



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

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

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

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

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

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

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

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

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

(b) is:

(i) missing; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) a power to the extent it is coupled with an interest in the subject of the power, including a power given

to or for the benefit of a creditor in connection with a credit transaction;

(2) a power to make health care decisions;

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

and

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

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

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

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

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

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

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

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

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

**Section 7. Nomination of conservator or guardian -- relation of agent to court-appointed fiduciary.**

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

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

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

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

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

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

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

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

**Section 9. Termination of power of attorney or agent's authority.** (1) A power of attorney terminates

when:

- (a) the principal dies;
- (b) the principal becomes incapacitated if the power of attorney is not durable;
- (c) the principal revokes the power of attorney;
- (d) the power of attorney provides that it terminates;
- (e) the purpose of the power of attorney is accomplished; or
- (f) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and

the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent's authority terminates when:

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

(d) the power of attorney terminates.

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

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

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

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

**Section 10. Coagents or successor agents.** (1) A principal may designate two or more persons to act

as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

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

- (a) has the same authority as that granted to the original agent; and
- (b) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

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

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

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

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

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

- (a) act in accordance with the principal's reasonable expectations to the extent actually known by the

agent and, otherwise, in the principal's best interest;

(b) act in good faith; and

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

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

(a) act loyally for the principal's benefit;

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

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

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

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

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

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

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

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

(iv) eligibility for a benefit, a program, or assistance under a statute or regulation.

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

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

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

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

declines.

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

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

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

- (1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or
- (2) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

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

- (a) the principal or the agent;
- (b) a guardian, conservator, or other fiduciary acting for the principal;
- (c) a person authorized to make health care decisions for the principal;
- (d) the principal's spouse, parent, or descendant;
- (e) an individual who would qualify as a presumptive heir of the principal;
- (f) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;



(g) a governmental agency having regulatory authority to protect the welfare of the principal;  
(h) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and

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

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

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

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

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

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

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

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

(a) the principal's caregiver;

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

or

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

**Section 18. Acceptance of and reliance upon acknowledged power of attorney.** (1) For purposes of [section 19] and this section, "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(2) A person that in good faith accepts an acknowledged power of attorney without actual knowledge

that the signature is not genuine may rely upon the presumption under [section 4] that the signature is genuine.

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

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

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

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

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

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

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

**Section 19. Liability for refusal to accept acknowledged power of attorney.** (1) Except as otherwise provided in subsection (2):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 23. Authority that requires specific grant -- grant of general authority.** (1) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:

- (a) create, amend, revoke, or terminate an inter vivos trust;
- (b) make a gift;
- (c) create or change rights of survivorship;
- (d) create or change a beneficiary designation;
- (e) delegate authority granted under the power of attorney;
- (f) waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (g) exercise fiduciary powers that the principal has authority to delegate; or
- (h) disclaim property, including a power of appointment.

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

(3) Subject to subsections (1), (2), (4), and (5), if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in 72-31-224 through 72-31-236.

(4) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to [section 43].

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

(6) Authority granted in a power of attorney is exercisable with respect to property that the principal has

when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

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

**Section 24. Incorporation of authority.** (1) An agent has authority described in 72-31-224 through 72-31-236, [sections 23 and 43], and this section if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in 72-31-224 through 72-31-236 and [section 43] or cites the section in which the authority is described.

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

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

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

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

(2) Unless contrary to an express provision in the will, the personal representative may discharge the personal representative's obligation to distribute to a minor or person under other disability as authorized by 72-5-104, ~~72-5-504~~, or any other statute. If the personal representative knows that a conservator has been appointed or that a proceeding for appointment of a conservator is pending, the personal representative is authorized to distribute only to the conservator.

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

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

or

(ii) the spouse, parent, or other close relative with whom the person under disability resides if the

distribution is of amounts not exceeding \$10,000 a year or property not exceeding \$10,000 in value, unless the court authorizes a larger amount or greater value.

