behalf of the principal, whether by mail,
 19 electronic transmission, telephone, or other means; and

20 (10) ~~in general,~~ do any other lawful act with respect to the subject and all property related to the subject."
 21

22 **Section 30.** Section 72-31-224, MCA, is amended to read:

23 **"72-31-224. Construction of power relating to real Real property transactions.** ~~In~~ Unless the power
 24 of attorney otherwise provides, language in a statutory power of attorney, the language granting power general
 25 authority with respect to real property transactions empowers authorizes the agent to:

26 (1) demand, buy, lease, receive, accept as a gift or as security for a loan an extension of credit, reject,
 27 demand, buy, lease, receive, or otherwise acquire or reject an interest in real property or a right incident to real
 28 property;

29 (2) sell, exchange, or convey, with or without covenants, representations, or warranties; quitclaim;
 30 release; surrender; ~~mortgage~~ retain title for security; encumber; partition; consent to partitioning; subject to an

1 ~~easement or covenant~~; subdivide; apply for zoning, ~~rezoning~~, or other governmental permits; plat or consent to
 2 platting; develop; grant ~~options~~ an option concerning; lease; ~~sublet~~ sublease; contribute to an entity in exchange
 3 for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real
 4 property;

5 (3) pledge or mortgage an interest in real property or right incident to real property as security to borrow
 6 money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the
 7 principal;

8 ~~(3)(4)~~ release, assign, satisfy, ~~and or~~ enforce, by litigation or otherwise, a mortgage, deed of trust,
 9 conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;

10 ~~(4)(5) do any act of management or of conservation with respect to~~ manage or conserve an interest in
 11 real property or a right incident to real property, owned or claimed to be owned by the principal, including:

12 (a) insuring against a ~~casualty~~, liability; or casualty or other loss;

13 (b) obtaining or regaining possession or protecting the interest or right, by litigation or otherwise;

14 (c) paying, assessing, compromising, or contesting taxes or assessments, or applying for and receiving
 15 refunds in connection with them; and

16 (d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;

17 ~~(5)(6)~~ use, develop, alter, replace, remove, erect, or install structures or other improvements upon real
 18 property in or incident to which the principal has or claims to have an interest or right;

19 ~~(6)(7)~~ participate in a reorganization with respect to real property or ~~a legal an~~ entity that owns an interest
 20 in or right incident to real property and receive, ~~and hold, and act with respect to~~ shares of stock or obligations
 21 stocks and bonds or other property received in a plan of reorganization ~~and to act with respect to them~~, including:

22 (a) selling or otherwise disposing of them;

23 (b) exercising or selling an option, right of conversion, or similar right with respect to them; and

24 (c) exercising any voting ~~them~~ rights in person or by proxy;

25 ~~(7)(8)~~ change the form of title of an interest in or right incident to real property; and

26 ~~(8)(9)~~ dedicate to public use, with or without consideration, easements or other real property in which
 27 the principal has or claims to have an interest."

28

29 **Section 31.** Section 72-31-225, MCA, is amended to read:

30 **"72-31-225. ~~Construction of power relating to tangible~~ Tangible personal property transactions.**

1 ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language
 2 granting power general authority with respect to tangible personal property transactions empowers authorizes
 3 the agent to:

4 (1) ~~demand, buy, receive, accept as a gift or as security for a loan, reject, demand, buy, receive an~~
 5 extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an
 6 interest in tangible personal property;

7 (2) sell, exchange, convey with or without covenants, ~~representations, or warranties, quitclaim,~~ release,
 8 surrender, ~~mortgage, encumber, pledge, hypothecate,~~ create a security interest in, ~~pawn,~~ grant options
 9 concerning, lease, sublease ~~to others,~~ or otherwise dispose of tangible personal property or an interest in tangible
 10 personal property;

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

14 ~~(3)(4)~~ release, assign, satisfy, or enforce, by litigation or otherwise, a ~~mortgage,~~ security interest,
 15 ~~encumbrance,~~ lien, or other claim on behalf of the principal with respect to tangible personal property or an
 16 interest in tangible personal property; ~~and~~

17 ~~(4)(5)~~ do an act of management or conservation with respect to manage or conserve tangible personal
 18 property or an interest in tangible personal property on behalf of the principal, including:

- 19 (a) insuring against ~~casualty,~~ liability; or casualty or other loss;
- 20 (b) obtaining or regaining possession or protecting the property or interest, by litigation or otherwise;
- 21 (c) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving
 22 refunds in connection with taxes or assessments;
- 23 (d) moving the property from place to place;
- 24 (e) storing the property for hire or on a gratuitous bailment; and
- 25 (f) using, ~~altering,~~ and making repairs, ~~or alterations,~~ or improvements to the property; and
- 26 (6) change the form of title of an interest in tangible personal property."

