

1 A bill to be entitled
2 An act relating to powers of attorney; providing
3 directives to the Division of Statutory Revision; creating
4 s. 709.2101, F.S.; providing a short title; creating s.
5 709.2102, F.S.; providing definitions; creating s.
6 709.2103, F.S.; providing applicability; providing
7 exceptions; creating s. 709.2104, F.S.; providing for a
8 durable power of attorney; creating s. 709.2105, F.S.;
9 specifying the qualifications for an agent; providing
10 requirements for the execution of a power of attorney;
11 creating s. 709.2106, F.S.; providing for the validity of
12 powers of attorney created by a certain date or in another
13 jurisdiction; providing for the validity of a military
14 power of attorney; providing for the validity of a
15 photocopy or electronic copy of a power of attorney;
16 creating s. 709.2107, F.S.; providing for the meaning and
17 effectiveness of a power of attorney; creating s.
18 709.2108, F.S.; specifying when a power of attorney is
19 effective; providing limitations with respect to a future
20 power of attorney; creating s. 709.2109, F.S.; providing
21 for the termination or suspension of a power of attorney
22 or an agent's authority; creating s. 709.2110, F.S.;
23 providing for the revocation of a power of attorney;
24 creating s. 709.2111, F.S.; providing for the designation
25 of co-agents and successor agents; specifying the
26 responsibility of a successor agent for a predecessor
27 agent; authorizing a co-agent to delegate certain banking
28 transaction to a co-agent; creating s. 709.2112, F.S.;

29 providing for the reimbursement and compensation of
30 agents; creating s. 709.2113, F.S.; providing for the
31 agent's acceptance of appointment; creating s. 709.2114,
32 F.S.; providing for an agent's duties; limiting an agent's
33 liability, absent a breach of duty; requiring that an
34 agent make certain disclosures upon order of a court, upon
35 the death of the principal, or under certain other
36 circumstances; creating s. 709.2115, F.S.; providing for
37 the exoneration of an agent; providing exceptions;
38 creating s. 709.2116, F.S.; providing for judicial relief;
39 authorizing the award of attorney's fees and costs;
40 providing for a judicial challenge to an agent's exercise
41 of power based on a conflict of interest; specifying the
42 burden of proof required to overcome that challenge;
43 creating s. 709.2117, F.S.; providing for an agent's
44 liability; creating s. 709.2118, F.S.; providing for an
45 agent's resignation; creating s. 709.2119, F.S.; providing
46 for the acceptance of and reliance upon a power of
47 attorney; authorizing a third party to require an
48 affidavit; providing for the validity of acts taken on
49 behalf of a principal who is reported as missing by a
50 branch of the United States Armed Forces; providing a
51 restriction on the conveyance of homestead property held
52 by such a principal; creating s. 709.2120, F.S.; providing
53 for liability if a third person refuses to accept a power
54 of attorney under certain circumstances; providing for an
55 award of damages and attorney's fees and costs; creating
56 s. 709.2121, F.S.; requiring that notice of certain events

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57 | be provided to an agent or other third person; specifying
58 | the form of the notice and when it is effective; creating
59 | s. 709.2201, F.S.; providing for the authority of an
60 | agent; providing limitations; providing that an agent's
61 | authority extends to property later acquired by the
62 | principal; creating s. 709.2202, F.S.; specifying that
63 | certain authority requires separate signed enumeration;
64 | restricting the amount of certain gifts made by an agent;
65 | specifying certain acts that do not require specific
66 | authority if the agent is authorized to conduct banking
67 | transactions; limiting the application of such provision;
68 | creating s. 709.2208, F.S.; providing for authority to
69 | conduct banking and security transactions; creating s.
70 | 709.2301, F.S.; specifying the role of common law;
71 | creating s. 709.2302, F.S.; providing for the preemption
72 | of laws relating to financial institutions; creating s.
73 | 709.2303, F.S.; providing for the recognition of other
74 | remedies; creating s. 709.2401, F.S.; specifying the
75 | relationship of the act to federal law regulating
76 | electronic signatures; creating s. 709.2402, F.S.;
77 | providing for powers of attorney executed before the
78 | effective date of the act; amending s. 736.0602, F.S.;
79 | conforming a cross-reference; repealing s. 709.01, F.S.,
80 | relating to the authority of an agent when the principal
81 | is dead; repealing s. 709.015, F.S., relating to the
82 | authority of an agent when the principal is missing;
83 | repealing s. 709.08, F.S., relating to durable powers of
84 | attorney; repealing s. 709.11, F.S., relating to a

85 deployment-contingent power of attorney; providing an
 86 effective date.

87

88 Be It Enacted by the Legislature of the State of Florida:

89

90 Section 1. The Division of Statutory Revision is requested
 91 to create part I of chapter 709, Florida Statutes, consisting of
 92 ss. 709.02-709.07, entitled "POWERS OF APPOINTMENT."

93 Section 2. The Division of Statutory Revision is requested
 94 to create part II of chapter 709, Florida Statutes, consisting
 95 of ss. 709.2101-709.2402, entitled "POWERS OF ATTORNEY."

96 Section 3. Section 709.2101, Florida Statutes, is created
 97 to read:

98 709.2101 Short title.—This part may be cited as the
 99 "Florida Power of Attorney Act."

100 Section 4. Section 709.2102, Florida Statutes, is created
 101 to read:

102 709.2102 Definitions.—As used in this part, the term:

103 (1) "Agent" means a person granted authority to act for a
 104 principal under a power of attorney, whether denominated an
 105 agent, attorney in fact, or otherwise. The term includes an
 106 original agent, co-agent, and successor agent.

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

109 (3) "Electronic" means technology having electrical,
 110 digital, magnetic, wireless, optical, electromagnetic, or
 111 similar capabilities.

