

By Senator Joyner

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1 A bill to be entitled
2 An act relating to powers of attorney; amending s.
3 709.2102, F.S.; adding definitions; revising the
4 definition of "sign"; amending s. 709.2103, F.S.;
5 adding certain powers of attorney to which this part
6 does not apply; amending s. 709.2105, F.S.;
7 authorizing a notary public to sign the principal's
8 name to the power of attorney under certain
9 circumstances; amending s. 709.2106, F.S.; clarifying
10 and revising language; providing that an original
11 power of attorney, rather than a photocopy or
12 electronic copy, may be required under certain
13 circumstances; providing that an original power of
14 attorney may be presented for recording in the
15 official records for a fee; amending s. 709.2114,
16 F.S.; adding exceptions to a provision that prohibits
17 an agent who has accepted appointment from delegating
18 authority to a third person; amending s. 709.2116,
19 F.S.; providing for attorney fees and costs as in
20 chancery actions; amending s. 709.2119, F.S.;
21 authorizing a third person to require an agent to
22 execute an affidavit stating that the agent's
23 authority was not terminated because of certain
24 circumstances; revising a sample form of an affidavit;
25 revising a cross-reference; amending s. 709.2120,
26 F.S.; revising language; providing a presumption of
27 reasonable time to accept or reject a power of
28 attorney for a broker-dealer; requiring a third person
29 who rejects a power of attorney to state the reason in

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30 writing unless a certain circumstance applies;
31 amending s. 709.2121, F.S.; providing for notice to a
32 broker-dealer; amending s. 709.2202, F.S.; conforming
33 a cross-reference; authorizing a notary public to sign
34 the principal's name to documents, other than the
35 power of attorney, under certain circumstances;
36 clarifying that certain gift amounts are based on the
37 calendar year; specifying that a broker-dealer does
38 not have a duty to inquire into certain actions by an
39 agent and is not liable for relying in good faith on
40 an agent's actions; amending s. 709.2208, F.S.;
41 providing that an agent acquires general authority
42 regarding securities held by a broker-dealer under
43 certain circumstances; providing an effective date.
44

45 Be It Enacted by the Legislature of the State of Florida:
46

47 Section 1. Present subsections (2) through (12) of section
48 709.2102, Florida Statutes, are redesignated as subsections (3)
49 through (13), respectively, present subsection (13) of that
50 section is redesignated as subsection (15), a new subsection (2)
51 and a new subsection (14) are added to that section, and present
52 subsection (12) of that section is amended to read:

53 709.2102 Definitions.—As used in this part, the term:

54 (2) "Broker-dealer" means a broker-dealer registered with
55 the United States Securities and Exchange Commission or the
56 Commodity Futures Trading Commission if the broker-dealer is
57 acting in that capacity.

58 (13)~~(12)~~ "Sign" means having present intent to authenticate

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59 or adopt a record to:

60 (a) Execute by signature or mark ~~adopt a tangible symbol~~;

61 or

62 (b) Attach to, or logically associate with the record an

63 electronic sound, symbol, or process.

64 (14) "Another state" means a state of the United States,

65 the District of Columbia, Puerto Rico, the United States Virgin

66 Islands, or any territory or insular possession subject to the

67 jurisdiction of the United States.

68 Section 2. Section 709.2103, Florida Statutes, is amended

69 to read:

70 709.2103 Applicability.—This part applies to all powers of

71 attorney except:

72 (1) A proxy or other delegation to exercise voting rights

73 or management rights with respect to an entity;

74 (2) A power created on a form prescribed by a government or

75 governmental subdivision, agency, or instrumentality for a

76 governmental purpose;

77 (3) A power to the extent it is coupled with an interest in

78 the subject of the power, including a power given to or for the

79 benefit of a creditor in connection with a credit transaction;

80 and

81 (4) A power created by a person other than an individual;

82 (5) A power given to a transfer agent to facilitate a

83 specific transfer or disposition of one or more identified

84 stocks, bonds, or other financial instruments;

85 (6) A power authorizing a financial institution or broker-

86 dealer, or an employee of the financial institution or broker-

87 dealer, to act as agent for the account owner in executing

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88 trades or transfers of cash, securities, commodities, or other
89 financial assets in the regular course of business; and

90 (7) A delegation of powers by a trustee in accordance with
91 s. 736.0807.

92 Section 3. Subsection (3) is added to section 709.2105,
93 Florida Statutes, to read:

94 709.2105 Qualifications of agent; execution of power of
95 attorney.—

96 (3) If the principal is physically unable to sign the power
97 of attorney, the notary public before whom the principal's oath
98 or acknowledgment is made may sign the principal's name on the
99 power of attorney pursuant to s. 117.05(14).

