

House Bill 2537

Sponsored by Representative SCHAUFLER (at the request of Oregon Bankers Association)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Enacts Uniform Power of Attorney Act.

A BILL FOR AN ACT

Relating to powers of attorney; creating new provisions; amending ORS 93.670, 125.445 and 125.710; and repealing ORS 127.005, 127.015, 127.025, 127.035 and 127.045.

Be It Enacted by the People of the State of Oregon:

GENERAL PROVISIONS

SECTION 1. Short title (Uniform Power of Attorney Act section 101). Sections 1 to 44 of this 2009 Act may be cited as the Uniform Power of Attorney Act.

SECTION 2. Definitions (Uniform Power of Attorney Act section 102). For the purposes of sections 1 to 44 of this 2009 Act:

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

(2) **"Business day" means all days other than:**

(a) **Saturdays and Sundays;**

(b) **New Year's Day on January 1;**

(c) **Martin Luther King, Jr.'s birthday on the third Monday in January;**

(d) **Presidents Day on the third Monday in February;**

(e) **Memorial Day on the last Monday in May;**

(f) **Independence Day on July 4;**

(g) **Labor Day on the first Monday in September;**

(h) **Columbus Day on the second Monday in October;**

(i) **Veterans Day on November 11;**

(j) **Thanksgiving Day on the fourth Thursday in November; and**

(k) **Christmas Day on December 25.**

(3) **"Durable power of attorney" means a power of attorney that is not terminated by the principal's incapacity.**

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

(5) **"Good faith" means honesty in fact.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (6) "Incapacity" means inability of an individual to manage property or business affairs
2 because the individual:

3 (a) Has an impairment in the ability to receive and evaluate information, or to make or
4 communicate decisions, even with the use of technological assistance;

5 (b) Is missing;

6 (c) Is detained, including incarcerated in a penal system; or

7 (d) Is outside the United States and unable to return.

8 (7) "Person" means a person as defined in ORS 174.100 and a public body as defined in
9 ORS 174.109.

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

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

21 (10) "Principal" means an individual who grants authority to an agent in a power of at-
22 torney.

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

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

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

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

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

31 (14) "State" means a state of the United States, the District of Columbia, Puerto Rico,
32 the United States Virgin Islands or any territory or insular possession subject to the juris-
33 diction of the United States.

34 (15) "Stocks and bonds" means stocks, bonds, mutual funds and all other types of secu-
35 rities and financial instruments, whether held directly, indirectly or in any other manner.
36 "Stocks and bonds" does not include commodity futures contracts and call or put options on
37 stocks or stock indexes.

38 SECTION 3. Applicability (Uniform Power of Attorney Act section 103.) Sections 1 to 44
39 of this 2009 Act apply to all powers of attorney except:

40 (1) A power to the extent it is coupled with an interest in the subject of the power, in-
41 cluding a power given to or for the benefit of a creditor in connection with a credit trans-
42 action;

43 (2) An advance directive under ORS 127.505 to 127.660, a declaration for mental health
44 treatment under ORS 127.700 to 127.737 or any other power to make health care decisions
45 or mental health decisions;

1 (3) A proxy or other delegation to exercise voting rights or management rights with re-
 2 spect to an entity; and

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

5 **SECTION 4. Power of attorney is durable (Uniform Power of Attorney Act section 104).**
 6 A power of attorney created under sections 1 to 44 of this 2009 Act is a durable power of
 7 attorney unless the power of attorney expressly provides that the power of attorney is ter-
 8 minated by the incapacity of the principal.

9 **SECTION 5. Execution of power of attorney (Uniform Power of Attorney Act section 105).**
 10 A power of attorney must be signed by the principal or be signed by another individual within
 11 range of the principal's sight or hearing, pursuant to the principal's direction. To execute a
 12 power of attorney, the principal must have the ability to comprehend the nature of the power
 13 of attorney and the consequences of its execution. A signature on a power of attorney is
 14 presumed to be genuine if the principal acknowledges the signature before a notary public
 15 or other individual authorized by law to take acknowledgments.

16 **SECTION 6. Validity of power of attorney (Uniform Power of Attorney Act section 106).**
 17 (1) A power of attorney executed in this state on or after the effective date of this 2009 Act
 18 is valid if the execution of the power of attorney complies with section 5 of this 2009 Act.

19 (2) A power of attorney executed in this state before the effective date of this 2009 Act
 20 is valid if the execution of the power of attorney complied with the law of this state as that
 21 law existed at the time of execution.

22 (3) A power of attorney executed in another state is valid in this state if, when the power
 23 of attorney was executed, the execution complied with:

24 (a) The law of the jurisdiction that determines the meaning and effect of the power of
 25 attorney under section 7 of this 2009 Act; or

26 (b) The requirements for a military power of attorney under 10 U.S.C. 1044b.

27 (4) Except as otherwise provided by law, a photocopy or electronically transmitted copy
 28 of an original power of attorney has the same effect as the original.

29 **SECTION 7. Meaning and effect of power of attorney (Uniform Power of Attorney Act**
 30 **section 107).** 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 juris-
 32 diction, by the law of the jurisdiction in which the power of attorney was executed.

33 **SECTION 8. Nomination of conservator or guardian; relation of agent to court-appointed**
 34 **fiduciary (Uniform Power of Attorney Act section 108).** (1) In a power of attorney, a principal
 35 may nominate a conservator of the principal's estate or guardian of the principal's person
 36 for consideration by the court if protective proceedings for the principal's estate or person
 37 are begun after the principal executes the power of attorney. A court shall consider a nom-
 38 ination by the principal as provided in ORS 125.200.

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

44 **SECTION 9. When power of attorney effective (Uniform Power of Attorney Act section**
 45 **109).** (1) A power of attorney is effective when executed unless the principal provides in the

1 power of attorney that the power of attorney becomes effective at a future date or upon the
 2 occurrence of a future event or contingency.

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

6 (3) If a power of attorney becomes effective upon the principal's incapacity and the
 7 principal has not authorized a person to determine whether the principal is incapacitated,
 8 or the person authorized is unable or unwilling to make the determination, the power of at-
 9 torney becomes effective when:

10 (a) A physician or licensed psychologist makes a determination in a writing or other re-
 11 cord that the principal is incapacitated as described in section 2 (7)(a) of this 2009 Act; or

12 (b) An attorney at law, a judge or an appropriate governmental official makes a deter-
 13 mination in a writing or other record that the principal is incapacitated as described in sec-
 14 tion 2 (7)(b), (c) or (d) of this 2009 Act.

15 (4) A person authorized by the principal in the power of attorney to determine that the
 16 principal is incapacitated may act as the principal's personal representative pursuant to the
 17 Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), and applicable
 18 regulations, to obtain access to the principal's health care information and communicate
 19 with the principal's health care provider.

20 SECTION 10. Termination of power of attorney or agent's authority (Uniform Power of
 21 Attorney Act section 110). (1) A power of attorney terminates when any of the following oc-
 22 cur:

23 (a) The principal dies.

24 (b) The principal becomes incapacitated, if the power of attorney is not a durable power
 25 of attorney.

26 (c) The principal, the principal's conservator or the court revokes the power of attorney.
 27 With respect to authority over real property under section 27 of this 2009 Act, if the power
 28 of attorney was recorded, the revocation must be recorded in the county where the real
 29 property is located.

30 (d) The power of attorney provides that the power of attorney terminates.

31 (e) The purpose of the power of attorney is accomplished.

32 (f) The principal, the principal's conservator or the court revokes the agent's authority,
 33 or the agent dies, becomes incapacitated or resigns, and the power of attorney does not
 34 provide for another agent to act under the power of attorney.

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

36 (a) The principal, the principal's conservator or the court revokes the authority;

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

38 (c) An action is filed for the dissolution or annulment of the agent's marriage or do-
 39 mestic partnership to the principal, or for the legal separation of the agent and the principal,
 40 unless the power of attorney otherwise provides; or

41 (d) The power of attorney terminates.