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

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

**"72-5-501. When health care power of attorney not affected by disability.** (1) A durable health care power of attorney is a power of attorney by which a principal designates another as the principal's attorney-in-fact or agent in writing and the writing contains the words, "This health care power of attorney is not affected by subsequent disability or incapacity of the principal or lapse of time" or "This health care power of attorney becomes effective upon the disability or incapacity of the principal" or similar words showing the intent of the principal that the authority conferred must be exercisable notwithstanding the principal's subsequent disability or incapacity and, unless it states a time of termination, notwithstanding the lapse of time since the execution of the instrument. ~~All acts done by the attorney-in-fact pursuant to a durable power of attorney during any period of disability or incapacity of the principal have the same effect and inure to the benefit of and bind the principal and the principal's successors in interest as if the principal were alive, competent, and not disabled. Unless the instrument states a time of termination, the power is exercisable notwithstanding the lapse of time since the execution of the instrument.~~

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

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

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

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

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

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

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

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

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

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

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

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

(3) execute, acknowledge, seal, file, and ~~deliver a deed, revocation, mortgage, lease, notice, check, release, or other~~ record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;

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

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

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

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

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

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

(8) communicate with any representative or employee of a government or governmental subdivision,



agency, or instrumentality on behalf of the principal;

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

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

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

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

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

(2) sell, exchange, ~~or~~ convey, with or without covenants, representations, or warranties; quitclaim; release; surrender; ~~mortgage~~ retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning, ~~rezoning,~~ or other governmental permits; plat or consent to platting; develop; grant ~~options~~ an option concerning; lease; ~~sublet~~ sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

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

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

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

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

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

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

(d) purchasing supplies, hiring assistance or labor, and making repairs or alterations in the real property;  
~~(5)(6)~~ use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has or claims to have an interest or right;

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

- (a) selling or otherwise disposing of them;
- (b) exercising or selling an option, right of conversion, or similar right with respect to them; and
- (c) exercising any voting ~~them~~ rights in person or by proxy;

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

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

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

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

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

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

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

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

~~(3)(4)~~ release, assign, satisfy, or enforce, by litigation or otherwise, a ~~mortgage,~~ security interest,

encumbrance, lien, or other claim on behalf of the principal with respect to tangible personal property or an interest in tangible personal property; and

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

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

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

~~"72-31-226. Construction of power relating to stock and bond transactions~~ **Stocks and bonds.**  
~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to stock and bond transactions empowers stocks and bonds authorizes the agent to:

- ~~(1) buy, sell, and exchange stocks; and~~ (1) buy, sell, and exchange stocks; and ~~bonds, mutual funds, and all other types of securities and financial instruments except commodity futures contracts; call and put options on stocks and stock indexes;~~
- (2) establish, continue, modify, or terminate an account with respect to stocks and bonds;
- (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
- (4) receive certificates and other evidences of ownership with respect to securities stocks and bonds;  
and
- (5) exercise voting rights with respect to securities stocks and bonds in person or by proxy; enter into voting trusts; and consent to limitations on the right to vote."

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

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

- (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts; and call and or put options on stocks and or stock indexes traded on a regulated option exchange; and
- (2) establish, continue, modify, and terminate option accounts ~~with a broker.~~"

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

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

- (1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
- (3) ~~hire~~ contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
- ~~(4) contract to procure other services available from a financial institution as the agent considers desirable;~~
- ~~(5)~~(4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
- ~~(6)~~(5) receive ~~bank statements~~ of account, vouchers, notices, and similar documents from a financial institution and to act with respect to them;
- ~~(7)~~(6) enter a safe deposit box or vault and withdraw or add to the contents;
- ~~(8)~~(7) borrow money ~~at an interest rate agreeable to the agent~~ and pledge as security personal property of the principal necessary ~~in order to borrow;~~ money or pay, renew, or extend the time of payment of a debt of

the principal or a debt guaranteed by the principal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) determine:

(i) the location of its operation;

(ii) the nature and extent of its business;

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

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

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

(c) change the name or form of organization under which the entity or business is operated and enter into a ~~partnership~~ ownership agreement with other persons ~~or organize a corporation~~ to take over all or part of the operation of the entity or business; and

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

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

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

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

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

is a party;

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

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

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

**"72-31-230. Construction of power relating to insurance transactions Insurance and annuities.**  
~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to insurance and annuity transactions empowers annuities authorizes the agent to:

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

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

(3) pay the premium or ~~assessment~~ make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

~~(4) designate the beneficiary of the contract; however, an agent may be named a beneficiary of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under a contract procured by the principal before executing the power of attorney;~~

~~——~~ ~~(5)(4)~~ apply for and receive a loan ~~on the security of the~~ secured by a contract of insurance or annuity;

~~(6)(5)~~ surrender and receive the cash surrender value on a contract of insurance or annuity;

~~(7)(6)~~ exercise an election;

(7) exercise investment power available under a contract of insurance or annuity;