112 (4) "Financial institution" has the same meaning as in s.

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113 655.005.

114 (5) "Incapacity" means the inability of an individual to
115 take those actions necessary to obtain, administer, and dispose
116 of real and personal property, intangible property, business
117 property, benefits, and income.

118 (6) "Knowledge" means a person has actual knowledge of the
119 fact, has received a notice or notification of the fact, or has
120 reason to know the fact from all other facts and circumstances
121 known to the person at the time in question. An organization
122 that conducts activities through employees has notice or
123 knowledge of a fact involving a power of attorney only from the
124 time information was received by an employee having
125 responsibility to act on matters involving the power of
126 attorney, or would have had if brought to the employee's
127 attention if the organization had exercised reasonable
128 diligence. An organization exercises reasonable diligence if the
129 organization maintains reasonable routines for communicating
130 significant information to the employee having responsibility to
131 act on matters involving the power of attorney and there is
132 reasonable compliance with the routines. Reasonable diligence
133 does not require an employee to communicate information unless
134 the communication is part of the individual's regular duties or
135 the individual knows that a matter involving the power of
136 attorney would be materially affected by the information.

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

140 (8) "Presently exercisable general power of appointment"

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141 means, with respect to property or a property interest subject
142 to a power of appointment, power exercisable at the time in
143 question to vest absolute ownership in the principal
144 individually, the principal's estate, the principal's creditors,
145 or the creditors of the principal's estate. The term includes a
146 power of appointment not exercisable until the occurrence of a
147 specified event, the satisfaction of an ascertainable standard,
148 or the passage of a specified period only after the occurrence
149 of the specified event, the satisfaction of the ascertainable
150 standard, or the passage of the specified period. The term does
151 not include a power exercisable in a fiduciary capacity or only
152 by will.

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

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

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

161 (12) "Sign" means having present intent to authenticate or
162 adopt a record to:

163 (a) Execute or adopt a tangible symbol; or

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

166 (13) "Third person" means any person other than the
167 principal, or the agent in the agent's capacity as agent.

168 Section 5. Section 709.2103, Florida Statutes, is created

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169 to read:

170 709.2103 Applicability.—This part applies to all powers of
 171 attorney except:

172 (1) A proxy or other delegation to exercise voting rights
 173 or management rights with respect to an entity;

174 (2) A power created on a form prescribed by a government
 175 or governmental subdivision, agency, or instrumentality for a
 176 governmental purpose;

177 (3) A power to the extent it is coupled with an interest
 178 in the subject of the power, including a power given to or for
 179 the benefit of a creditor in connection with a credit
 180 transaction; and

181 (4) A power created by a person other than an individual.

182 Section 6. Section 709.2104, Florida Statutes, is created
 183 to read:

184 709.2104 Durable power of attorney.—Except as otherwise
 185 provided under this part, a power of attorney is durable if it
 186 contains the words: "This durable power of attorney is not
 187 terminated by subsequent incapacity of the principal except as
 188 provided in chapter 709, Florida Statutes," or similar words
 189 that show the principal's intent that the authority conferred is
 190 exercisable notwithstanding the principal's subsequent
 191 incapacity.

192 Section 7. Section 709.2105, Florida Statutes, is created
 193 to read:

194 709.2105 Qualifications of agent; execution of power of
 195 attorney.—

196 (1) The agent must be a natural person who is 18 years of

197 age or older or a financial institution that has trust powers,
 198 has a place of business in this state, and is authorized to
 199 conduct trust business in this state.

200 (2) A power of attorney must be signed by the principal
 201 and by two subscribing witnesses and be acknowledged by the
 202 principal before a notary public or as otherwise provided in s.
 203 695.03.

204 Section 8. Section 709.2106, Florida Statutes, is created
 205 to read:

206 709.2106 Validity of power of attorney.—

207 (1) A power of attorney executed on or after October 1,
 208 2011, is valid if its execution complies with s. 709.2103.

209 (2) A power of attorney executed before October 1, 2011,
 210 is valid if its execution complied with the law of this state at
 211 the time of execution.

212 (3) A power of attorney executed in another state which
 213 does not comply with the execution requirements of this part is
 214 valid in this state if, when the power of attorney was executed,
 215 the power of attorney and its execution complied with the law of
 216 the state of execution. A third person who is requested to
 217 accept a power of attorney that is valid in this state solely
 218 because of this subsection may in good faith request, and rely
 219 upon, without further investigation, an opinion of counsel as to
 220 any matter of law concerning the power of attorney, including
 221 the due execution and validity of the power of attorney. An
 222 opinion of counsel requested under this subsection must be
 223 provided at the principal's expense. A third person may accept a
 224 power of attorney that is valid in this state solely because of

225 this subsection if the agent does not provide the requested
 226 opinion of counsel, and in such case, a third person has no
 227 liability for refusing to accept the power of attorney. This
 228 subsection does not affect any other rights of a third person
 229 who is requested to accept the power of attorney under this
 230 part, or any other provisions of applicable law.

231 (4) A military power of attorney is valid if it is
 232 executed in accordance with 10 U.S.C. s. 1044b, as amended. A
 233 deployment-contingent power of attorney may be signed in
 234 advance, is effective upon the deployment of the principal, and
 235 shall be afforded full force and effect by the courts of this
 236 state.

237 (5) Except as otherwise provided in the power of attorney,
 238 a photocopy or electronically transmitted copy of an original
 239 power of attorney has the same effect as the original.

240 Section 9. Section 709.2107, Florida Statutes, is created
 241 to read:

242 709.2107 Meaning and effectiveness of power of attorney.—
 243 The meaning and effectiveness of a power of attorney is governed
 244 by this part if the power of attorney:

245 (1) Is used in this state; or

246 (2) States that it is to be governed by the laws of this
 247 state.