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

45 (4) Termination of an agent's authority or of a power of attorney is not effective as to

1 the agent or another person that, without actual knowledge of the termination, acts in good
 2 faith under the power of attorney. An act so performed, unless otherwise invalid or
 3 unenforceable, binds the principal and the principal's successors in interest.

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

9 (6) In the absence of fraud, an affidavit executed by the agent stating that at the time
 10 of doing an act under the power of attorney the agent did not have actual knowledge of the
 11 revocation or termination of the power of attorney by death or by incapacity is conclusive
 12 proof of the nonrevocation or nontermination of the power at that time. If the exercise of
 13 the power requires execution and delivery of any instrument that is recordable, the affidavit,
 14 when acknowledged, is also recordable.

15 (7) The execution of a power of attorney does not revoke a power of attorney previously
 16 executed by the principal unless the subsequent power of attorney provides that the previous
 17 power of attorney is revoked or that all other powers of attorney are revoked.

18 **SECTION 11. Coagents and successor agents (Uniform Power of Attorney Act section**
 19 **111).** (1) A principal may designate two or more persons to act as coagents. Unless the power
 20 of attorney otherwise provides, each coagent may exercise authority independently.

21 (2) A principal may designate one or more successor agents to act if an agent resigns,
 22 dies, becomes incapacitated, is not qualified to serve or declines to serve. A principal may
 23 grant authority to designate one or more successor agents to an agent or other person des-
 24 ignated by name, office or function. Unless the power of attorney otherwise provides, a suc-
 25 cessor agent:

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

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

29 (3) Except as otherwise provided in the power of attorney and subsection (4) of this sec-
 30 tion, an agent that does not participate in or conceal a breach of fiduciary duty committed
 31 by another agent, including a predecessor agent, is not liable for the actions of the other
 32 agent.

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

39 **SECTION 12. Reimbursement and compensation of agent (Uniform Power of Attorney**
 40 **Act section 112).** Unless the power of attorney otherwise provides, an agent is entitled to
 41 reimbursement of expenses reasonably incurred on behalf of the principal and to compen-
 42 sation that is reasonable under the circumstances.

43 **SECTION 13. Agent's acceptance (Uniform Power of Attorney Act section 113).** Except
 44 as otherwise provided in the power of attorney, a person accepts appointment as an agent
 45 under a power of attorney by exercising authority or performing duties as an agent or by

1 any other assertion or conduct indicating acceptance.

2 **SECTION 14. Agent's duties (Uniform Power of Attorney Act section 114).** (1)

3 Notwithstanding any provision to the contrary in the power of attorney:

4 (a) An agent that has accepted appointment shall act in accordance with the principal's
5 reasonable expectations to the extent actually known by the agent. If the agent does not
6 know the reasonable expectations of the principal, the agent shall act in the principal's best
7 interest.

8 (b) An agent that has accepted appointment shall act in good faith.

9 (c) An agent that has accepted appointment shall act only within the scope of authority
10 granted in the power of attorney.

11 (2) Except as otherwise provided in the power of attorney:

12 (a) An agent that has accepted appointment shall act loyally for the principal's benefit.

13 (b) An agent that has accepted appointment shall act so as not to create a conflict of
14 interest that impairs the agent's ability to act impartially in the principal's best interest.

15 (c) An agent that has accepted appointment shall act with the care, competence and
16 diligence ordinarily exercised by agents in similar circumstances.

17 (d) An agent that has accepted appointment shall keep a record of all receipts, dis-
18 bursements and transactions made on behalf of the principal.

19 (e) An agent that has accepted appointment shall cooperate with a person that has au-
20 thority to make health care decisions for the principal pursuant to an advance directive ex-
21 ecuted by the principal in accordance with ORS 127.505 to 127.660 or a declaration for mental
22 health treatment executed by the principal in accordance with ORS 127.700 to 127.737, to
23 carry out the principal's reasonable expectations to the extent actually known by the agent.
24 If the agent does not know the reasonable expectations of the principal, the agent shall act
25 in the principal's best interest.

26 (f) An agent that has accepted appointment shall attempt to preserve the principal's es-
27 tate plan, to the extent actually known by the agent, if preserving the plan is consistent with
28 the principal's best interest based on all relevant factors, including:

29 (A) The value and nature of the principal's property;

30 (B) The principal's foreseeable obligations and need for maintenance;

31 (C) Minimization of taxes, including income, estate, inheritance, generation-skipping
32 transfer and gift taxes; and

33 (D) Eligibility for a benefit, a program or assistance under a statute or regulation.

34 (3) An agent that acts in good faith is not liable to any beneficiary of the principal's es-
35 tate plan for failure to preserve the plan.

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

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

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

45 (7) An agent that exercises authority to delegate to another person the authority granted

1 by the principal, or that engages another person on behalf of the principal, is not liable for
 2 an act, error of judgment or default of that person if the agent exercises care, competence
 3 and diligence in selecting and monitoring the person.

4 (8) Except as otherwise provided in the power of attorney, an agent is not required to
 5 disclose receipts, disbursements or transactions conducted on behalf of the principal unless
 6 ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary
 7 acting for the principal, a governmental agency having authority to protect the welfare of
 8 the principal or, upon the death of the principal, by the personal representative or successor
 9 in interest of the principal's estate. If so requested, within 30 days the agent shall comply
 10 with the request or provide a writing or other record substantiating why additional time is
 11 needed and shall comply with the request within 60 days after the request.

12 **SECTION 15. Exoneration of agent (Uniform Power of Attorney Act section 115).** A pro-
 13 vision in a power of attorney relieving an agent of liability for breach of duty is binding on
 14 the principal and the principal's successors in interest except to the extent that the pro-
 15 vision:

16 (1) Relieves the agent of liability for breach of duty committed dishonestly, with an im-
 17 proper motive or with reckless indifference to the purposes of the power of attorney or the
 18 best interest of the principal; or

19 (2) Was inserted in the power of attorney as a result of an abuse of a confidential or
 20 fiduciary relationship with the principal.

21 **SECTION 16. Judicial relief (Uniform Power of Attorney Act section 116).** (1) The fol-
 22 lowing persons may petition a court to construe a power of attorney, or review an agent's
 23 conduct, and grant appropriate relief:

24 (a) The principal or the agent;

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

26 (c) A person authorized to make health care decisions or mental health treatment deci-
 27 sions for the principal;

28 (d) The principal's spouse, parent, domestic partner or descendant;

29 (e) An individual who would be entitled to a share of the principal's estate if the principal
 30 died on the day the petition is filed;

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

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

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

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

39 (2) Upon motion by the principal, the court shall dismiss a petition filed under this sec-
 40 tion unless the court finds that dismissal would be contrary to the principal's interest.

41 **SECTION 17. Agent's liability (Uniform Power of Attorney Act section 117).** An agent
 42 that violates sections 1 to 44 of this 2009 Act is liable to the principal or the principal's
 43 successors in interest for the amount required to:

44 (1) Restore the value of the principal's property to what it would have been had the vio-
 45 lation not occurred; and

1 (2) Reimburse the principal or the principal's successors in interest for the attorney fees
2 and costs incurred by the principal or the successors in interest.

3 **SECTION 18. Agent's resignation; notice (Uniform Power of Attorney Act section 118).**

4 (1) Unless the power of attorney provides a different method for an agent's resignation, an
5 agent may resign by giving notice to the principal if the principal is not incapacitated.

6 (2) Unless the power of attorney provides a different method for an agent's resignation,
7 and the principal is incapacitated, an agent may resign by giving notice to any conservator
8 or guardian appointed for the principal, and to any coagent or successor agent designated in
9 the power of attorney. If a conservator or guardian has not been appointed and no coagent
10 or successor agent designated under the power of attorney, an agent may resign by giving
11 notice to:

12 (a) The person reasonably believed by the agent to be the principal's primary caregiver;

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

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

16 **SECTION 19. Acceptance of and reliance on acknowledged power of attorney (Uniform**
17 **Power of Attorney Act section 119).** (1) For purposes of this section and section 20 of this
18 2009 Act, a power of attorney is acknowledged if the power of attorney appears on its face
19 to have been verified before a notary public or other individual authorized to take acknowl-
20 edgments.