- (8) change the manner of paying premiums on a contract of insurance or annuity;
- (9) change or convert the type of insurance ~~contract~~ or annuity; with respect to which the principal has or claims to have a power described in this section;
- ~~(10) change the beneficiary of a contract of insurance or annuity; however, the agent may not be designated a beneficiary except to the extent permitted by subsection (4);~~
- ~~————(11)(10) apply for and procure government aid a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;~~
- ~~(12)(11) collect, sell, assign, hypothecate, borrow upon against, or pledge the interest of the principal in a contract of insurance or annuity; and~~
- ~~(13)(12) pay from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment."~~

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

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

(2) Unless the power of attorney otherwise provides, language in in a statutory power of attorney, the language granting power general authority with respect to an estate, trust, and or other beneficiary transactions beneficial interest, empowers authorizes the agent to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled as a beneficiary to a share or payment, including to:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

(6) waive the issuance and service of process upon the principal; ~~accept service of process;~~ appear

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

(7) act for the principal with respect to bankruptcy or insolvency ~~proceedings~~, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, ~~proceeding or a~~ receivership, ~~1~~ or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value; ~~and~~

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

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

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

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

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

(i) the principal's children;

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

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

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

(c) ~~including providing~~ provide living quarters for the individuals described in subsection (1)(a) by:

(i) purchase, lease, or other contract; ~~or~~

(ii) paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises

owned by the principal ~~and~~ or occupied by those individuals;

~~(2)(d)~~ provide for the individuals described in subsection (1) normal domestic help, usual vacations and usual travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subsection (1)(a);

~~(3)(e)~~ pay for the individuals described in subsection (1) expenses for necessary medical, dental, and surgical health care, hospitalization, and custodial care for the individuals described in subsection (1)(a);

(f) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act of 1996, sections 1171 through 1179 of the Social Security Act, 42 U.S.C. 1320d, et seq., and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

~~(4)(g)~~ continue any provision made by the principal for the individuals described in subsection (1) for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subsection (1)(a);

~~(5)(h)~~ maintain or open charge credit and debit accounts for the convenience of the individuals described in subsection (1)(a) and open new accounts the agent considers desirable to accomplish a lawful purpose; and

~~(6)(i)~~ continue payments incidental to the membership or affiliation of the principal in a church religious institution, club, society, order, or other organization or continue contributions to those organizations.

(2) Authority with respect to personal and family maintenance is neither dependent upon nor limited by authority that an agent may or may not have with respect to gifts under this part."

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

**"72-31-234. Construction of power relating to benefits from social security, medicare, medicaid, or other Benefits from governmental programs or from civil or military service.** (1) In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation, including social security, medicare, and medicaid.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) a deferred compensation plan under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b);  
and

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

~~(2) In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with respect to retirement plan transactions empowers plans authorizes the agent to:

~~(1)(a)~~ select payment options the form and timing of payments under any a retirement plan in which the principal participates, including plans for self-employed individuals and withdraw benefits from a plan;

~~(2)~~ designate beneficiaries under those plans and change existing designations;

~~(3)~~ make voluntary contributions to those plans;

~~(4)~~ exercise the investment powers available under any self-directed retirement plan;

~~(5)(b)~~ make "rollovers" a rollover, including a direct trustee-to-trustee rollover, of plan benefits into other from one retirement plans plan to another;

(c) establish a retirement plan in the principal's name;

(d) make contributions to a retirement plan;

(e) exercise investment powers available under a retirement plan; and

~~(6)(f)~~ if authorized by the plan, borrow from, sell assets to, and purchase assets from the a retirement plan; and

~~(7)~~ waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed."

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

**"72-31-236. Construction of power relating to tax matters Taxes.** ~~In~~ Unless the power of attorney otherwise provides, language in a statutory power of attorney, the language granting power general authority with

respect to ~~tax matters empowers~~ taxes authorizes the agent to:

- (1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and ~~any~~ other tax-related documents, including receipts, offers, waivers, consents, (including consents and agreements under section 2032A of the Internal Revenue Code, 26 U.S.C. 2032A section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
- (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;
- (3) exercise any election available to the principal under federal, state, local, or foreign tax law; and
- (4) act for the principal in all tax matters for all periods before the internal revenue service ~~and any~~ or other taxing authority."