27

28 **Section 32.** Section 72-31-226, MCA, is amended to read:

29 **"72-31-226. ~~Construction of power relating to stock and bond transactions~~ Stocks and bonds.**
 30 ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language

1 ~~granting power general authority~~ with respect to ~~stock and bond transactions empowers~~ stocks and bonds
 2 authorizes the agent to:

3 (1) buy, sell, and exchange stocks; and bonds; mutual funds, and all other types of securities and
 4 ~~financial instruments except commodity futures contracts; call and put options on stocks and stock indexes;~~

5 (2) establish, continue, modify, or terminate an account with respect to stocks and bonds;

6 (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt
 7 of the principal;

8 (4) receive certificates and other evidences of ownership with respect to securities stocks and bonds;

9 and

10 (5) exercise voting rights with respect to securities stocks and bonds in person or by proxy; enter into
 11 voting trusts; and consent to limitations on the right to vote."

12

13 **Section 33.** Section 72-31-227, MCA, is amended to read:

14 **"72-31-227. Construction of power relating to commodity and option transactions Commodities**
 15 **and options.** ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the
 16 language granting power general authority with respect to commodity and option transactions empowers
 17 commodities and options authorizes the agent to:

18 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts; and call and or put
 19 options on stocks and or stock indexes traded on a regulated option exchange; and

20 (2) establish, continue, modify, and terminate option accounts with a broker."

21

22 **Section 34.** Section 72-31-228, MCA, is amended to read:

23 **"72-31-228. Construction of power relating to banking Banks and other financial institution**
 24 **transactions institutions.** ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power
 25 of attorney, the language granting power general authority with respect to banking banks and other financial
 26 institution transactions empowers institutions authorizes the agent to:

27 (1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of
 28 the principal;

29 (2) establish, modify, and terminate an account or other banking arrangement with a bank, trust
 30 company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution

1 selected by the agent;

2 (3) ~~hire~~ contract for services available from a financial institution, including renting a safe deposit box
3 or space in a vault;

4 (4) ~~contract to procure other services available from a financial institution as the agent considers~~
5 ~~desirable;~~

6 ~~_____~~(5)(4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the
7 principal deposited with or left in the custody of a financial institution;

8 (6)(5) receive ~~bank~~ statements of account, vouchers, notices, and similar documents from a financial
9 institution and to act with respect to them;

10 (7)(6) enter a safe deposit box or vault and withdraw or add to the contents;

11 (8)(7) borrow money ~~at an interest rate agreeable to the agent~~ and pledge as security personal property
12 of the principal necessary ~~in order to borrow~~; money or pay, renew, or extend the time of payment of a debt of
13 the principal or a debt guaranteed by the principal;

14 (9)(8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts,
15 and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order;
16 transfer money, receive the cash or other proceeds of those transactions; and accept a draft drawn by a person
17 upon the principal and pay it when due;

18 (10)(9) receive for the principal and act upon a sight draft, warehouse receipt, other document of title
19 whether tangible or electronic, or other negotiable or nonnegotiable instrument;

20 (11)(10) apply for, and receive, and use letters of credit, credit and debit cards, electronic transaction
21 authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in
22 connection with letters of credit; and

23 (12)(11) consent to an extension of the time of payment with respect to commercial paper or a financial
24 transaction with a financial institution."