21 (2) A person that in good faith accepts an acknowledged power of attorney without actual
22 knowledge that the signature of the principal is not genuine may rely upon the presumption
23 under section 5 of this 2009 Act that the signature is genuine.

24 (3) A person that in good faith accepts a power of attorney without actual knowledge that
25 the signature is not genuine, that the power of attorney is void, invalid or terminated, that
26 the purported agent's authority is void, invalid or terminated or that the agent is exceeding
27 or improperly exercising the agent's authority may rely upon the power of attorney as if the
28 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 au-
30 thority. The person is not required to ensure that the assets of the principal that are paid
31 or delivered to the agent are properly applied.

32 (4) A person that is asked to accept a power of attorney may request, and rely upon,
33 without further investigation:

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

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

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

41 (5) An English translation, or an opinion of counsel, requested under subsection (4) of
42 this section must be provided at the principal's expense unless the request is made more
43 than 10 business days after the power of attorney is presented for acceptance.

44 (6) For purposes of this section and section 20 of this 2009 Act, a person that conducts
45 activities through employees is without actual knowledge of a fact relating to a power of

1 attorney, a principal or an agent if the employee conducting the transaction involving the
 2 power of attorney is without actual knowledge of the fact.

3 **SECTION 20. Liability for refusal to accept acknowledged statutory form power of at-**
 4 **torney (Uniform Power of Attorney Act section 120).** (1) For the purposes of this section,
 5 “statutory form power of attorney” means a power of attorney substantially in the form
 6 provided in section 41 of this 2009 Act or a power of attorney that meets the requirements
 7 for a military power of attorney pursuant to 10 U.S.C. 1044b.

8 (2) Except as otherwise provided in subsection (3) of this section, not more than 10
 9 business days after presentation to a person of an acknowledged statutory form power of
 10 attorney, the person must accept the power of attorney or request a certification, a trans-
 11 lation or an opinion of counsel under section 19 (4) of this 2009 Act.

12 (3) Subject to subsection (5) of this section, if a person requests a certification, a trans-
 13 lation or an opinion of counsel under subsection (2) of this section, the person must accept
 14 the statutory form power of attorney not more than 10 business days after receiving a cer-
 15 tification, translation or opinion of counsel that is reasonably satisfactory to the person.

16 (4) A person may not require an additional or different form of power of attorney for
 17 authority that is granted in an acknowledged statutory form power of attorney presented to
 18 the person.

19 (5) A person is not required to accept an acknowledged statutory form power of attorney
 20 if:

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

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

25 (c) The person has actual knowledge of the termination of the agent’s authority or of the
 26 power of attorney before exercise of the power;

27 (d) A request for a certification, a translation or an opinion of counsel under section 19
 28 (4) of this 2009 Act is refused;

29 (e) The person in good faith believes that the power is not valid or that the agent does
 30 not have the authority to perform the act requested, whether or not a certification, a
 31 translation or an opinion of counsel under section 19 (4) of this 2009 Act has been requested
 32 or provided;

33 (f) The person has grounds to make a report, or has actual knowledge that another per-
 34 son has made a report, to the Department of Human Services or to a law enforcement
 35 agency indicating that the principal may be subject to physical or financial abuse, neglect,
 36 exploitation or abandonment by the agent or a person acting for or with the agent;

37 (g) The power of attorney does not contain a specimen signature of the agent authorized
 38 to act;

39 (h) The person in good faith suspects that the person presenting the statutory form
 40 power of attorney is not the agent named in the power of attorney;

41 (i) The person in good faith believes that the action proposed by the agent would consti-
 42 tute a wrongful taking, diverting or withholding of money or property of the principal; or

43 (j) The principal’s signature on the statutory form power of attorney was not witnessed
 44 or the witnesses did not sign the affidavit of attesting witnesses in the statutory form power
 45 of attorney.

1 (6) A person that refuses to accept an acknowledged statutory form power of attorney
2 in violation of this section is subject to:

3 (a) A judgment mandating acceptance of the power of attorney; and

4 (b) Liability for reasonable attorney fees and costs incurred in any action or proceeding
5 that confirms the validity of the power of attorney or mandates acceptance of the power of
6 attorney if the court determines that the person did not act in good faith in refusing to ac-
7 cept the acknowledged statutory form power of attorney.

8 SECTION 21. Principles of law and equity (Uniform Power of Attorney Act section 121).
9 Unless displaced by a provision of sections 1 to 44 of this 2009 Act, the principles of law and
10 equity supplement sections 1 to 44 of this 2009 Act.

11 SECTION 22. Laws applicable to financial institutions and entities (Uniform Power of
12 Attorney Act section 122). Sections 1 to 44 of this 2009 Act do not supersede any other law
13 applicable to financial institutions or other entities, and that other law controls if it is in-
14 consistent with sections 1 to 44 of this 2009 Act.

15 SECTION 23. Remedies under other law (Uniform Power of Attorney Act section 123).
16 The remedies under sections 1 to 44 of this 2009 Act are not exclusive and do not abrogate
17 any other right or remedy under the law of this state.

18
19 **AUTHORITY**
20

21 SECTION 24. Authority that requires specific grant; grant of general authority (Uniform
22 Power of Attorney Act section 201). (1) An agent under a power of attorney may exercise the
23 following authority on behalf of the principal or with the principal's property only if the
24 power of attorney expressly grants the agent the authority, and exercise of the authority is
25 not otherwise prohibited by another agreement or instrument to which the authority or
26 property is subject:

27 (a) Creating, amending, revoking or terminating an inter vivos trust.

28 (b) Making a gift.

29 (c) Creating or changing rights of survivorship.

30 (d) Creating or changing a beneficiary designation.

31 (e) Delegating authority granted under the power of attorney.

32 (f) Waiving the principal's right to be a beneficiary of a joint and survivor annuity, in-
33 cluding a survivor benefit under a retirement plan.

34 (g) Exercising fiduciary powers that the principal has authority to delegate.

35 (h) Disclaiming property or refusing an interest in property, including a power of ap-
36 pointment.

37 (2) Unless the power of attorney specifically so provides, an agent who is not an ancestor,
38 spouse, domestic partner or descendant of the principal may not exercise authority under a
39 power of attorney to create in the agent, or in an individual to whom the agent owes a legal
40 obligation of support, an interest in the principal's property, whether by gift, right of
41 survivorship, beneficiary designation, disclaimer or otherwise.

42 (3) Subject to subsections (1), (2), (4) and (5) of this section, if a power of attorney grants
43 to an agent authority to perform all acts that a principal could perform, the agent has the
44 general authority described in sections 27 to 40 of this 2009 Act.

45 (4) Unless the power of attorney specifically provides otherwise, a grant of authority to

1 make a gift is subject to section 40 of this 2009 Act.

2 (5) Subject to subsections (1), (2) and (4) of this section, if the subjects over which au-
 3 thority is granted in a power of attorney are similar or overlap, the broadest authority con-
 4 trols.

5 (6) Authority granted in a power of attorney is exercisable with respect to property that
 6 the principal has when the power of attorney is executed or later acquires, whether or not
 7 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 (7) An act performed by an agent pursuant to a power of attorney has the same effect
 10 and inures to the benefit of the principal and the principal's successors in interest, and binds
 11 the principal and the principal's successors in interest, as if the principal had performed the
 12 act.

13 **SECTION 25. Incorporation of authority (Uniform Power of Attorney Act section 202).** (1)
 14 An agent has authority as described in sections 27 to 40 of this 2009 Act with respect to a
 15 subject area identified in sections 27 to 40 of this 2009 Act if the power of attorney incorpo-
 16 rates that authority by:

17 (a) Granting general authority with respect to one of those areas and referring to the
 18 subject area using the descriptive terms used for the subject area in sections 27 to 40 of this
 19 2009 Act; or

20 (b) Granting authority with respect to the subject area by citing the provision of sections
 21 27 to 40 of this 2009 Act that describes the authority of an agent in the subject area.

22 (2) If a provision of sections 27 to 40 of this 2009 Act is incorporated in a power of at-
 23 torney under this section, the provision has the same effect as if the provision were set out
 24 in full in the power of attorney.