100 Section 4. Subsections (3) and (5) of section 709.2106,
101 Florida Statutes, are amended, and subsection (6) is added to
102 that section, to read:

103 709.2106 Validity of power of attorney.—

104 (3) A power of attorney executed in another state which
105 does not comply with the execution requirements of this part is
106 valid in this state if, when the power of attorney was executed,
107 the power of attorney and its execution complied with the law of
108 the state of execution. A third person who is requested to
109 accept a power of attorney that is valid in this state solely
110 because of this subsection may in good faith request, and rely
111 upon, without further investigation, an opinion of counsel as to
112 any matter of law concerning the power of attorney, including
113 the due execution and validity of the power of attorney. An
114 opinion of counsel requested under this subsection must be
115 provided at the principal's expense. A third person may reject
116 ~~accept~~ a power of attorney that is valid in this state solely

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117 because of this subsection if the agent does not provide the
118 requested opinion of counsel, and in such case, a third person
119 has no liability for rejecting ~~refusing to accept~~ the power of
120 attorney. This subsection does not affect any other rights of a
121 third person who is requested to accept the power of attorney
122 under this part, or any other provisions of applicable law.

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

126 Notwithstanding the provisions of this subsection, an original
127 power of attorney that is relied upon to affect the title to
128 real property may be required for recording in the official
129 records.

130 (6) An original of a properly executed power of attorney
131 may be presented to the clerk of the circuit court for recording
132 in the official records, as provided under s. 28.222, upon
133 payment of a service charge, as provided under s. 28.24.

134 Section 5. Subsection (1) of section 709.2114, Florida
135 Statutes, is amended to read:

136 709.2114 Agent's duties.—

137 (1) An agent is a fiduciary. Notwithstanding the provisions
138 in the power of attorney, an agent who has accepted appointment:

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

141 1. May not act contrary to the principal's reasonable
142 expectations actually known by the agent;

143 2. Must act in good faith;

144 3. May not act in a manner that is contrary to the
145 principal's best interest, except as provided in paragraph

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146 (2) (d) and s. 709.2202; and

147 4. Must attempt to preserve the principal's estate plan, to
148 the extent actually known by the agent, if preserving the plan
149 is consistent with the principal's best interest based on all
150 relevant factors, including:

151 a. The value and nature of the principal's property;

152 b. The principal's foreseeable obligations and need for
153 maintenance;

154 c. Minimization of taxes, including income, estate,
155 inheritance, generation-skipping transfer, and gift taxes;

156 d. Eligibility for a benefit, a program, or assistance
157 under a statute or rule; and

158 e. The principal's personal history of making or joining in
159 making gifts;

160 (b) May not delegate authority to a third person except as
161 authorized under ~~provided in~~ s. 518.112 or this part, or by
162 executing a power of attorney on a form prescribed by a
163 government or governmental subdivision, agency, or
164 instrumentality for a governmental purpose;

165 (c) Must keep a record of all receipts, disbursements, and
166 transactions made on behalf of the principal; and

167 (d) Must create and maintain an accurate inventory each
168 time the agent accesses the principal's safe-deposit box, if the
169 power of attorney authorizes the agent to access the box.

170 Section 6. Subsection (3) of section 709.2116, Florida
171 Statutes, is amended to read:

172 709.2116 Judicial relief; conflicts of interests.—

173 (3) In any proceeding commenced by filing a petition under
174 this section, including, but not limited to, the unreasonable

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175 refusal of a third person to allow an agent to act pursuant to
176 the power of attorney, and in challenges to the proper exercise
177 of authority by the agent, the court shall award reasonable
178 attorney ~~attorney's~~ fees and costs as in chancery actions.

179 Section 7. Subsections (2) and (3) of section 709.2119,
180 Florida Statutes, are amended to read:

181 709.2119 Acceptance of and reliance upon power of
182 attorney.—

183 (2) A third person may require:

184 (a) An agent to execute an affidavit stating where the
185 principal is domiciled; that the principal is not deceased; that
186 there has been no revocation, or partial or complete termination
187 by adjudication of incapacity or by the occurrence of an event
188 referenced in the power of attorney; that there has been no
189 suspension by initiation of proceedings to determine incapacity,
190 or to appoint a guardian, of the principal; that the agent's
191 authority has not been terminated by the filing of an action for
192 dissolution or annulment of marriage, or legal separation of the
193 agent and principal; and, if the affiant is a successor agent,
194 the reasons for the unavailability of the predecessor agents, if
195 any, at the time the authority is exercised.