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

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

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

(3) An agent may make a gift of the principal's property only as the agent determines is consistent with

the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

- (a) the value and nature of the principal's property;
- (b) the principal's foreseeable obligations and need for maintenance;
- (c) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (d) eligibility for a benefit, a program, or assistance under a statute or regulation; and
- (e) the principal's personal history of making or joining in making gifts.

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

MONTANA STATUTORY FORM POWER OF ATTORNEY

IMPORTANT INFORMATION

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

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

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

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

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

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

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

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

DESIGNATION OF AGENT

I .....

(Name of Principal)

name the following person as my agent:

Name of Agent: .....

Agent's Address:.....

Agent's Telephone Number:.....

DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of Successor Agent:.....

Successor Agent's Address:.....

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

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

Name of Second Successor Agent:.....

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

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

GRANT OF GENERAL AUTHORITY

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

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

- (...) Real Property
- (...) Tangible Personal Property
- (...) Stocks and Bonds
- (...) Commodities and Options
- (...) Banks and Other Financial Institutions
- (...) Operation of Entity or Business



- (...) Insurance and Annuities
- (...) Estates, Trusts, and Other Beneficial Interests
- (...) Claims and Litigation
- (...) Personal and Family Maintenance
- (...) Benefits from Governmental Programs or Civil or Military Service
- (...) Retirement Plans
- (...) Taxes
- (...) All Preceding Subjects

LIMITATION ON AGENT'S AUTHORITY

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

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

.....  
.....

EFFECTIVE DATE

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

NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)

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

Name of Nominee for conservator or guardian of my estate:

.....

Nominee's Address:.....

Nominee's Telephone Number:.....

Name of Nominee for guardian of my person: .....

Nominee's Address: .....

Nominee's Telephone Number: .....

RELIANCE ON THIS POWER OF ATTORNEY

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.

SIGNATURE AND ACKNOWLEDGMENT

.....  
Your Signature Date

.....  
Your Name Printed

.....  
Your Address

.....  
Your Telephone Number

State of .....

[County] of.....

This document was acknowledged before me on

.....,

(Date)

by.....

(Name of Principal)

..... (Seal, if any)

Signature of Notary

My commission expires:.....

This document prepared by:

.....

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

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

- (1) do what you know the principal reasonably expects you to do with the principal's property or, if you

do not know the principal's expectations, act in the principal's best interest;

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

of the principal and signing your own name as "agent" in the following manner:

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

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

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

#### Termination of Agent's Authority

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

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

**Section 45. Agent's certification.** 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 .....

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 .....

I further certify that to my knowledge:

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

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

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

(4) .....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

.....

Agent's Signature

.....

Date

.....

Agent's Name Printed

.....

Agent's Address

.....



Agent's Telephone Number

This document was acknowledged before me on .....,

(Date)

by.....

(Name of Agent)

..... (Seal, if any)

Signature of Notary

My commission expires: .....

This document prepared by:

.....

**Section 46.** Section 72-31-238, MCA, is amended to read:

**"72-31-238. Uniformity of application and construction.** ~~This part~~ In applying and construing this uniform act, consideration must be applied and construed to effectuate its general purpose to make uniform the given to the need to promote uniformity of the law with respect to the its subject of this part matter among the states enacting that enact it."

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

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

(1) [this act] applies to a power of attorney created before, on, or after [the effective date of this act] unless it is a health care power of attorney;

(2) [this act] applies to a judicial proceeding concerning a power of attorney commenced on or after [the effective date of this act] unless it is a health care power of attorney;

(3) [this act] applies to a judicial proceeding concerning a power of attorney commenced before [the

effective date of this act] unless the court finds that application of a provision of [this act] would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and

(4) an act done before [the effective date of this act] is not affected by [this act].

**Section 49. Repealer.** The following sections of the Montana Code Annotated are repealed:

72-31-201. Statutory form of power of attorney.

72-31-237. Existing interests -- foreign interests.

**Section 50. Codification instruction.** (1) [Sections 1 through 24, 43 through 45, and 47] are intended to be codified as an integral part of Title 72, chapter 31, part 2, and the provisions of Title 72, chapter 31, part 2, apply to [sections 1 through 24, 43 through 45, and 47].

- END -

I hereby certify that the within bill,  
HB 0374, originated in the House.

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Chief Clerk of the House

---

Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2011.

HOUSE BILL NO. 374

INTRODUCED BY K. HANSEN, O'HARA, MURPHY, MENAHAN, LARSEN, WARBURTON, AUGARE,  
MACDONALD, SANDS, JENT, C. WILLIAMS, J. PETERSON, HUTTON

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