25 (3) A principal may modify any authority incorporated by reference under this section.

26 **SECTION 26. Construction of authority generally (Uniform Power of Attorney Act sec-**
 27 **tion 203).** Except as otherwise provided in the power of attorney, by executing a power of
 28 attorney that incorporates by reference a subject described in sections 27 to 40 of this 2009
 29 Act, or by executing a power of attorney that grants authority to an agent to do all acts that
 30 a principal could do pursuant to section 24 (3) of this 2009 Act, a principal authorizes the
 31 agent, with respect to that subject, to:

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

35 (2) Contract in any manner with any person, on terms agreeable to the agent, to ac-
 36 complish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
 37 release or modify the contract or another contract made by or on behalf of the principal.

38 (3) Execute, acknowledge, seal, deliver, file or record any instrument or communication
 39 the agent considers desirable to accomplish a purpose of a transaction, including creating
 40 at any time a schedule listing some or all of the principal's property and attaching the
 41 schedule to the power of attorney.

42 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
 43 propose or accept a compromise with respect to a claim existing in favor of or against the
 44 principal or intervene in litigation relating to the claim.

45 (5) Seek on the principal's behalf the assistance of a court or other governmental agency

1 to carry out an act authorized in the power of attorney.

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

4 (7) Prepare, execute and file a record, report or other document to safeguard or promote
5 the principal's interest under a statute or regulation.

6 (8) Communicate with any representative or employee of a government or governmental
7 subdivision, agency or instrumentality on behalf of the principal.

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

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

11 **SECTION 27. Real property (Uniform Power of Attorney Act section 204).** Unless the
12 power of attorney otherwise provides, language in a power of attorney granting general au-
13 thority with respect to real property authorizes the agent to:

14 (1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit,
15 or otherwise acquire or reject an interest in real property or a right incident to real prop-
16 erty.

17 (2) Sell, exchange, convey with or without covenants, representations or warranties,
18 quitclaim, release, surrender, retain title for security for, encumber, partition or consent to
19 partitioning subject to an easement or covenant, subdivide, apply for zoning or other gov-
20 ernmental permits for, plat or consent to platting, develop, explore for and extract minerals
21 from, exploit in a way that causes depletion of, grant an option concerning, lease, sublease,
22 contribute to a legal entity in exchange for an interest in that entity or otherwise grant or
23 dispose of an interest in real property or a right incident to real property.

24 (3) Pledge or mortgage an interest in real property or right incident to real property as
25 security to borrow money or pay, renew or extend the time of payment of a debt of the
26 principal or a debt guaranteed by the principal.

27 (4) Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust,
28 conditional sale contract, encumbrance, lien or other claim to real property that exists or
29 is asserted.

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

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

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

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

37 (d) Purchasing supplies, hiring assistance or labor and making repairs or alterations to
38 the real property.

39 (6) Use, develop, alter, replace, remove, erect or install structures or other improve-
40 ments upon real property in or incident to which the principal has, or claims to have, an
41 interest or right.

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

45 (a) Selling or otherwise disposing of them;

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

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

4 (8) Change the form of title of an interest in or right incident to real property.

5 (9) Dedicate to public use, with or without consideration, easements or other real prop-
6 erty in which the principal has, or claims to have, an interest.

7 (10) Participate in any proceeding involving eminent domain, including the grant or sur-
8 render of rights or property in lieu of condemnation.

9 **SECTION 28. Tangible personal property (Uniform Power of Attorney Act section 205).**

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

12 (1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or
13 otherwise acquire or reject ownership or possession of tangible personal property or an in-
14 terest in tangible personal property.

15 (2) Sell, exchange, convey with or without covenants, representations or warranties,
16 quitclaim, release, surrender, create a security interest in, grant options concerning, lease,
17 sublease or otherwise dispose of tangible personal property or an interest in tangible per-
18 sonal property.

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

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

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

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

28 (b) Obtaining or regaining possession of or protecting the property or interest, by liti-
29 gation or otherwise;

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

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

33 (e) Storing the property for hire or on a gratuitous bailment; and

34 (f) Using and making repairs, alterations or improvements to the property.

35 (6) Change the form of title of an interest in tangible personal property.

36 **SECTION 29. Stocks and bonds (Uniform Power of Attorney Act section 206).** Unless the
37 power of attorney otherwise provides, language in a power of attorney granting general au-
38 thority with respect to stocks and bonds authorizes the agent to:

39 (1) Buy, sell and exchange stocks and bonds.

40 (2) Establish, continue, modify or terminate an account with respect to stocks and bonds.

41 (3) Pledge stocks and bonds as security to borrow, pay, renew or extend the time of
42 payment of a debt of the principal.

43 (4) Receive certificates and other evidences of ownership with respect to stocks and
44 bonds.

45 (5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter

1 into voting trusts and consent to limitations on the right to vote.

2 **SECTION 30. Commodities and options (Uniform Power of Attorney Act section 207).**

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

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

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

8 **SECTION 31. Banks and other financial institutions (Uniform Power of Attorney Act**
9 **section 208).** Unless the power of attorney otherwise provides, language in a power of attor-
10 ney granting general authority with respect to banks and other financial institutions au-
11 thorizes the agent to:

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

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

17 (3) Contract for services available from a financial institution, including renting a safe
18 deposit box or space in a vault.

19 (4) Withdraw, by check, order, electronic funds transfer or otherwise, money or property
20 of the principal deposited with or left in the custody of a financial institution.

21 (5) Receive statements of account, vouchers, notices and similar documents from a fi-
22 nancial institution and act with respect to them.

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

24 (7) Borrow money and grant security interests in real and personal property of the
25 principal to secure loans and other debts of the principal or debts guaranteed by the princi-
26 pal.

27 (8) Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes,
28 checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the
29 principal or the principal's order, transfer money, receive the cash or other proceeds of
30 those transactions and accept a draft drawn by a person upon the principal and pay the draft
31 when due.

32 (9) Receive for the principal and act upon a sight draft, warehouse receipt or other doc-
33 ument of title, whether tangible or electronic, or other negotiable or nonnegotiable instru-
34 ment.

35 (10) Apply for, receive and use letters of credit, credit and debit cards, electronic trans-
36 action authorizations and traveler's checks from a financial institution and give an indem-
37 nity or other agreement in connection with letters of credit.

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

40 (12) Prepare any necessary financial statements of the assets and liabilities or income
41 and expenses of the principal for submission to any banking or financial institution.

42 **SECTION 32. Operation of entity or business (Uniform Power of Attorney Act section**
43 **209).** Subject to the terms of a document or an agreement governing an entity or an entity
44 ownership interest, and unless the power of attorney otherwise provides, language in a power
45 of attorney granting general authority with respect to operation of an entity or business

1 authorizes the agent to:

2 (1) Operate, buy, sell, enlarge, reduce or terminate an ownership interest.

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

5 (3) Enforce the terms of an ownership agreement.

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

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

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

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

15 (a) Continue, modify, renegotiate, extend and terminate a contract made by or on behalf
16 of the principal with respect to the entity or business before execution of the power of at-
17 torney.

18 (b) Determine the location of its operation.

19 (c) Determine the nature and extent of its business.

20 (d) Determine the methods of manufacturing, selling, merchandising, financing, ac-
21 counting and advertising employed in its operation.

22 (e) Determine the amount and types of insurance carried.

23 (f) Determine the mode of engaging, compensating and dealing with its employees and
24 accountants, attorneys or other advisors.

25 (g) Change the name or form of organization under which the entity or business is op-
26 erated and enter into an ownership agreement with other persons to take over all or part
27 of the operation of the entity or business.

28 (h) Demand and receive money due or claimed by the principal or on the principal's be-
29 half in the operation of the entity or business, and control and disburse the money in the
30 operation of the entity or business.

31 (8) Put additional capital into an entity or business in which the principal has an interest.

32 (9) Join in a plan of reorganization, consolidation, conversion, domestication or merger
33 of the entity or business.

34 (10) Sell or liquidate all or part of an entity or business.