196 (b) An officer of a financial institution acting as agent
197 to execute a separate affidavit, or include in the form of the
198 affidavit, the officer's title and a statement that the officer
199 has full authority to perform all acts and enter into all
200 transactions authorized by the power of attorney for and on
201 behalf of the financial institution in its capacity as agent.

202 (c) A written affidavit executed by the agent under this
203 subsection may, but need not, be in the following form:

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STATE OF.....
COUNTY OF.....

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

1. Affiant is the agent ~~attorney in fact~~ named in the
~~Durable~~ Power of Attorney executed by ...(principal)...
("Principal") on ...(date)....

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

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

a. The Principal is not deceased;

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

c. Affiant's authority has not been terminated by the
filing of an action for dissolution or annulment of Affiant's
marriage to the principal, or their legal separation; and

~~d.e.~~ There has been no revocation, or partial or complete
termination, of the power of attorney or of Affiant's authority.

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

5. Affiant is the successor to ...(insert name of
predecessor agent)..., who has resigned, died, become
incapacitated, is no longer qualified to serve, has declined to

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233 serve as agent, or is otherwise unable to act, if applicable.

234 6. Affiant agrees not to exercise any powers granted by the
235 ~~Durable~~ Power of Attorney if Affiant attains knowledge that the
236 power of attorney ~~it~~ has been revoked, has been partially or
237 completely terminated or suspended, or is no longer valid
238 because of the death or adjudication of incapacity of the
239 Principal.

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241
242 ... (Affiant) ...
243

244 Sworn to (or affirmed) and subscribed before me this
245 day of ... (month) ..., ... (year) ..., by ... (name of person making
246 statement) ...

247
248 ... (Signature of Notary Public-State of Florida) ...
249
250 ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...
251

252 Personally Known OR Produced Identification
253 ... (Type of Identification Produced) ...
254

255 (3) A third person who is asked to accept a power of
256 attorney that appears to be executed in accordance with s.
257 709.2105 ~~s. 709.2103~~ may in good faith request, and rely upon,
258 without further investigation:

259 (a) A certified ~~verified~~ English translation of the power
260 of attorney if the power of attorney contains, in whole or in
261 part, language other than English;

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262 (b) An opinion of counsel as to any matter of law
263 concerning the power of attorney if the third person making the
264 request provides in a writing or other record the reason for the
265 request; or

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

267 Section 8. Section 709.2120, Florida Statutes, is amended
268 to read:

269 709.2120 Rejecting a Refusal to accept power of attorney.-

270 (1) ~~Except as provided in subsection (2):~~

271 ~~(a) A third person must accept or reject a power of~~
272 ~~attorney within a reasonable time. A third person who rejects a~~
273 ~~power of attorney must state in writing the reason for the~~
274 ~~rejection.~~

275 ~~(b) Four days, excluding Saturdays, Sundays, and legal~~
276 ~~holidays, are presumed to be a reasonable time for a financial~~
277 ~~institution or broker-dealer to accept or reject a power of~~
278 ~~attorney with respect to:~~

279 (a)1. A banking transaction, if the power of attorney
280 expressly contains authority to conduct banking transactions
281 pursuant to s. 709.2208(1); or

282 (b)2. An investment ~~A security~~ transaction, if the power of
283 attorney expressly contains authority to conduct investment
284 ~~security~~ transactions pursuant to s. 709.2208(2).

285 (2)(e) A third person may not require an additional or
286 different form of power of attorney for authority granted in the
287 power of attorney presented.

288 (3) A third person who rejects a power of attorney for any
289 reason other than as provided in paragraph (4) (a) must state in
290 writing the reason for the rejection.

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291 (4)~~(2)~~ A third person is not required to accept a power of
292 attorney if:

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

295 (b) The third person has knowledge of the termination or
296 suspension of the agent's authority or of the power of attorney
297 before exercising the power;

298 (c) A timely request by the third person for an affidavit,
299 English translation, or opinion of counsel under s. 709.2119(4)
300 is refused by the agent;

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

304 (e) The third person makes, or has knowledge that another
305 person has made, a report to the local adult protective services
306 office stating a good faith belief that the principal may be
307 subject to physical or financial abuse, neglect, exploitation,
308 or abandonment by the agent or a person acting for or with the
309 agent.