25

26 **Section 35.** Section 72-31-229, MCA, is amended to read:

27 "**72-31-229. Construction of power relating to Operation of entity or business operating**
28 **transactions.** ~~In~~ Subject to the terms of a document or an agreement governing an entity or an entity ownership
29 interest and unless the power of attorney otherwise provides, language in a statutory power of attorney, the
30 language granting power general authority with respect to operation of an entity or business operating

1 ~~transactions empowers~~ authorizes the agent to:

2 (1) ~~to~~ operate, buy, sell, enlarge, reduce, and terminate ~~a business~~ an ownership interest;

3 (2) ~~to the extent that an agent is permitted by law to act for a principal and subject to the terms of the~~
4 ~~partnership agreement, to~~:

5 ~~—(a)(2)~~ perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege,
6 or option that the principal has, may have, or claims to have ~~under a partnership agreement, whether or not the~~
7 ~~principal is a partner~~;

8 (b)(3) enforce the terms of ~~a partnership~~ an ownership agreement ~~by litigation or otherwise~~; and

9 (c)(4) ~~defend~~ initiate, participate in, submit to ~~arbitration~~ alternative dispute resolution, settle, oppose,
10 or propose or accept a compromise with respect to litigation to which the principal is a party because of
11 ~~membership in the partnership~~ an ownership interest;

12 (3)(5) ~~to~~ exercise in person or by proxy or enforce, by litigation or otherwise, a right, power, privilege,
13 or option the principal has or claims to have as the holder of ~~a bond, share, or other instrument of similar~~
14 ~~character and to defend~~, stocks and bonds;

15 (6) initiate, participate in, submit to ~~arbitration~~ alternative dispute resolution, settle, oppose, or propose
16 or accept a compromise with respect to litigation to which the principal is a party ~~because of a bond, share, or~~
17 ~~similar instrument concerning stocks and bonds~~;

18 (4)(7) with respect to ~~a~~ an entity or business owned solely by the principal, ~~to~~:

19 (a) continue, modify, renegotiate, extend, and terminate a contract made ~~with an individual or a legal~~
20 ~~entity, firm, association, or corporation by or on behalf of the principal~~ by or with respect to the entity or business
21 before execution of the power of attorney;

22 (b) determine:

23 (i) the location of its operation;

24 (ii) the nature and extent of its business;

25 (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising
26 employed in its operation;

27 (iv) the amount and types of insurance carried; and

28 (v) the mode of engaging, compensating, and dealing with its employees, accountants, attorneys, and
29 or other agents and employees advisors;

30 (c) change the name or form of organization under which the entity or business is operated and enter

1 into a ~~partnership~~ an ownership agreement with other persons or ~~organize a corporation~~ to take over all or part
 2 of the operation of the entity or business; and

3 (d) demand and receive money due or claimed by the principal or on the principal's behalf in the
 4 operation of the entity or business and control and disburse the money in the operation of the entity or business;

5 ~~(5)(8)~~ to put additional capital into a an entity or business in which the principal has an interest;

6 ~~(6)(9)~~ to join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity
 7 or business;

8 ~~(7)(10)~~ to sell or liquidate a business all or part of it ~~at the time and upon the terms the agent considers~~
 9 ~~desirable~~ an entity or business;

10 ~~(8)(11)~~ to establish the value of a an entity or business under a buyout agreement to which the principal
 11 is a party;

12 ~~(9)(12)~~ to prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with
 13 respect to a an entity or business ~~that are required by a governmental agency or instrumentality or that the agent~~
 14 ~~considers desirable~~ and to make related payments; and

15 ~~(10)(13)~~ to pay, compromise, or contest taxes, or assessments, fines, or penalties and ~~to do~~ perform any
 16 other act ~~that the agent considers desirable~~ to protect the principal from illegal or unnecessary taxation,
 17 assessments, fines, or penalties, ~~or assessments~~ with respect to a an entity or business, including attempts to
 18 recover, in any manner permitted by law, money paid before or after the execution of the power of attorney."

19

20 **Section 36.** Section 72-31-230, MCA, is amended to read:

21 **"72-31-230. Construction of power relating to insurance transactions Insurance and annuities.**

22 ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language
 23 granting power general authority with respect to insurance and annuity transactions empowers annuities
 24 authorizes the agent to:

25 (1) continue, pay the premium or ~~assessment~~ make a contribution on, modify, exchange, rescind,
 26 release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to
 27 either the principal or another person, whether or not the principal is a beneficiary under the contract;

28 (2) procure new, different, and additional contracts of insurance and annuities for the principal and the
 29 principal's spouse, children, and other dependents and ~~to~~ select the amount, type of insurance or annuity, and
 30 mode of payment;