35 (11) Establish the value of an entity or business under a buyout agreement to which the
36 principal is a party.

37 (12) Prepare, sign, file and deliver reports, compilations of information, returns or other
38 papers with respect to an entity or business, and make related payments.

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

43 (14) Establish, manage, perfect, defend, license and dispose of any intangible and intel-
44 lectual property of the principal or in which the principal claims an interest, including pat-
45 ents, trademarks, copyrights and trade secrets.

1 (15) Engage in any banking or financial transaction which the agent deems desirable or
2 necessary for effectuating the execution of any of the powers of the agent described in this
3 section.

4 **SECTION 33. Insurance and annuities (Uniform Power of Attorney Act section 210).** Un-
5 less the power of attorney otherwise provides, language in a power of attorney granting
6 general authority with respect to insurance and annuities authorizes the agent to:

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

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

14 (3) Pay the premium or make a contribution on, modify, exchange, rescind, release or
15 terminate a contract of insurance or annuity procured by the agent.

16 (4) Apply for and receive a loan secured by a contract of insurance or annuity.

17 (5) Surrender and receive the cash surrender value on a contract of insurance or annu-
18 ity.

19 (6) Exercise an election.

20 (7) Exercise investment powers available under a contract of insurance or annuity.

21 (8) Change the manner of paying premiums on a contract of insurance or annuity.

22 (9) Change or convert the type of insurance or annuity with respect to which the prin-
23 cipal has or claims to have authority described in this section.

24 (10) Apply for and procure a benefit or assistance under a statute or regulation to guar-
25 antee or pay premiums of a contract of insurance on the life of the principal.

26 (11) Collect, sell, assign, hypothecate, borrow against or pledge the interest of the prin-
27 cipal in a contract of insurance or annuity.

28 (12) Select the form and timing of the payment of proceeds from a contract of insurance
29 or annuity.

30 (13) Pay, from proceeds or otherwise, compromise or contest and apply for refunds in
31 connection with a tax or assessment levied by a taxing authority with respect to a contract
32 of insurance or annuity or its proceeds or liability accruing by reason of the tax or assess-
33 ment.

34 **SECTION 34. Estates, trusts and other beneficial interests (Uniform Power of Attorney**
35 **Act section 211).** (1) For the purposes of this section, "estates, trusts, and other beneficial
36 interests" means a trust, probate estate, guardianship, conservatorship, escrow or
37 custodianship or a fund from which the principal is, may become or claims to be entitled to
38 a share or payment.

39 (2) Unless the power of attorney otherwise provides, language in a power of attorney
40 granting general authority with respect to estates, trusts and other beneficial interests au-
41 thORIZES the agent to:

42 (a) Accept, receive, receipt for, sell, assign, pledge or exchange a share in or payment
43 from the fund.

44 (b) Demand or obtain money or another thing of value to which the principal is, may
45 become or claims to be entitled by reason of the fund, by litigation or otherwise.

1 (c) Exercise, for the benefit of the principal, a presently exercisable general power of
2 appointment held by the principal.

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

7 (e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
8 propose or accept a compromise with respect to litigation to remove, substitute or surcharge
9 a fiduciary.

10 (f) Conserve, invest, disburse or use anything received for an authorized purpose.

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

14 (h) Reject, renounce, disclaim, release or consent to a reduction in or modification of a
15 share in or payment from the fund.

16 (i) Prepare, sign, file and deliver all reports, compilations of information, returns or pa-
17 pers with respect to any interest had or claimed by the principal in the fund.

18 (j) Pay, compromise, contest or apply for and receive refunds in connection with any tax
19 or assessment.

20 (k) Agree to and contract for the accomplishment of the purposes listed in this section,
21 and perform, rescind, reform, release or modify the agreement or contract.

22 **SECTION 35. Claims and litigation (Uniform Power of Attorney Act section 212). Unless**
23 **the power of attorney otherwise provides, language in a power of attorney granting general**
24 **authority with respect to claims and litigation authorizes the agent to:**

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

29 (2) Bring an action to determine adverse claims or intervene or otherwise participate in
30 litigation.

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

34 (4) Make or accept a tender, offer of judgment or admission of facts, submit a contro-
35 versy on an agreed statement of facts, consent to examination and bind the principal in liti-
36 gation.

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

38 (6) Waive the issuance and service of process upon the principal, accept service of pro-
39 cess, appear for the principal, designate persons upon which process directed to the principal
40 may be served, execute and file or deliver stipulations on the principal's behalf, verify
41 pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and
42 pay for the preparation and printing of records and briefs in connection with the prosecution,
43 settlement or defense of a claim or litigation.

44 (7) Receive, execute and file or deliver a consent, waiver, release, confession of judgment,
45 satisfaction of judgment, notice, agreement or other instrument in connection with the

1 prosecution, settlement or defense of a claim or litigation.

2 (8) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or
 3 involuntary, concerning the principal or some other person, or with respect to a reorgan-
 4 ization, receivership or application for the appointment of a receiver or trustee that affects
 5 an interest of the principal in property or other thing of value.

6 (9) Pay a judgment, award or order against the principal or a settlement made in con-
 7 nection with a claim or litigation.

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

10 **SECTION 36. Personal and family maintenance (Uniform Power of Attorney Act section**
 11 **213).** (1) Unless the power of attorney otherwise provides, language in a power of attorney
 12 granting general authority with respect to personal and family maintenance authorizes the
 13 agent to:

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

17 (A) The principal's children;

18 (B) Other individuals legally entitled to be supported by the principal; and

19 (C) The individuals whom the principal has customarily supported or indicated the intent
 20 to support.

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

23 (c) Provide living quarters for the individuals described in paragraph (a) of this sub-
 24 section by:

25 (A) Purchase, lease or other contract; or

26 (B) Paying the operating costs, including interest, amortization payments, repairs, im-
 27 provements and taxes, for premises owned by the principal or occupied by those individuals.

28 (d) Provide normal domestic help, usual vacations and travel expenses, and funds for
 29 shelter, clothing, food, appropriate education, including postsecondary and vocational educa-
 30 tion, and other current living costs for the individuals described in paragraph (a) of this
 31 subsection.

32 (e) Pay expenses for necessary health care and custodial care on behalf of the individuals
 33 described in paragraph (a) of this subsection.

34 (f) Act as the principal's personal representative pursuant to the Health Insurance Por-
 35 tability and Accountability Act of 1996 (P.L. 104-191) and applicable regulations, in making
 36 decisions related to the past, present or future payment for the provision of health care
 37 consented to by the principal or anyone authorized under the law of this state to consent to
 38 health care on behalf of the principal.

39 (g) Continue any provision made by the principal for transportation, including register-
 40 ing, licensing, insuring and replacing automobiles or other means of transportation, for the
 41 individuals described in paragraph (a) of this subsection.

42 (h) Maintain or open new credit and debit accounts for the convenience of the individuals
 43 described in paragraph (a) of this subsection.

44 (i) Continue payments incidental to the membership or affiliation of the principal in a
 45 religious institution, club, society, order or other organization or to continue contributions

1 to those organizations.

2 (j) Use any asset of the principal for the performance of the powers enumerated in this
 3 section, including the power to draw money by check or otherwise from any financial insti-
 4 tution deposit of the principal, to sell and convert to cash any asset, to borrow money and
 5 pledge as security for a loan.

6 (2) Authority with respect to personal and family maintenance is neither dependent upon
 7 nor limited by authority that an agent may or may not have with respect to gifts under
 8 sections 1 to 44 of this 2009 Act.

9 **SECTION 37. Benefits from governmental programs or from civil or military service**
 10 **(Uniform Power of Attorney Act section 214).** (1) For the purposes of this section, “benefits
 11 from governmental programs or civil or military service” means any benefit, program or
 12 assistance provided under a statute or regulation including Social Security, Medicare and
 13 Medicaid.

14 (2) Unless the power of attorney otherwise provides, and subject to the requirements of
 15 the payor or issuing agency, language in a power of attorney granting general authority with
 16 respect to benefits from governmental programs or civil or military service authorizes the
 17 agent to:

18 (a) Execute vouchers in the name of the principal for allowances and reimbursements
 19 payable by the United States or a foreign government or by a state or subdivision of a state
 20 to the principal, including allowances and reimbursements for transportation of the individ-
 21 uals described in section 36 (1)(a) of this 2009 Act, and for shipment of their household ef-
 22 fects.