248 Section 10. Section 709.2108, Florida Statutes, is created
 249 to read:

250 709.2108 When power of attorney is effective.—

251 (1) Except as provided in this section, a power of
 252 attorney is exercisable when executed.

253 (2) If a power of attorney executed before October 1,
 254 2011, is conditioned on the principal's lack of capacity to
 255 manage property as defined in s. 744.102(12) (a), and the power
 256 of attorney has not become exercisable before that date, the
 257 power of attorney is exercisable upon the delivery of the
 258 affidavit of a physician who has primary responsibility for the
 259 treatment and care of the principal and who is licensed to
 260 practice medicine pursuant to chapter 458 or chapter 459 as of
 261 the date of the affidavit. The affidavit must state where the
 262 physician is licensed to practice medicine, that the physician
 263 is the primary physician who has responsibility for the
 264 treatment and care of the principal, and that the physician
 265 believes that the principal lacks the capacity to manage
 266 property.

267 (3) Except as provided in subsection (2) and section
 268 709.2106(4), a power of attorney is ineffective if the power of
 269 attorney provides that it is to become effective at a future
 270 date or upon the occurrence of a future event or contingency.

271 Section 11. Section 709.2109, Florida Statutes, is created
 272 to read:

273 709.2109 Termination or suspension of power of attorney or
 274 agent's authority.—

275 (1) A power of attorney terminates when:

276 (a) The principal dies;

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

279 (c) The principal is adjudicated totally or partially
 280 incapacitated by a court, unless the court determines that

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281 certain authority granted by the power of attorney is to be
282 exercisable by the agent;

283 (d) The principal revokes the power of attorney;

284 (e) The power of attorney provides that it terminates;

285 (f) The purpose of the power of attorney is accomplished;

286 or

287 (g) The agent's authority terminates and the power of
288 attorney does not provide for another agent to act under the
289 power of attorney.

290 (2) An agent's authority is exercisable until the
291 authority terminates. An agent's authority terminates when:

292 (a) The agent dies, becomes incapacitated, resigns, or is
293 removed by a court;

294 (b) An action is filed for the dissolution or annulment of
295 the agent's marriage to the principal or for their legal
296 separation, unless the power of attorney otherwise provides; or

297 (c) The power of attorney terminates.

298 (3) If any person initiates judicial proceedings to
299 determine the principal's incapacity or for the appointment of a
300 guardian advocate, the authority granted under the power of
301 attorney is suspended until the petition is dismissed or
302 withdrawn or the court enters an order authorizing the agent to
303 exercise one or more powers granted under the power of attorney.

304 (a) If an emergency arises after initiation of proceedings
305 to determine incapacity and before adjudication regarding the
306 principal's capacity, the agent may petition the court in which
307 the proceeding is pending for authorization to exercise a power
308 granted under the power of attorney. The petition must set forth

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309 the nature of the emergency, the property or matter involved,
310 and the power to be exercised by the agent.

311 (b) Notwithstanding the provisions of this section, unless
312 otherwise ordered by the court, a proceeding to determine
313 incapacity does not affect the authority of the agent to make
314 health care decisions for the principal, including, but not
315 limited to, those provided in chapter 765. If the principal has
316 executed a health care advance directive designating a health
317 care surrogate, the terms of the directive control if the
318 directive and the power of attorney are in conflict unless the
319 power of attorney is later executed and expressly states
320 otherwise.

321 (4) Termination or suspension of an agent's authority or
322 of a power of attorney is not effective as to an agent who,
323 without knowledge of the termination or suspension, acts in good
324 faith under the power of attorney. An act so performed, unless
325 otherwise invalid or unenforceable, binds the principal and the
326 principal's successors in interest.

327 Section 12. Section 709.2110, Florida Statutes, is created
328 to read:

329 709.2110 Revocation of power of attorney.-

330 (1) A principal may revoke a power of attorney by
331 expressing the revocation in a subsequently executed power of
332 attorney or other writing signed by the principal. The principal
333 may give notice of the revocation to an agent who has accepted
334 authority under the revoked power of attorney.

335 (2) Except as provided in subsection (1), the execution of
336 a power of attorney does not revoke a power of attorney

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337 previously executed by the principal.

338 Section 13. Section 709.2111, Florida Statutes, is created
339 to read:

340 709.2111 Co-agents and successor agents.—

341 (1) A principal may designate two or more persons to act
342 as co-agents. Unless the power of attorney otherwise provides,
343 each co-agent may exercise its authority independently.

344 (2) A principal may designate one or more successor agents
345 to act if an agent resigns, dies, becomes incapacitated, is not
346 qualified to serve, or declines to serve. Unless the power of
347 attorney otherwise provides, a successor agent:

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

350 (b) May not act until the predecessor agents have
351 resigned, have died, have become incapacitated, are no longer
352 qualified to serve, or have declined to serve.

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

358 (4) An agent who has actual knowledge of a breach or
359 imminent breach of fiduciary duty by another agent, including a
360 predecessor agent, must take any action reasonably appropriate
361 in the circumstances to safeguard the principal's best
362 interests. If the agent in good faith believes that the
363 principal is not incapacitated, giving notice to the principal
364 is a sufficient action. An agent who fails to take action as

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365 required by this subsection is liable to the principal for the
366 principal's reasonably foreseeable damages that could have been
367 avoided if the agent had taken such action.

368 (5) A successor agent does not have a duty to review the
369 conduct or decisions of a predecessor agent. Except as provided
370 in subsection (4), a successor agent does not have a duty to
371 institute any proceeding against a predecessor agent, or to file
372 any claim against a predecessor agent's estate, for any of the
373 predecessor agent's actions or omissions as agent.