- 1 (3) pay the premium or ~~assessment~~ make a contribution on, modify, exchange, rescind, release, or
 2 terminate a contract of insurance or annuity procured by the agent;
- 3 ~~(4) designate the beneficiary of the contract; however, an agent may be named a beneficiary of the~~
 4 ~~contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named~~
 5 ~~as a beneficiary under a contract procured by the principal before executing the power of attorney;~~
- 6 ~~——(5)(4) apply for and receive a loan on the security of the~~ secured by a contract of insurance or annuity;
- 7 ~~(6)(5) surrender and receive the cash surrender value on a contract of insurance or annuity;~~
- 8 ~~(7)(6) exercise an election;~~
- 9 (7) exercise investment power available under a contract of insurance or annuity;
- 10 (8) change the manner of paying premiums on a contract of insurance or annuity;
- 11 (9) change or convert the type of insurance ~~contract~~ or annuity; with respect to which the principal has
 12 or claims to have a power described in this section;
- 13 ~~(10) change the beneficiary of a contract of insurance or annuity; however, the agent may not be~~
 14 ~~designated a beneficiary except to the extent permitted by subsection (4);~~
- 15 ~~——(11)(10) apply for and procure government aid a benefit or assistance under a statute or regulation to~~
 16 ~~guarantee or pay premiums of a contract of insurance on the life of the principal;~~
- 17 ~~(12)(11) collect, sell, assign, hypothecate, borrow upon~~ against, or pledge the interest of the principal in
 18 a contract of insurance or annuity; and
- 19 ~~(13)(12) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection~~
 20 ~~with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its~~
 21 ~~proceeds or liability accruing by reason of the tax or assessment."~~

22

23 **Section 37.** Section 72-31-231, MCA, is amended to read:

24 **"72-31-231. ~~Construction of power relating to estate~~ Estates, trust trusts, and other beneficiary**
 25 **~~transactions beneficial interests.~~ (1) In this section, "estate, trust, or other beneficial interest" means a trust,**
 26 **probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may**
 27 **become, or claims to be entitled to a share or payment.**

28 **(2) Unless the power of attorney otherwise provides, language in ~~in~~ a statutory power of attorney, the**
 29 **language granting power ~~general authority~~ with respect to an estate, trust, and or other beneficiary transactions**
 30 **beneficial interest, ~~empowers~~ authorizes the agent to act for the principal in all matters that affect a trust, probate**

1 ~~estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may~~
 2 ~~become, or claims to be entitled as a beneficiary to a share or payment, including to:~~

3 ~~(1)(a) accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, or exchange, or consent~~
 4 ~~to a reduction in or modification of a share in or payment from the fund;~~

5 ~~(2)(b) demand or obtain, by litigation or otherwise, money or other another thing of value to which the~~
 6 ~~principal is, may become, or claims to be entitled by reason of the fund, by litigation or otherwise;~~

7 ~~(c) exercise for the benefit of the principal a presently exercisable general power of appointment held~~
 8 ~~by the principal;~~

9 ~~(3)(d) initiate, participate in, submit to alternative dispute resolution, settle, and oppose, or propose or~~
 10 ~~accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will,~~
 11 ~~declaration of trust, or other instrument or transaction affecting the interest of the principal;~~

12 ~~(4)(e) initiate, participate in, submit to alternative dispute resolution, settle, and oppose, or propose or~~
 13 ~~accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;~~

14 ~~(5)(f) conserve, invest, disburse, and or use anything received for an authorized purpose; and~~

15 ~~(6)(g) transfer an interest of the principal in real property, stocks, and bonds, accounts with financial~~
 16 ~~institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust~~
 17 ~~created by the principal as settlor."~~

18

19 **Section 38.** Section 72-31-232, MCA, is amended to read:

20 **"72-31-232. ~~Construction of power relating to claims~~ Claims and litigation.** ~~In~~ Unless the power of
 21 attorney otherwise provides, language in a statutory power of attorney, the language granting general authority
 22 with respect to claims and litigation empowers authorizes the agent to:

23 (1) assert and ~~prosecute~~ maintain before a court or administrative agency a claim, claim for relief, cause
 24 of action, counterclaim, or offset, recoupment, or defense, and defend against an individual, a legal entity, or
 25 ~~government, including suits~~ an action to recover property or other thing of value, ~~to~~ recover damages sustained
 26 by the principal, ~~to~~ eliminate or modify tax liability, or ~~to~~ seek an injunction, specific performance, or other relief;

27 (2) bring an action to determine adverse claims; or intervene or otherwise participate in litigation; ~~and~~
 28 ~~act as amicus curiae;~~

29 (3) ~~in connection with litigation, procure~~ seek an attachment, garnishment, ~~libel,~~ order of arrest, or other
 30 preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment,

1 order, or decree;

2 (4) ~~in connection with litigation, perform any lawful act, including acceptance of~~ make or accept a tender,
3 offer of judgment, or admission of facts, ~~submission of~~ submit a controversy on an agreed statement of facts,
4 consent to examination ~~before trial~~, and ~~binding~~ bind the principal in litigation;

5 (5) submit to ~~arbitration~~ alternative dispute resolution, settle, and propose or accept a compromise ~~with~~
6 ~~respect to a claim or litigation~~;

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

13 (7) act for the principal with respect to bankruptcy or insolvency ~~proceedings~~, whether voluntary or
14 involuntary, concerning the principal or some other person, or with respect to a reorganization, ~~proceeding or a~~
15 receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in
16 property or other thing of value; ~~and~~

17 (8) pay a judgment, award, or order against the principal or a settlement made in connection with a claim
18 or litigation; and

19 (9) ~~receive and conserve~~ money or other thing of value paid in settlement of or as proceeds of a claim
20 or litigation."

21

22 **Section 39.** Section 72-31-233, MCA, is amended to read:

23 **"72-31-233. ~~Construction of power relating to personal~~ Personal and family maintenance. (1) ~~In~~**
24 Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting
25 power general authority with respect to personal and family maintenance ~~empowers~~ authorizes the agent to:

26 (1)(a) ~~do perform~~ the acts necessary to maintain the customary standard of living of the principal and
27 the principal's spouse, children, and other following individuals, whether living when the power of attorney is
28 executed or later born:

29 (i) the principal's children;

30 (ii) other individuals customarily or legally entitled to be supported by the principal; and

1 (iii) the individuals whom the principal has customarily supported or indicated the intent to support;
 2 (b) make periodic payments of child support and other family maintenance required by a court or
 3 governmental agency or an agreement to which the principal is a party;
 4 (c) ~~including providing~~ provide living quarters for the individuals described in subsection (1)(a) by:
 5 (i) purchase, lease, or other contract; or
 6 (ii) paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises
 7 owned by the principal ~~and~~ or occupied by those individuals;
 8 (2)(d) provide for the individuals described in subsection (1) normal domestic help, usual vacations and
 9 usual travel expenses, and funds for shelter, clothing, food, appropriate education, ~~including postsecondary and~~
 10 vocational education, and other current living costs for the individuals described in subsection (1)(a);
 11 (3)(e) pay for the individuals described in subsection (1) expenses for necessary medical, dental, and
 12 surgical health care, hospitalization, and custodial care for the individuals described in subsection (1)(a);
 13 (f) act as the principal's personal representative pursuant to the Health Insurance Portability and
 14 Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and
 15 applicable regulations, in making decisions related to the past, present, or future payment for the provision of
 16 health care consented to by the principal or anyone authorized under the law of this state to consent to health
 17 care on behalf of the principal;
 18 (4)(g) continue any provision made by the principal for the individuals described in subsection (1) for
 19 automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for
 20 the individuals described in subsection (1)(a);
 21 (5)(h) maintain ~~or open charge~~ credit and debit accounts for the convenience of the individuals described
 22 in subsection (1)(a) and open new accounts ~~the agent considers desirable to accomplish a lawful purpose;~~ and
 23 (6)(i) continue payments incidental to the membership or affiliation of the principal in a ~~church~~ religious
 24 institution, club, society, order, or other organization or continue contributions to those organizations.
 25 (2) Authority with respect to personal and family maintenance is neither dependent upon nor limited by
 26 authority that an agent may or may not have with respect to gifts under this part."
 27

28 **Section 40.** Section 72-31-234, MCA, is amended to read:

29 **"72-31-234. Construction of power relating to benefits from social security, medicare, medicaid,**
 30 **or other Benefits from governmental programs or from civil or military service. (1) In this section, "benefits**

1 from governmental programs or civil or military service" means any benefit, program, or assistance provided
 2 under a statute or regulation, including social security, medicare, and medicaid.