23 (b) Take possession and order the removal and shipment of property of the principal from
 24 a post, warehouse, depot, dock or other place of storage or safekeeping, either governmental
 25 or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket,
 26 certificate or other instrument for that purpose.

27 (c) Enroll in, apply for, select, reject, change, amend or discontinue, on the principal’s
 28 behalf, a benefit or program.

29 (d) Prepare, file and maintain a claim of the principal for a benefit or assistance, financial
 30 or otherwise, to which the principal may be entitled under a statute or regulation.

31 (e) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or
 32 propose or accept a compromise with respect to litigation concerning any benefit or assist-
 33 ance the principal may be entitled to receive under a statute or regulation.

34 (f) Receive the financial proceeds of a claim described in paragraph (d) of this subsection
 35 and conserve, invest, disburse or use for a lawful purpose anything so received.

36 (g) Receive, endorse and collect the proceeds of any check, draft, warrant or other pay-
 37 ment instrument or any payment by electronic means that is payable to the order of the
 38 principal and is drawn on the treasurer or other fiscal officer or depository of the United
 39 States, any department, agency or other subdivision of the United States, any state or any
 40 department, agency, county, municipality or other subdivision of a state.

41 **SECTION 38. Retirement plans (Uniform Power of Attorney Act section 215).** (1) For the
 42 purposes of this section, “retirement plan” means a plan or account created by an employer,
 43 the principal or another individual to provide retirement benefits or deferred compensation
 44 of which the principal is a participant, beneficiary or owner, including a plan or account
 45 under the following sections of the Internal Revenue Code:

- 1 (a) An individual retirement account under 26 U.S.C. 408;
- 2 (b) A Roth individual retirement account under 26 U.S.C. 408A;
- 3 (c) A deemed individual retirement account under 26 U.S.C. 408(q);
- 4 (d) An annuity or mutual fund custodial account under 26 U.S.C. 403(b);
- 5 (e) A pension, profit-sharing, stock bonus or other retirement plan qualified under 26
- 6 U.S.C. 401(a);
- 7 (f) A plan under 26 U.S.C. 457(b); and
- 8 (g) A nonqualified deferred compensation plan under 26 U.S.C. 409A.

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

- 11 (a) Select the form and timing of payments under a retirement plan and withdraw bene-
- 12 fits from a plan.
- 13 (b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one
- 14 retirement plan to another.
- 15 (c) Establish a retirement plan in the principal's name.
- 16 (d) Make contributions to a retirement plan.
- 17 (e) Exercise investment powers available under a retirement plan.
- 18 (f) Borrow from, sell assets to or purchase assets from a retirement plan.

19 **SECTION 39. Taxes (Uniform Power of Attorney Act section 216).** Unless the power of
20 attorney otherwise provides, language in a power of attorney granting general authority with
21 respect to taxes authorizes the agent to:

- 22 (1) Prepare, sign and file federal, state, local and foreign income, gift, payroll, property,
- 23 Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for
- 24 extension of time, petitions regarding tax matters and any other tax-related documents, in-
- 25 cluding receipts, offers, waivers, consents, including consents and agreements under 26
- 26 U.S.C. 2032A, closing agreements and any power of attorney required by the Internal Re-
- 27 venue Service or other taxing authority for the purposes of the following 25 tax years and
- 28 for the purposes of any tax year upon which the statute of limitations has not run.
- 29 (2) Pay taxes due, including interest and penalties, collect refunds, post bonds, receive
- 30 confidential information and contest deficiencies determined by the Internal Revenue Service
- 31 or other taxing authority.
- 32 (3) Exercise any election available to the principal under federal, state, local or foreign
- 33 tax law.
- 34 (4) Act for the principal in all tax matters for all periods before the Internal Revenue
- 35 Service or other taxing authority.

36 **SECTION 40. Gifts (Uniform Power of Attorney Act section 217).** (1) For the purposes of
37 this section, a gift "for the benefit of" a person includes a gift to a trust, an account under
38 ORS 126.805 to 126.886, and a tuition savings account or prepaid tuition plan under 26 U.S.C.
39 529.

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

- 42 (a) Make outright to, or for the benefit of, a person a gift of any of the principal's prop-
- 43 erty, including by the exercise of a presently exercisable general power of appointment held
- 44 by the principal, in an amount per donee not to exceed the annual dollar limits of the federal
- 45 gift tax exclusion under 26 U.S.C. 2503(b) without regard to whether the federal gift tax ex-

1 clusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pur-
2 suant to 26 U.S.C. 2513 in an amount per donee not to exceed twice the annual federal gift
3 tax exclusion limit;

4 (b) Consent, pursuant to 26 U.S.C. 2513, to the splitting of a gift made by the principal's
5 spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for
6 both spouses; and

7 (c) Make gifts to charitable organizations to satisfy written pledges executed by the
8 principal.

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

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

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

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

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

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

19
20 **STATUTORY FORMS**

21
22 **SECTION 41. Statutory form power of attorney (Uniform Power of Attorney Act section**
23 **301).** A power of attorney that meets the requirements for a military power of attorney un-
24 der 10 U.S.C. 1044b, or a document in substantially the following form, must be used to
25 create a statutory form power of attorney that has the meaning and effect prescribed by
26 section 20 of this 2009 Act:
27

28
29 **OREGON STATUTORY FORM**
30 **POWER OF ATTORNEY**

31
32 **IMPORTANT INFORMATION**

33
34 **This power of attorney authorizes another person (your agent) to make decisions about your**
35 **property for you (the principal). Your agent will be able to make decisions and act with re-**
36 **spect to your property (including your money) whether or not you can act for yourself. The**
37 **meaning of the authority over the subjects listed on this form is explained in the Uniform**
38 **Power of Attorney Act (sections 1 to 44 of this 2009 Act).**

39
40 **This power of attorney does not authorize the agent to make health care decisions for you.**

41
42 **You should select someone you trust to serve as your agent. Unless you specify otherwise,**
43 **the agent's authority generally continues until you die or revoke the power of attorney or**
44 **the agent resigns or is unable to act for you.**

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

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

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

10
11 This power of attorney becomes effective immediately unless you state otherwise in the
12 Special Instructions.

13
14 If you have questions about the power of attorney or the authority you are granting to your
15 agent, you should seek legal advice before signing this form.

16
17 **DESIGNATION OF AGENT**

18
19 I, _____ (Name of Principal), name the following person as my
20 agent:

21
22 Name of Agent: _____

23
24 Agent's Address: _____

25
26 Agent's Telephone Number: _____

27
28 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

29
30 I do not wish to designate a successor agent:

31
32 _____ (initial if you do not want to name a successor agent).