374 (6) If a power of attorney requires that two or more
375 persons act together as co-agents, notwithstanding the
376 requirement that they act together, one or more of the agents
377 may delegate to a co-agent the authority to conduct banking
378 transactions as provided in s. 709.2208(1), whether the
379 authority to conduct banking transactions is specifically
380 enumerated or incorporated by reference to that section in the
381 power of attorney.

382 Section 14. Section 709.2112, Florida Statutes, is created
383 to read:

384 709.2112 Reimbursement and compensation of agent.—

385 (1) Unless the power of attorney otherwise provides, an
386 agent is entitled to reimbursement of expenses reasonably
387 incurred on behalf of the principal.

388 (2) Unless the power of attorney otherwise provides, a
389 qualified agent is entitled to compensation that is reasonable
390 under the circumstances.

391 (3) Notwithstanding any provision in the power of
392 attorney, an agent may not be paid compensation unless the agent

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393 | is a qualified agent.

394 | (4) For purposes of this section, the term "qualified
 395 | agent" means an agent who is the spouse of the principal, an
 396 | heir of the principal within the meaning of s. 732.103, a
 397 | financial institution that has trust powers and a place of
 398 | business in this state, an attorney or certified public
 399 | accountant who is licensed in this state, or a natural person
 400 | who is a resident of this state and who has never been an agent
 401 | for more than three principals at the same time.

402 | Section 15. Section 709.2113, Florida Statutes, is created
 403 | to read:

404 | 709.2113 Agent's acceptance of appointment.—Except as
 405 | otherwise provided in the power of attorney, a person accepts
 406 | appointment as an agent by exercising authority or performing
 407 | duties as an agent or by any other assertion or conduct
 408 | indicating acceptance. The scope of an agent's acceptance is
 409 | limited to those aspects of the power of attorney for which the
 410 | agent's assertions or conduct reasonably manifests acceptance.

411 | Section 16. Section 709.2114, Florida Statutes, is created
 412 | to read:

413 | 709.2114 Agent's duties.—

414 | (1) An agent is a fiduciary. Notwithstanding the
 415 | provisions in the power of attorney, an agent who has accepted
 416 | appointment:

417 | (a) Must act only within the scope of authority granted in
 418 | the power of attorney. In exercising that authority, the agent:

419 | 1. May not act contrary to the principal's reasonable
 420 | expectations actually known by the agent;

- 421 2. Must act in good faith;
- 422 3. May not act in a manner that is contrary to the
- 423 principal's best interest, except as provided in paragraph
- 424 (2) (d) and s. 709.2202; and
- 425 4. To the extent actually known by the agent, must attempt
- 426 to preserve the principal's estate plan if preserving the plan
- 427 is consistent with the principal's best interest based on all
- 428 relevant factors, including:
 - 429 a. The value and nature of the principal's property;
 - 430 b. The principal's foreseeable obligations and need for
 - 431 maintenance;
 - 432 c. Minimization of taxes, including income, estate,
 - 433 inheritance, generation-skipping transfer, and gift taxes;
 - 434 d. Eligibility for a benefit, a program, or assistance
 - 435 under a statute or rule; and
 - 436 e. The principal's personal history of making or joining
 - 437 in making gifts;
- 438 (b) May not delegate authority to a third person except as
- 439 provided in s. 518.112;
- 440 (c) Must keep a record of all receipts, disbursements, and
- 441 transactions made on behalf of the principal; and
- 442 (d) Must create and maintain an accurate inventory each
- 443 time the agent accesses the principal's safe-deposit box, if the
- 444 power of attorney authorizes the agent to access the box.
- 445 (2) Except as otherwise provided in the power of attorney,
- 446 an agent who has accepted appointment shall:
 - 447 (a) Act loyally for the sole benefit of the principal;
 - 448 (b) Act so as not to create a conflict of interest that

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449 impairs the agent's ability to act impartially in the
450 principal's best interest;

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

453 (d) Cooperate with a person who has authority to make
454 health care decisions for the principal in order to carry out
455 the principal's reasonable expectations to the extent actually
456 known by the agent and, otherwise, act in the principal's best
457 interest.

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

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

467 (5) Absent a breach of duty to the principal, an agent is
468 not liable if the value of the principal's property declines.

469 (6) Except as otherwise provided in the power of attorney,
470 an agent is not required to disclose receipts, disbursements,
471 transactions conducted on behalf of the principal, or safe-
472 deposit box inventories, unless ordered by a court or requested
473 by the principal, a court-appointed guardian, another fiduciary
474 acting for the principal, a governmental agency having authority
475 to protect the welfare of the principal, or, upon the death of
476 the principal, by the personal representative or successor in

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477 interest of the principal's estate. If requested, the agent must
478 comply with the request within 60 days or provide a writing or
479 other record substantiating why additional time is needed and
480 comply with the request within an additional 60 days.

481 Section 17. Section 709.2115, Florida Statutes, is created
482 to read:

483 709.2115 Exoneration of agent.—A power of attorney may
484 provide that the agent is not liable for any acts or decisions
485 made by the agent in good faith and under the power of attorney,
486 except to the extent the provision:

487 (1) Relieves the agent of liability for breach of a duty
488 committed dishonestly, with improper motive, or with reckless
489 indifference to the purposes of the power of attorney or the
490 best interest of the principal; or

491 (2) Was inserted as a result of an abuse of a confidential
492 or fiduciary relationship with the principal.

493 Section 18. Section 709.2116, Florida Statutes, is created
494 to read:

495 709.2116 Judicial relief; conflicts of interests.—

496 (1) A court may construe or enforce a power of attorney,
497 review the agent's conduct, terminate the agent's authority,
498 remove the agent, and grant other appropriate relief.

499 (2) The following persons may petition the court:

500 (a) The principal or the agent, including any nominated
501 successor agent.

502 (b) A guardian, conservator, trustee, or other fiduciary
503 acting for the principal or the principal's estate.