3 ~~(2) In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the
 4 language granting power general authority with respect to benefits from social security, medicare, medicaid or
 5 other governmental programs or from civil or military service empowers authorizes the agent to:

6 ~~(1)~~(a) execute vouchers in the name of the principal for allowances and reimbursements payable by the
 7 United States or a foreign government or by a state or subdivision of a state to the principal, including allowances
 8 and reimbursements for transportation of the individuals described in 72-31-233(1)(a), and for shipment of their
 9 household effects;

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

14 (c) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit
 15 or program;

16 ~~(3)~~(d) prepare, file, and ~~prosecute~~ maintain a claim of the principal ~~to~~ for a benefit or assistance, financial
 17 or otherwise, to which the principal ~~claims to~~ may be entitled; to receive under a statute or governmental
 18 regulation;

19 ~~(4)~~(e) ~~prosecute~~ initiate, defend ~~participate in,~~ submit to ~~arbitration~~ alternative dispute resolution, settle,
 20 oppose, and or propose or accept a compromise with respect to litigation concerning any benefits benefit or
 21 assistance the principal may be entitled to receive under a statute or regulation; and

22 ~~(5)~~(f) receive the financial proceeds of a claim of the type described in this section subsection (2)(d) and
 23 conserve, invest, disburse, or use for a lawful purpose anything so received for a lawful purpose."

24

25 **Section 41.** Section 72-31-235, MCA, is amended to read:

26 **"72-31-235. Construction of power relating to retirement plan transactions Retirement plans. (1)**

27 In this section, "retirement plan" means a plan or account created by an employer, the principal, or another
 28 individual to provide retirement benefits or deferred compensation of which the principal is a participant,
 29 beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

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

- 1 (b) a Roth individual retirement account under section 408A of the Internal Revenue Code, 26 U.S.C.
 2 408A;
- 3 (c) a deemed individual retirement account under section 408(q) of the Internal Revenue Code, 26
 4 U.S.C. 408(q);
- 5 (d) an annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code, 26
 6 U.S.C. 403(b);
- 7 (e) a pension, profit-sharing, stock bonus, or other retirement plan qualified under section 401(a) of the
 8 Internal Revenue Code, 26 U.S.C. 401(a);
- 9 (f) a deferred compensation plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b);
 10 and
- 11 (g) a nonqualified deferred compensation plan under section 409A of the Internal Revenue Code, 26
 12 U.S.C. 409A.
- 13 (2) ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the
 14 language granting ~~power~~ general authority with respect to retirement plan transactions empowers ~~plans~~
 15 authorizes the agent to:
- 16 (1)(a) select ~~payment options~~ the form and timing of payments under any a retirement plan in which the
 17 principal participates, including plans for self-employed individuals and withdraw benefits from a plan;
- 18 (2) ~~designate beneficiaries under those plans and change existing designations;~~
- 19 ~~(3) make voluntary contributions to those plans;~~
- 20 ~~(4) exercise the investment powers available under any self-directed retirement plan;~~
- 21 ~~(5)(b) make "rollovers" a rollover, including a direct trustee-to-trustee rollover, of plan benefits into other~~
 22 from one retirement plans plan to another;
- 23 (c) establish a retirement plan in the principal's name;
- 24 (d) make contributions to a retirement plan;
- 25 (e) exercise investment powers available under a retirement plan; and
- 26 (6)(f) if authorized by the plan, borrow from, sell assets to, and purchase assets from the a retirement
 27 plan; and
- 28 ~~(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a~~
 29 spouse who is not employed."