33
34 If my agent is unable or unwilling to act for me, I name as my successor agent:

35
36 Name of Successor Agent: _____

37
38 Successor Agent's Address: _____

39
40 Successor Agent's Telephone Number: _____

41
42 If my successor agent is unable or unwilling to act for me, I name as my second successor
43 agent:

44
45 Name of Second Successor Agent: _____

1 **Second Successor Agent’s Address:** _____

3 **Second Successor Agent’s Telephone Number:** _____

5 **GRANT OF GENERAL AUTHORITY**

7 **I grant my agent and any successor agent general authority to act for me with respect to**
8 **the following subjects as defined in the Uniform Power of Attorney Act (sections 1 to 44 of**
9 **this 2009 Act).**

11 **(INITIAL one of the two boxes next to each subject to indicate whether you do or do not**
12 **want to include authority over that subject in the agent’s general authority. If neither box**
13 **is initialed next to a particular subject, the authority over that subject is NOT granted to**
14 **the agent.)**

16 **I include authority**
17 **over this subject**

I do not include
authority over
this subject

- | | | | |
|----|-------|-------|---|
| 19 | (___) | (___) | Real Property |
| 20 | (___) | (___) | Tangible Personal Property |
| 21 | (___) | (___) | Stocks and Bonds |
| 22 | (___) | (___) | Commodities and Options |
| 23 | (___) | (___) | Banks and Other Financial Institutions |
| 24 | (___) | (___) | Operation of Entity or Business |
| 25 | (___) | (___) | Insurance and Annuities |
| 26 | (___) | (___) | Estates, Trusts and Other Beneficial Interests |
| 27 | (___) | (___) | Claims and Litigation |
| 28 | (___) | (___) | Personal and Family Maintenance |
| 29 | (___) | (___) | Benefits from Governmental Programs |
| 30 | | | or Civil or Military Service |
| 31 | (___) | (___) | Retirement Plans |
| 32 | (___) | (___) | Taxes |

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

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

39 **(CAUTION: Granting any of the following will give your agent the authority to take actions**
40 **that could significantly reduce your property or change how your property is distributed at**
41 **your death. INITIAL one of the two boxes next to each authority to indicate whether or not**
42 **you want to give your agent authority over each subject.)**

44 **I grant authority**
45 **over this subject**

I do not grant
authority over

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this subject

- Create, amend, revoke or terminate a living trust**
- Make a gift, subject to the limitations of section 40 of this 2009 Act and any special instructions in this power of attorney**
- Create or change rights of survivorship**
- Create or change a beneficiary designation**
- Authorize another person to exercise the authority granted under this power of attorney**
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan**
- Exercise fiduciary powers that the principal has authority to delegate**

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)

I do not wish to give any special instructions:

____ (initial if you do not wish to give any special instructions)

You may give special instructions on the following lines:

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2
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EFFECTIVE DATE

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

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

I do not wish to nominate a conservator or guardian:

_____ (initial if you do not wish to nominate a conservator or guardian)

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

Name of Nominee for conservator 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

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

REVOCAION OF PRIOR POWERS OF ATTORNEY

**_____ I hereby revoke all powers of attorney that I have previously executed except:

_____ (describe any previous powers of attorney
you do not wish to revoke)**

SIGNATURE AND ACKNOWLEDGMENT

Your Signature Date

Your Name Printed

Your Address

1 _____

2 **Your Telephone Number**

3 **State of Oregon,)**

4 _____) **ss.**

5 **County of _____)**

6

7 **The above document was acknowledged before me on _____ (Date)**

8 **by _____ (Name of Principal).**

9

Notary Public for _____

10

My commission expires: _____

11

12

13 **This document prepared by:**

14

15

16

17 **WITNESS CERTIFICATION**

18

19 **THIS CERTIFIES that the foregoing instrument consisting of _____ sheets of typewriting,**

20 **including this sheet, was on _____ (insert date) duly signed by**

21 **_____ (insert name of principal), the Principal named**

22 **therein, in the presence of us, who, at the Principal's request, and within the Principal's**

23 **presence, and in the presence of each other, have signed this certification as witnesses.**

24

25 _____ **Residing at _____.**

26 _____ **Residing at _____.**

27

28 **AFFIDAVIT OF ATTESTING WITNESSES TO**

29

POWER OF ATTORNEY OF

30

31

(Insert name of Principal)

32

33 **State of Oregon,)**

34 _____) **ss.**

35 **County of _____)**

36

37 **I, _____, and I, _____, each duly**
38 **sworn, say:**

39 **That I am one of the attesting witnesses to the Power of Attorney of**

40 **_____ (insert name of Principal), dated**

41 **_____ (insert date of Power of Attorney), to which this Affidavit is at-**

42 **tached; and**

43 **That said Power of Attorney was signed by the Principal on said date, in the presence**
44 **of each of us; and**

45 **That at the request of the Principal, in the presence of the Principal, and in the presence**

1 of the other of the undersigned witnesses, I subscribed my name to the Power of Attorney
2 as an attesting witness; and

3 That to the best of my knowledge and belief, the Principal was then over the age of
4 eighteen (18) years, comprehended the nature of the Power of Attorney and the consequences
5 of its execution, was not acting under duress or undue influence, and was not induced by
6 misrepresentation or fraud to execute said Power of Attorney.

7 _____
8 _____
9 _____

10 SUBSCRIBED and sworn to by each of the affiants above named this ____ day of
11 _____, _____.

12 _____
13 Notary Public for _____

14 My commission expires: _____

15
16 **IMPORTANT INFORMATION FOR AGENT**

17 **Agent's Duties**

18
19 **When you accept the authority granted under this power of attorney, a special legal re-**
20 **lationship is created between you and the principal. This relationship imposes upon you legal**
21 **duties that continue until you resign or the power of attorney is terminated or revoked. You**
22 **must:**

23 (1) **Do what you know the principal reasonably expects you to do with the principal's**
24 **property or, if you do not know the principal's expectations, act in the principal's best in-**
25 **terest;**

26 (2) **Act in good faith;**

27 (3) **Do nothing beyond the authority granted in this power of attorney; and**

28 (4) **Disclose your identity as an agent whenever you act for the principal by writing or**
29 **printing the name of the principal and signing your own name as "agent" in the following**
30 **manner:**

31 _____ (Principal's Name) by _____

32 **(Your Signature) as Agent**

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

34 (1) **Act loyally for the principal's benefit;**

35 (2) **Act with care, competence and diligence;**

36 (3) **Keep a record of all monies received, monies paid out and transactions made on behalf**
37 **of the principal;**

38 (4) **Cooperate with any person that has authority to make health care decisions for the**
39 **principal to do what you know the principal reasonably expects or, if you do not know the**
40 **principal's expectations, to act in the principal's best interest; and**

41 (5) **Attempt to preserve the principal's estate plan if you know the plan and preserving**
42 **the plan is consistent with the principal's best interest.**

43
44 **Termination of Agent's Authority**
45

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

- (1) Death of the principal;**
- (2) The principal’s revocation of the power of attorney or your authority;**
- (3) The occurrence of a termination event stated in the power of attorney;**
- (4) The purpose of the power of attorney is fully accomplished; or**
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.**

Liability of Agent

The authority granted to you is defined in the Uniform Power of Attorney Act (sections 1 to 44 of this 2009 Act). If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

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

Dated this ____ day of _____, 20____.

**Specimen signature of Agent and Agent’s
Acceptance of Appointment**

SECTION 42. Agent’s certification (Uniform Power of Attorney Act section 302). The following optional form may be used by an agent to certify facts concerning a power of attorney:

**AGENT’S CERTIFICATION AS TO THE VALIDITY OF
POWER OF ATTORNEY AND AGENT’S AUTHORITY**

State of Oregon,)
) ss.
County of _____)

I, _____ (Name of Agent), certify under penalty of perjury that _____ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated _____, 20____.

I further certify that to my knowledge:

1 (1) The Principal is alive and has not revoked the Power of Attorney or my authority to
2 act under the Power of Attorney and the Power of Attorney and my authority to act under
3 the Power of Attorney have not terminated;

4 (2) If the Power of Attorney was drafted to become effective upon the happening of an
5 event or contingency, the event or contingency has occurred;

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

8 (4) _____
9 _____
10 _____
11 _____

12 (Insert other relevant statements)

13
14 **SIGNATURE AND ACKNOWLEDGMENT**

15
16 _____
17 **Agent's Signature** **Date**

18 _____
19 **Agent's Name Printed**

20 _____
21 _____

22 **Agent's Address**
23 _____

24 **Agent's Telephone Number**

25
26 This document was acknowledged before me on _____ (Date),
27 by _____ (Name of Agent).

28 _____
29 Notary Public for _____

30 My commission expires: _____

31
32 This document prepared by: _____

33
34
35
36 **MISCELLANEOUS PROVISIONS**

37
38 **SECTION 43. Uniformity of application and construction (Uniform Power of Attorney Act**
39 **section 401).** In applying and construing sections 1 to 44 of this 2009 Act, consideration must
40 be given to the need to promote uniformity of the law with respect to its subject matter
41 among the states that enact it.