504 (c) A person authorized to make health care decisions for

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505 the principal if the health care of the principal is affected by
506 the actions of the agent.

507 (d) Any other interested person if the person demonstrates
508 to the court's satisfaction that the person is interested in the
509 welfare of the principal and has a good faith belief that the
510 court's intervention is necessary.

511 (e) A governmental agency having regulatory authority to
512 protect the welfare of the principal.

513 (f) A person asked to honor the power of attorney.

514 (3) In any proceeding commenced by filing a petition under
515 this section, including, but not limited to, the unreasonable
516 refusal of a third person to allow an agent to act pursuant to
517 the power of attorney, and in challenges to the proper exercise
518 of authority by the agent, the court shall award reasonable
519 attorney's fees and costs.

520 (4) If an agent's exercise of a power is challenged in a
521 judicial proceeding brought by or on behalf of the principal on
522 the grounds that the exercise of the power was affected by a
523 conflict of interest, and evidence is presented that the agent
524 or an affiliate of the agent had a personal interest in the
525 exercise of the power, the agent or affiliate has the burden of
526 proving, by clear and convincing evidence that the agent acted:

527 (a) Solely in the interest of the principal; or

528 (b) In good faith in the principal's best interest, and
529 the conflict of interest was expressly authorized in the power
530 of attorney.

531 (5) For purposes of subsection (4):

532 (a) A provision authorizing an agent to engage in a

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533 transaction affected by a conflict of interest which is inserted
534 into a power of attorney as the result of the abuse of a
535 fiduciary or confidential relationship with the principal by the
536 agent or the agent's affiliate is invalid.

537 (b) Affiliates of an agent include:

538 1. The agent's spouse;

539 2. The agent's descendants, siblings, parents, or their
540 spouses;

541 3. A corporation or other entity in which the agent, or a
542 person who owns a significant interest in the agent, has an
543 interest that might affect the agent's best judgment;

544 4. A person or entity that owns a significant interest in
545 the agent; or

546 5. The agent acting in a fiduciary capacity for someone
547 other than the principal.

548 Section 19. Section 709.2117, Florida Statutes, is created
549 to read:

550 709.2117 Agent's liability.—An agent who violates this
551 part is liable to the principal or the principal's successors in
552 interest for the amount required to:

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

555 (2) Reimburse the principal or the principal's successors
556 in interest for the attorney's fees and costs paid from the
557 principal's funds on the agent's behalf in defense of the
558 agent's actions.

559 Section 20. Section 709.2118, Florida Statutes, is created
560 to read:

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561 709.2118 Agent's resignation.—Unless the power of attorney
562 provides a different method for an agent's resignation, an agent
563 may resign by giving notice to the principal, to the guardian if
564 the principal is incapacitated and one has been appointed for
565 the principal, and to any co-agent, or if none, the next
566 successor agent.

567 Section 21. Section 709.2119, Florida Statutes, is created
568 to read:

569 709.2119 Acceptance of and reliance upon power of
570 attorney.—

571 (1) (a) A third person who in good faith accepts a power of
572 attorney that appears to be executed in accordance with this
573 part may rely upon the power of attorney and may enforce an
574 authorized transaction against the principal's property as if:

575 1. The power of attorney were genuine, valid, and still in
576 effect;

577 2. The agent's authority were genuine, valid, and still in
578 effect; and

579 3. The authority of the officer executing for or on behalf
580 of a financial institution that has trust powers and acting as
581 agent is genuine, valid, and still in effect.

582 (b) For purposes of this subsection, and without limiting
583 what constitutes good faith, a third person does not accept a
584 power of attorney in good faith if the third person has notice
585 that:

586 1. The power of attorney is void, invalid, or terminated;

587 or

588 2. The purported agent's authority is void, invalid,

589 suspended, or terminated.

590 (2) A third person may require:

591 (a) An agent to execute an affidavit stating where the
592 principal is domiciled; that the principal is not deceased; that
593 there has been no revocation, or partial or complete termination
594 by adjudication of incapacity or by the occurrence of an event
595 referenced in the power of attorney; that there has been no
596 suspension by initiation of proceedings to determine incapacity,
597 or to appoint a guardian, of the principal; and, if the affiant
598 is a successor agent, the reasons for the unavailability of the
599 predecessor agents, if any, at the time the authority is
600 exercised.

601 (b) An officer of a financial institution acting as agent
602 to execute a separate affidavit, or include in the form of the
603 affidavit, the officer's title and a statement that the officer
604 has full authority to perform all acts and enter into all
605 transactions authorized by the power of attorney for and on
606 behalf of the financial institution in its capacity as agent. A
607 written affidavit executed by the agent under this subsection
608 may, but need not, be in the following form:

610 STATE OF.....

611 COUNTY OF.....

613 Before me, the undersigned authority, personally appeared
614 ...(attorney in fact)... ("Affiant"), who swore or affirmed
615 that:

616 1. Affiant is the attorney in fact named in the Durable

617 Power of Attorney executed by ...(principal)... ("Principal") on
618 ...(date)....

619 2. This Power of Attorney is currently exercisable by
620 Affiant. The principal is domiciled in ...(insert name of state,
621 territory, or foreign country)....

622 3. To the best of the Affiant's knowledge after diligent
623 search and inquiry:

624 a. The Principal is not deceased;

625 b. Affiant's authority has not been suspended by
626 initiation of proceedings to determine incapacity or to appoint
627 a guardian or a guardian advocate; and

628 c. There has been no revocation, or partial or complete
629 termination, of the power of attorney or of the Affiant's
630 authority.

631 4. The Affiant is acting within the scope of authority
632 granted in the power of attorney.

633 5. The Affiant is the successor to ...(insert name of
634 predecessor agent)..., who has resigned, died, become
635 incapacitated, is no longer qualified to serve, has declined to
636 serve as agent, or is otherwise unable to act, if applicable.