30

1 **Section 42.** Section 72-31-236, MCA, is amended to read:

2 "**72-31-236. Construction of power relating to tax matters Taxes.** ~~In~~ Unless the power of attorney
3 otherwise provides, language in a statutory power of attorney, the language granting power general authority with
4 respect to tax matters empowers taxes authorizes the agent to:

5 (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal
6 Insurance Contributions Act, and other tax returns; ~~claims for refunds; requests for extension of time; petitions~~
7 ~~regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents,~~
8 ~~(including consents and agreements under section 2032A of the Internal Revenue Code, 26 U.S.C. 2032A section~~
9 ~~2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue~~
10 ~~service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and~~
11 ~~the following 25 tax years;~~

12 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies
13 determined by the internal revenue service or other taxing authority;

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

15 (4) act for the principal in all tax matters for all periods before the internal revenue service ~~and any or~~
16 ~~other taxing authority."~~

17
18 NEW SECTION. Section 43. Gifts. (1) In this section, a gift "for the benefit of" a person includes a gift
19 to a trust, an account under the Uniform Transfers to Minors Act, Title 72, chapter 26, and a tuition savings
20 account or prepaid tuition plan under section 529 of the Internal Revenue Code, 26 U.S.C. 529.

21 (2) Unless the power of attorney otherwise provides, language in a power of attorney granting general
22 authority with respect to gifts authorizes the agent only to:

23 (a) make outright to or for the benefit of a person, a gift of any of the principal's property, including by
24 the exercise of a presently exercisable general power of appointment held by the principal, in an amount per
25 donee not to exceed the annual dollar limits of the federal gift tax exclusion under section 2503(b) of the Internal
26 Revenue Code, 26 U.S.C. 2503(b), without regard to whether the federal gift tax exclusion applies to the gift, or
27 if the principal's spouse agrees to consent to a split gift pursuant to section 2513 of the Internal Revenue Code,
28 26 U.S.C. 2513, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

29 (b) consent, pursuant to section 2513 of the Internal Revenue Code, 26 U.S.C. 2513, to the splitting of
30 a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax

1 exclusions for both spouses.

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

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

6 (b) the principal's foreseeable obligations and need for maintenance;

7 (c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift
8 taxes;

9 (d) eligibility for a benefit, a program, or assistance under a statute or regulation; and

10 (e) the principal's personal history of making or joining in making gifts.

11

12 **NEW SECTION. Section 44. Statutory form power of attorney.** A document substantially in the
13 following form may be used to create a statutory form power of attorney that has the meaning and effect
14 prescribed by this part.

15 MONTANA STATUTORY FORM POWER OF ATTORNEY

16 IMPORTANT INFORMATION

17 This power of attorney authorizes another person (your agent) to make decisions concerning your
18 property for you (the principal). Your agent will be able to make decisions and act with respect to your property
19 (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects
20 listed on this form is explained in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2.

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

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

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

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

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

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

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

5 DESIGNATION OF AGENT

6 I

7 (Name of Principal)

8 name the following person as my agent:

9 Name of Agent:

10 Agent's Address:.....

11 Agent's Telephone Number:.....

12 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

14 Name of Successor Agent:.....

15 Successor Agent's Address:.....

16 Successor Agent's Telephone Number:.....

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

18 Name of Second Successor Agent:.....

19 Second Successor Agent's Address:.....

20 Second Successor Agent's Telephone Number:.....

21 GRANT OF GENERAL AUTHORITY

22 I grant my agent and any successor agent general authority to act for me with respect to the following
23 subjects as defined in the Uniform Power of Attorney Act, Title 72, chapter 31, part 2:

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

26 (...) Real Property

27 (...) Tangible Personal Property

28 (...) Stocks and Bonds

29 (...) Commodities and Options

30 (...) Banks and Other Financial Institutions



- 1 (...) Operation of Entity or Business
- 2 (...) Insurance and Annuities
- 3 (...) Estates, Trusts, and Other Beneficial Interests
- 4 (...) Claims and Litigation
- 5 (...) Personal and Family Maintenance
- 6 (...) Benefits from Governmental Programs or Civil or Military Service
- 7 (...) Retirement Plans
- 8 (...) Taxes
- 9 (...) All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

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

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

.....
.....

EFFECTIVE DATE

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

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

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

Name of Nominee for conservator or guardian of my estate:

.....

Nominee's Address:.....

Nominee's Telephone Number:.....

Name of Nominee for guardian of my person:

Nominee's Address:

Nominee's Telephone Number:

RELIANCE ON THIS POWER OF ATTORNEY



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

3 SIGNATURE AND ACKNOWLEDGMENT

4

5 Your Signature Date

6

7 Your Name Printed

8

9 Your Address

10

11 Your Telephone Number

12 State of

13 [County] of.....