42 **SECTION 44. Relation to Electronic Signatures in Global and National Commerce Act**
43 **(Uniform Power of Attorney Act section 402).** Except for 15 U.S.C. 7001(c), sections 1 to 44
44 of this 2009 Act modify, limit and supersede the federal Electronic Signatures in Global and
45 National Commerce Act, 15 U.S.C. 7001 et seq. Sections 1 to 44 of this 2009 Act do not au-

1 **thorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b).**

2 **SECTION 45. Effect on existing powers of Attorney (Uniform Power of Attorney Act**
 3 **section 403). Except as otherwise provided in sections 1 to 44 of this 2009 Act:**

4 (1) Sections 1 to 44 of this 2009 Act apply to a power of attorney created before, on or
 5 after the effective date of this 2009 Act;

6 (2) Sections 1 to 44 of this 2009 Act apply to a judicial proceeding concerning a power of
 7 attorney commenced on or after the effective date of this 2009 Act;

8 (3) Sections 1 to 44 of this 2009 Act apply to a judicial proceeding concerning a power of
 9 attorney commenced before the effective date of this 2009 Act unless the court finds that
 10 application of a provision of sections 1 to 44 of this 2009 Act would substantially interfere
 11 with the effective conduct of the judicial proceeding or prejudice the rights of a party, in
 12 which case that provision does not apply and the superseded law applies; and

13 (4) An act done before the effective date of this 2009 Act is not affected by sections 1 to
 14 44 of this 2009 Act.

15 **SECTION 46.** ORS 93.670 is amended to read:

16 93.670. [(1)] Every [letter] **power** of attorney, or other instrument containing a power to convey
 17 lands, as agent or attorney for the owner of such lands, and every executory contract for the sale
 18 or purchase of lands, when acknowledged or proved in the manner prescribed for the acknowledg-
 19 ment or proof of conveyances, may be recorded in the county clerk's office of any county in which
 20 the lands to which such power or contract relates is situated. When so acknowledged or proved,
 21 such [letter] **power of attorney**, instrument or contract, and the record thereof when recorded, or
 22 the certified transcript of such record, may be read in evidence in any court in this state without
 23 further proof of the same.

24 [(2) *No letter of attorney, or other instrument so recorded, is deemed to be revoked by any act of*
 25 *the party by whom it was executed unless the instrument containing such revocation is also recorded*
 26 *in the same office in which the instrument containing the power was recorded.*]

27 **SECTION 47.** ORS 125.445 is amended to read:

28 125.445. A conservator may perform the following acts without prior court authorization or
 29 confirmation if the conservator is acting reasonably to accomplish the purposes for which the
 30 conservator was appointed:

31 (1) Collect, hold and retain assets of the estate including land wherever situated, until, in the
 32 judgment of the conservator, disposition of the assets should be made. Assets of the estate may be
 33 retained even though those assets include property in which the conservator is personally inter-
 34 ested.

35 (2) Receive additions to the estate.

36 (3) Continue or participate in the operation of any business or other enterprise.

37 (4) Acquire an undivided interest in an estate asset in which the conservator, in any fiduciary
 38 capacity, holds an undivided interest.

39 (5) Invest and reinvest estate assets and funds in the same manner as a trustee may invest and
 40 reinvest.

41 (6) Deposit estate funds in a bank including a bank operated by the conservator.

42 (7) Except as limited in ORS 125.430, acquire or dispose of an estate asset including real prop-
 43 erty wherever situated for cash or on credit, at public or private sale.

44 (8) Manage, develop, improve, exchange, partition, change the character of or abandon an estate
 45 asset in connection with the exercise of any power vested in the conservator.

1 (9) Make ordinary or extraordinary repairs or alterations in buildings or other structures, de-
 2 molish any improvements, or raze existing or erect new party walls or buildings.

3 (10) Subdivide, develop or dedicate land to public use, make or obtain the vacation of plats and
 4 adjust boundaries, adjust differences in valuation on exchange or partition by giving or receiving
 5 considerations, and dedicate easements to public use without consideration.

6 (11) Enter for any purpose into a lease as lessor or lessee with or without option to purchase
 7 or renew for a term within or extending beyond the term of the conservatorship.

8 (12) Enter into a lease or arrangement for exploration and removal of minerals or other natural
 9 resources or enter into a pooling or unitization agreement.

10 (13) Grant an option involving disposition of an estate asset or take an option for acquisition
 11 of any asset.

12 (14) Vote a security, in person or by general or limited proxy.

13 (15) Pay calls, assessments and any other sums chargeable or accruing against or on account
 14 of securities.

15 (16) Sell or exercise stock subscription or conversion rights, or consent, directly or through a
 16 committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of
 17 a corporation or other business enterprise.

18 (17) Hold a security in the name of a nominee or in other form without disclosure of the con-
 19 servatorship so that title to the security may pass by delivery. The conservator is liable for any act
 20 of the nominee in connection with the stock so held.

21 (18) Insure the assets of the estate against damage or loss, and the conservator against liability
 22 with respect to third persons.

23 (19) Borrow money to be repaid from estate assets or otherwise and mortgage or pledge property
 24 of the protected person as security therefor.

25 (20) Advance money for the protection of the estate or the protected person, and for all ex-
 26 penses, losses and liability sustained in the administration of the estate or because of the holding
 27 or ownership of any estate assets. The conservator has a lien on the estate as against the protected
 28 person for advances so made.

29 (21) Pay or contest any claim, settle a claim by or against the estate or the protected person
 30 by compromise, arbitration or otherwise, and release, in whole or in part, any claim belonging to
 31 the estate to the extent that the claim is uncollectible.

32 (22) Pay taxes, assessments, compensation of the conservator and other expenses incurred in the
 33 collection, care, administration and protection of the estate.

34 (23) Allocate items of income or expense to either income or principal, including creation of
 35 reserves out of income for depreciation, obsolescence or amortization, or for depletion in mineral
 36 or timber properties.

37 (24) Pay any sum distributable to a protected person or a dependent of a protected person by
 38 paying the sum to the protected person or the dependent, or by paying the sum either to a guardian,
 39 custodian under ORS 126.700, or conservator of the protected person or, if none, to a relative or
 40 other person with custody of the protected person.

41 (25) Employ persons, including attorneys, auditors, investment advisers or agents, even though
 42 they are associated with the conservator, to advise or assist the conservator in the performance of
 43 administrative duties, acting upon their recommendation without independent investigation, and in-
 44 stead of acting personally, employing one or more agents to perform any act of administration,
 45 whether or not discretionary, except that payment to the conservator's attorney of record is subject

1 to the provisions of ORS 125.095.

2 (26) Prosecute or defend actions, claims or proceedings in any jurisdiction for the protection of
3 estate assets and of the conservator in the performance of duties.

4 (27) Prosecute claims of the protected person including those for the personal injury of the
5 protected person.

6 (28) Execute and deliver all instruments that will accomplish or facilitate the exercise of the
7 powers vested in the conservator.

8 **(29) Revoke, suspend or terminate all or any part of the power of an attorney-in-fact or
9 other agent appointed by the principal or by the conservator.**

10 **SECTION 48.** ORS 125.710 is amended to read:

11 125.710. (1) The public guardian and conservator may serve as the guardian or conservator, or
12 both, of any person of whom the court having probate jurisdiction in the county may have jurisdic-
13 tion. The public guardian and conservator may serve as guardian or conservator upon the petition
14 of any person or upon the own petition of the public guardian and conservator.

15 (2) When appointed as guardian or conservator by the court having probate jurisdiction, the
16 public guardian and conservator shall serve as provided in ORS chapter 125[, *ORS 127.005 and*
17 *127.015*] except as specifically stated to the contrary in ORS 125.700 to 125.730.

18 (3) The public guardian and conservator in the discretion of the public guardian and conservator
19 may employ private attorneys if the fees for the attorneys can be defrayed out of funds of the
20 guardianship or conservatorship estate.

21 **SECTION 49.** ORS 127.005, 127.015, 127.025, 127.035 and 127.045 are repealed.

22 **SECTION 50.** The unit and section captions used in this 2009 Act are provided only for
23 the convenience of the reader and do not become part of the statutory law of this state or
24 express any legislative intent in the enactment of this 2009 Act.

25