637 6. Affiant agrees not to exercise any powers granted by
638 the Durable Power of Attorney if Affiant attains knowledge that
639 it has been revoked, has been partially or completely terminated
640 or suspended, or is no longer valid because of the death or
641 adjudication of incapacity of the Principal.

642
643
644 ... (Affiant)...

645
 646 Sworn to (or affirmed) and subscribed before me this
 647 day of ... (month) ..., ... (year) ..., by ... (name of person making
 648 statement) ...

649
 650 ... (Signature of Notary Public-State of Florida) ...

651
 652 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...

653
 654 Personally Known OR Produced Identification

655 ... (Type of Identification Produced) ...

656
 657 (3) A third person who is asked to accept a power of
 658 attorney that appears to be executed in accordance with s.
 659 709.2103 may in good faith request, and rely upon, without
 660 further investigation:

661 (a) A verified English translation of the power of
 662 attorney if the power of attorney contains, in whole or in part,
 663 language other than English;

664 (b) An opinion of counsel as to any matter of law
 665 concerning the power of attorney if the third person making the
 666 request provides in a writing or other record the reason for the
 667 request; or

668 (c) The affidavit described in subsection (2).

669 (4) An English translation or an opinion of counsel
 670 requested under this section must be provided at the principal's
 671 expense unless the request is made after the time specified in
 672 s. 709.2120(1) for acceptance or rejection of the power of

673 attorney.

674 (5) Third persons who act in reliance upon the authority
 675 granted to an agent and in accordance with the instructions of
 676 the agent shall be held harmless by the principal from any loss
 677 suffered or liability incurred as a result of actions taken
 678 before the receipt of written notice as provided in s. 709.2121.
 679 A third person who acts in good faith upon any representation,
 680 direction, decision, or act of the agent is not liable to the
 681 principal or the principal's estate, beneficiaries, or joint
 682 owners for those acts.

683 (6) The acts of an agent under a power of attorney are as
 684 valid and binding on the principal or the principal's estate as
 685 if the principal were alive and competent if, in connection with
 686 any activity pertaining to hostilities in which the United
 687 States is then engaged, the principal is officially listed or
 688 reported by a branch of the United States Armed Forces in a
 689 missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s.
 690 5561, regardless of whether the principal is dead, alive, or
 691 incompetent. Homestead property held as tenants by the
 692 entireties may not be conveyed by a power of attorney regulated
 693 under this provision until 1 year after the first official
 694 report or listing of the principal as missing or missing in
 695 action. An affidavit of an officer of the Armed Forces having
 696 maintenance and control of the records pertaining to those
 697 missing or missing in action that the principal has been in that
 698 status for a given period is conclusive presumption of the fact.

699 Section 22. Section 709.2120, Florida Statutes, is created
 700 to read:

701 709.2120 Refusal to accept power of attorney.-
 702 (1) Except as provided in subsection (2):
 703 (a) A third person must accept or reject a power of
 704 attorney within a reasonable time. A third person who rejects a
 705 power of attorney must state in writing the reason for the
 706 rejection.
 707 (b) Four days, excluding Saturdays, Sundays, and legal
 708 holidays, are presumed to be a reasonable time for a financial
 709 institution to accept or reject a power of attorney with respect
 710 to:
 711 1. A banking transaction, if the power of attorney
 712 expressly contains authority to conduct banking transactions
 713 pursuant to s. 709.2208(1); or
 714 2. A security transaction, if the power of attorney
 715 expressly contains authority to conduct security transactions
 716 pursuant to s. 709.2208(2).
 717 (c) A third person may not require an additional or
 718 different form of power of attorney for authority granted in the
 719 power of attorney presented.
 720 (2) A third person is not required to accept a power of
 721 attorney if:
 722 (a) The third person is not otherwise required to engage
 723 in a transaction with the principal in the same circumstances;
 724 (b) The third person has knowledge of the termination or
 725 suspension of the agent's authority or of the power of attorney
 726 before exercising the power;
 727 (c) A timely request by the third person for an affidavit,
 728 English translation, or opinion of counsel under s. 709.2119(4)

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729 is refused by the agent;

730 (d) Except as provided in paragraph (b), the third person
731 believes in good faith that the power is not valid or that the
732 agent does not have authority to perform the act requested; or

733 (e) The third person makes, or has knowledge that another
734 person has made, a report to the local adult protective services
735 office stating a good faith belief that the principal may be
736 subject to physical or financial abuse, neglect, exploitation,
737 or abandonment by the agent or a person acting for or with the
738 agent.

739 (3) A third person who, in violation of this section,
740 refuses to accept a power of attorney is subject to:

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

743 (b) Liability for damages, including reasonable attorney's
744 fees and costs, incurred in any action or proceeding that
745 confirms, for the purpose tendered, the validity of the power of
746 attorney or mandates acceptance of the power of attorney.

747 Section 23. Section 709.2121, Florida Statutes, is created
748 to read:

749 709.2121 Notice.—

750 (1) A notice, including a notice of revocation, notice of
751 partial or complete termination by adjudication of incapacity or
752 by the occurrence of an event referenced in the power of
753 attorney, notice of death of the principal, notice of suspension
754 by initiation of proceedings to determine incapacity or to
755 appoint a guardian, or other notice, is not effective until
756 written notice is provided to the agent or any third persons

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757 relying upon a power of attorney.

758 (2) Notice must be in writing and must be accomplished in
759 a manner reasonably suitable under the circumstances and likely
760 to result in receipt of the notice or document. Permissible
761 methods of notice or for sending a document include first-class
762 mail, personal delivery, delivery to the person's last known
763 place of residence or place of business, or a properly directed
764 facsimile or other electronic message.