14 This document was acknowledged before me on

15,

16 (Date)

17 by.....

18 (Name of Principal)

19 (Seal, if any)

20 Signature of Notary

21 My commission expires:.....

22 This document prepared by:

23

24 IMPORTANT INFORMATION FOR AGENT

25 Agent's Duties

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

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



- 1 (2) act in good faith;
- 2 (3) do nothing beyond the authority granted in this power of attorney; and
- 3 (4) disclose your identity as an agent whenever you act for the principal by writing or printing the name
- 4 of the principal and signing your own name as "agent" in the following manner:

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

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

- 7 (1) act loyally for the principal's benefit;
- 8 (2) avoid conflicts that would impair your ability to act in the principal's best interest;
- 9 (3) act with care, competence, and diligence;
- 10 (4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- 11 (5) cooperate with any person that has authority to make health care decisions for the principal to do
- 12 what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the
- 13 principal's best interest; and
- 14 (6) attempt to preserve the principal's estate plan if you know the plan and preserving the plan is
- 15 consistent with the principal's best interest.

16 Termination of Agent's Authority

17 You must stop acting on behalf of the principal if you learn of any event that terminates this power of

18 attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority

19 to act under a power of attorney include:

- 20 (1) death of the principal;
- 21 (2) the principal's revocation of the power of attorney or your authority;
- 22 (3) the occurrence of a termination event stated in the power of attorney;
- 23 (4) the purpose of the power of attorney is fully accomplished; or
- 24 (5) if you are married to the principal, a legal action is filed with a court to end your marriage, or for your
- 25 legal separation, unless the Special Instructions in this power of attorney state that such an action will not
- 26 terminate your authority.

27 Liability of Agent

28 The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, Title 72,

29 chapter 31, part 2. If you violate the Uniform Power of Attorney Act, Title 72, chapter 31, part 2, or act outside the

30 authority granted, you may be liable for any damages caused by your violation.

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

3
4 **NEW SECTION. Section 45. Agent's certification.** The following optional form may be used by an
5 agent to certify facts concerning a power of attorney.

6 AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S
7 AUTHORITY

8 State of

9 County of.....

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

12 I further certify that to my knowledge:

13 (1) the principal is alive and has not revoked the power of attorney or my authority to act under the power
14 of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

15 (2) if the power of attorney was drafted to become effective upon the happening of an event or
16 contingency, the event or contingency has occurred;

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

18 (4)

19 (Insert other relevant statements)

20 SIGNATURE AND ACKNOWLEDGMENT

21 Date

22 Agent's Signature

23

24 Agent's Name Printed

25

26 Agent's Address

27

28 Agent's Telephone Number

29 This document was acknowledged before me on,

30 (Date)



1 by.....
 2 (Name of Agent)
 3 (Seal, if any)
 4 Signature of Notary
 5 My commission expires:
 6 This document prepared by:
 7

8
 9 **Section 46.** Section 72-31-238, MCA, is amended to read:
 10 **"72-31-238. Uniformity of application and construction.** ~~This part~~ In applying and construing this
 11 uniform act, consideration must be applied and construed to effectuate its general purpose to make uniform the
 12 given to the need to promote uniformity of the law with respect to the its subject of this part matter among the
 13 states enacting that enact it."

14
 15 NEW SECTION. **Section 47. Relation to electronic signatures in global commerce act.** This part
 16 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15
 17 U.S.C. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or
 18 authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. 7003(b).

19
 20 NEW SECTION. **Section 48. Effect on existing powers of attorney.** Except as otherwise provided
 21 in [this act], on [the effective date of this act]:

- 22 (1) [this act] applies to a power of attorney created before, on, or after [the effective date of this act]
 23 unless it is a health care power of attorney;
- 24 (2) [this act] applies to a judicial proceeding concerning a power of attorney commenced on or after [the
 25 effective date of this act] unless it is a health care power of attorney;
- 26 (3) [this act] applies to a judicial proceeding concerning a power of attorney commenced before [the
 27 effective date of this act] unless the court finds that application of a provision of [this act] would substantially
 28 interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that
 29 provision does not apply and the superseded law applies; and
- 30 (4) an act done before [the effective date of this act] is not affected by [this act].