765 (3) Notice to a financial institution must contain the
766 name, address, and the last four digits of the principal's
767 taxpayer identification number and be directed to an officer or
768 a manager of the financial institution in this state.

769 (4) Notice is effective when given, except that notice
770 upon a financial institution, brokerage company, or title
771 insurance company is not effective until 5 days, excluding
772 Saturdays, Sundays, and legal holidays, after it is received.

773 Section 24. Section 709.2201, Florida Statutes, is created
774 to read:

775 709.2201 Authority of agent.—

776 (1) Except as provided in this section or other applicable
777 law, an agent may only exercise authority specifically granted
778 to the agent in the power of attorney and any authority
779 reasonably necessary to give effect to that express grant of
780 specific authority. General provisions in a power of attorney
781 which do not identify the specific authority granted, such as
782 provisions purporting to give the agent authority to do all acts
783 that the principal can do, is not an express grant of specific
784 authority and does not grant any authority to the agent. Court

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785 approval is not required for any action of the agent in
 786 furtherance of an express grant of specific authority.

787 (2) As a confirmation of the law in effect in this state
 788 when this part became effective, such authorization may include,
 789 without limitation, authority to:

790 (a) Execute stock powers or similar documents on behalf of
 791 the principal and delegate to a transfer agent or similar person
 792 the authority to register any stocks, bonds, or other securities
 793 into or out of the principal's or nominee's name.

794 (b) Convey or mortgage homestead property. However, if the
 795 principal is married, the agent may not mortgage or convey
 796 homestead property without joinder of the principal's spouse or
 797 the spouse's guardian. Joinder by a spouse may be accomplished
 798 by the exercise of authority in a power of attorney executed by
 799 the joining spouse, and either spouse may appoint the other as
 800 his or her agent.

801 (c) If such authority is specifically granted in a durable
 802 power of attorney, make all health care decisions on behalf of
 803 the principal, including, but not limited to, those set forth in
 804 chapter 765.

805 (3) Notwithstanding the provisions of this section, an
 806 agent may not:

807 (a) Perform duties under a contract that requires the
 808 exercise of personal services of the principal;

809 (b) Make any affidavit as to the personal knowledge of the
 810 principal;

811 (c) Vote in any public election on behalf of the
 812 principal;

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813 (d) Execute or revoke any will or codicil for the
 814 principal; or

815 (e) Exercise powers and authority granted to the principal
 816 as trustee or as court-appointed fiduciary.

817 (4) Subject to s. 709.2202, if the subjects over which
 818 authority is granted in a power of attorney are similar or
 819 overlap, the broadest authority controls.

820 (5) Authority granted in a power of attorney is
 821 exercisable with respect to property that the principal has when
 822 the power of attorney is executed and to property that the
 823 principal acquires later, whether or not the property is located
 824 in this state and whether or not the authority is exercised or
 825 the power of attorney is executed in this state.

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

830 Section 25. Section 709.2202, Florida Statutes, is created
 831 to read:

832 709.2202 Authority that requires separate signed
 833 enumeration.—

834 (1) Notwithstanding s. 709.2201, an agent may exercise the
 835 following authority only if the principal signed or initialed
 836 next to each specific enumeration of the authority, the exercise
 837 of the authority is consistent with the agent's duties under s.
 838 709.2114, and the exercise is not otherwise prohibited by
 839 another agreement or instrument:

840 (a) Create an inter vivos trust;

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841 (b) With respect to a trust created by or on behalf of the
842 principal, amend, modify, revoke, or terminate the trust, but
843 only if the trust instrument explicitly provides for amendment,
844 modification, revocation, or termination by the settlor's agent;

845 (c) Make a gift, subject to subsection (3);

846 (d) Create or change rights of survivorship;

847 (e) Create or change a beneficiary designation;

848 (f) Waive the principal's right to be a beneficiary of a
849 joint and survivor annuity, including a survivor benefit under a
850 retirement plan; or

851 (g) Disclaim property and powers of appointment.

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

860 (3) Unless the power of attorney otherwise provides, a
861 provision in a power of attorney granting general authority with
862 respect to gifts authorizes the agent to only:

863 (a) Make outright to, or for the benefit of, a person a
864 gift of any of the principal's property, including by the
865 exercise of a presently exercisable general power of appointment
866 held by the principal, in an amount per donee not to exceed the
867 annual dollar limits of the federal gift tax exclusion under 26
868 U.S.C. s. 2503(b), as amended, without regard to whether the

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869 federal gift tax exclusion applies to the gift, or if the
870 principal's spouse agrees to consent to a split gift pursuant to
871 26 U.S.C. s. 2513, as amended, in an amount per donee not to
872 exceed twice the annual federal gift tax exclusion limit; and

873 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to
874 the splitting of a gift made by the principal's spouse in an
875 amount per donee not to exceed the aggregate annual gift tax
876 exclusions for both spouses.

877 (4) Notwithstanding subsection (1), if a power of attorney
878 is otherwise sufficient to grant an agent authority to conduct
879 banking transactions, as provided in s. 709.2208(1), conduct
880 investment transactions as provided in s. 709.2208(2), or
881 otherwise make additions to or withdrawals from an account of
882 the principal, making a deposit to or withdrawal from an
883 insurance policy, retirement account, individual retirement
884 account, benefit plan, bank account, or any other account held
885 jointly or otherwise held in survivorship or payable on death,
886 is not considered to be a change to the survivorship feature or
887 beneficiary designation, and no further specific authority is
888 required for the agent to exercise such authority. A bank or
889 other financial institution does not have a duty to inquire as
890 to the appropriateness of the agent's exercise of that authority
891 and is not liable to the principal or any other person for
892 actions taken in good faith reliance on the appropriateness of
893 the agent's actions. This subsection does not eliminate the
894 agent's fiduciary duties to the principal with respect to any
895 exercise of the power of attorney.

896 (5) This section does not apply to a power of attorney

897 executed before October 1, 2011.

898 Section 26. Section 709.2208, Florida Statutes, is created
899 to read:

900 709.2208 Banks and other financial institutions.—

901 (1) A power of attorney that includes the statement that
902 the agent has "authority to conduct banking transactions as
903 provided in section 709.2208(1), Florida Statutes" grants
904 general authority to the agent to engage in the following
905 transactions with financial institutions without additional
906 specific enumeration in the power of attorney:

907 (a) Establish, continue, modify, or terminate an account
908 or other banking arrangement with a financial institution.

909 (b) Contract for services available from a financial
910 institution, including renting a safe-deposit box or space in a
911 vault.

912 (c) Withdraw, by check, order, electronic funds transfer,
913 or otherwise, money or property of the principal deposited with
914 or left in the custody of a financial institution.

915 (d) Receive statements of account, vouchers, notices, and
916 similar documents from a financial institution and act with
917 respect to them.

918 (e) Purchase cashier's checks, official checks, counter
919 checks, bank drafts, money orders, and similar instruments.

920 (f) Endorse and negotiate checks, cashier's checks,
921 official checks, drafts, and other negotiable paper of the
922 principal or payable to the principal or the principal's order,
923 transfer money, receive the cash or other proceeds of those
924 transactions, and accept a draft drawn by a person upon the

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925 principal and pay it when due.

926 (g) Apply for, receive, and use debit cards, electronic
 927 transaction authorizations, and traveler's checks from a
 928 financial institution.

929 (h) Use, charge, or draw upon any line of credit, credit
 930 card, or other credit established by the principal with a
 931 financial institution.

932 (i) Consent to an extension of the time of payment with
 933 respect to commercial paper or a financial transaction with a
 934 financial institution.

935 (2) A power of attorney that specifically includes the
 936 statement that the agent has "authority to conduct investment
 937 transactions as provided in section 709.2208(2), Florida
 938 Statutes" grants general authority to the agent with respect to
 939 securities held by financial institutions to take the following
 940 actions without additional specific enumeration in the power of
 941 attorney:

942 (a) Buy, sell, and exchange investment instruments.

943 (b) Establish, continue, modify, or terminate an account
 944 with respect to investment instruments.

945 (c) Pledge investment instruments as security to borrow,
 946 pay, renew, or extend the time of payment of a debt of the
 947 principal.

948 (d) Receive certificates and other evidences of ownership
 949 with respect to investment instruments.

950 (e) Exercise voting rights with respect to investment
 951 instruments in person or by proxy, enter into voting trusts, and
 952 consent to limitations on the right to vote.

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953 (f) Sell commodity futures contracts and call and put
 954 options on stocks and stock indexes.

955
 956 For purposes of this subsection, the term "investment
 957 instruments" means stocks, bonds, mutual funds, and all other
 958 types of securities and financial instruments, whether held
 959 directly, indirectly, or in any other manner, including shares
 960 or interests in a private investment fund, including, but not
 961 limited to, a private investment fund organized as a limited
 962 partnership, a limited liability company, a statutory or common
 963 law business trust, a statutory trust, or a real estate
 964 investment trust, joint venture, or any other general or limited
 965 partnership; derivatives or other interests of any nature in
 966 securities such as options, options on futures, and variable
 967 forward contracts; mutual funds; common trust funds; money
 968 market funds; hedge funds; private equity or venture capital
 969 funds; insurance contracts; and other entities or vehicles
 970 investing in securities or interests in securities whether
 971 registered or otherwise, except commodity futures contracts and
 972 call and put options on stocks and stock indexes.

973 Section 27. Section 709.2301, Florida Statutes, is created
 974 to read:

975 709.2301 Principles of law and equity.—The common law of
 976 agency and principles of equity supplement this part, except as
 977 modified by this part or other state law.

978 Section 28. Section 709.2302, Florida Statutes, is created
 979 to read:

980 709.2302 Laws applicable to financial institutions and

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981 entities.—This part does not supersede any other law applicable
 982 to financial institutions or other entities, and that law
 983 controls if inconsistent with this part.

984 Section 29. Section 709.2303, Florida Statutes, is created
 985 to read:

986 709.2303 Remedies under other law.—The remedies under this
 987 part are not exclusive and do not abrogate any right or remedy
 988 under any other law other than this part.

989 Section 30. Section 709.2401, Florida Statutes, is created
 990 to read:

991 709.2401 Relation to electronic signatures in federal
 992 law.—This part modifies, limits, and supersedes the federal
 993 Electronic Signatures in Global and National Commerce Act, 15
 994 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede
 995 s. 101(c) of that act, or authorize electronic delivery of any
 996 of the notices described in s. 103(b) of that act.

997 Section 31. Section 709.2402, Florida Statutes, is created
 998 to read:

999 709.2402 Effect on existing powers of attorney.—Except as
 1000 otherwise provided in this part:

1001 (1) This part applies to a power of attorney created
 1002 before, on, or after October 1, 2011, and to acts of the agent
 1003 occurring on or after that date.

1004 (2) An act of the agent occurring before October 1, 2011,
 1005 is not affected by this part.

1006 Section 32. Subsection (5) of section 736.0602, Florida
 1007 Statutes, is amended to read:

1008 736.0602 Revocation or amendment of revocable trust.—

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1009 | (5) A settlor's powers with respect to revocation,
 1010 | amendment, or distribution of trust property may be exercised by
 1011 | an agent under a power of attorney only as authorized by s.
 1012 | 709.2206 ~~709.08~~.

1013 | Section 33. Sections 709.01, 709.015, 709.08, and 709.11
 1014 | Florida Statutes, are repealed.

1015 | Section 34. This act shall take effect October 1, 2011.