310 (5)~~(3)~~ A third person who, in violation of this section,
311 rejects ~~refuses to accept~~ a power of attorney is subject to:

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

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

318 Section 9. Subsection (3) of section 709.2121, Florida
319 Statutes, is amended to read:

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320 709.2121 Notice.—

321 (3) Notice to a financial institution or broker-dealer must
322 contain the name, address, and the last four digits of the
323 principal's taxpayer identification number and be directed to an
324 officer or a manager of the financial institution or broker-
325 dealer in this state.

326 Section 10. Present subsections (2) through (5) of section
327 709.2202, Florida Statutes, are redesignated as subsections (3)
328 through (6), respectively, a new subsection (2) is added to that
329 section, and present subsections (1), (3), and (4) of that
330 section are amended to read:

331 709.2202 Authority that requires separate signed
332 enumeration.—

333 (1) Notwithstanding s. 709.2201, an agent may exercise the
334 following authority only if the principal signed or initialed
335 next to each specific enumeration of the authority, the exercise
336 of the authority is consistent with the agent's duties under s.
337 709.2114, and the exercise is not otherwise prohibited by
338 another agreement or instrument:

339 (a) Create an inter vivos trust;

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

344 (c) Make a gift, subject to subsection (4)~~(3)~~;

345 (d) Create or change rights of survivorship;

346 (e) Create or change a beneficiary designation;

347 (f) Waive the principal's right to be a beneficiary of a
348 joint and survivor annuity, including a survivor benefit under a

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349 retirement plan; or

350 (g) Disclaim property and powers of appointment.

351 (2) In addition to signing the power of attorney on behalf
352 of the principal pursuant to s. 709.2105(3), if the principal is
353 physically unable to sign or initial next to any enumerated
354 authority for which subsection (1) requires the principal to
355 sign or initial, the notary public before whom the principal's
356 oath or acknowledgment is made may sign the principal's name or
357 initials if:

358 (a) The principal directs the notary to sign the
359 principal's name or initials on the power of attorney next to
360 any enumerated authority for which subsection (1) requires the
361 principal to sign or initial;

362 (b) The signing or initialing by the notary is done in the
363 presence of the principal and witnessed by two disinterested
364 subscribing witnesses; and

365 (c) The notary writes the statement "Signature or initials
366 affixed by notary, pursuant to s. 709.2202(2), Florida Statutes"
367 below each signature or initial that the notary writes on behalf
368 of the principal. Only one notarial certificate, in
369 substantially the same form as provided in s. 117.05(14), which
370 states the circumstances of all signatures and initials written
371 by the notary public, is required to be completed by the notary
372 public.

373 (4)~~(3)~~ Unless the power of attorney otherwise provides, a
374 provision in a power of attorney granting general authority with
375 respect to gifts authorizes the agent to only:

376 (a) Make outright to, or for the benefit of, a person a
377 gift of any of the principal's property, including by the

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378 exercise of a presently exercisable general power of appointment
379 held by the principal, in an amount per donee per calendar year,
380 not to exceed the annual dollar limits of the federal gift tax
381 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard
382 to whether the federal gift tax exclusion applies to the gift,
383 or if the principal's spouse agrees to consent to a split gift
384 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per
385 donee per calendar year, not to exceed twice the annual federal
386 gift tax exclusion limit; and

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

391 (5)~~(4)~~ Notwithstanding subsection (1), if a power of
392 attorney is otherwise sufficient to grant an agent authority to
393 conduct banking transactions, as provided in s. 709.2208(1),
394 conduct investment transactions as provided in s. 709.2208(2),
395 or otherwise make additions to or withdrawals from an account of
396 the principal, making a deposit to or withdrawal from an
397 insurance policy, retirement account, individual retirement
398 account, benefit plan, bank account, or any other account held
399 jointly or otherwise held in survivorship or payable on death,
400 is not considered to be a change to the survivorship feature or
401 beneficiary designation, and no further specific authority is
402 required for the agent to exercise such authority. A ~~bank or~~
403 ~~other~~ financial institution or broker-dealer does not have a
404 duty to inquire as to the appropriateness of the agent's
405 exercise of that authority and is not liable to the principal or
406 any other person for actions taken in good faith reliance on the

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407 appropriateness of the agent's actions. This subsection does not
408 eliminate the agent's fiduciary duties to the principal with
409 respect to any exercise of the power of attorney.

410 Section 11. Subsection (2) of section 709.2208, Florida
411 Statutes, is amended to read:

412 709.2208 Banks and other financial institutions.—

413 (2) A power of attorney that specifically includes the
414 statement that the agent has "authority to conduct investment
415 transactions as provided in section 709.2208(2), Florida
416 Statutes" grants general authority to the agent with respect to
417 securities held by financial institutions or broker-dealers to
418 take the following actions without additional specific
419 enumeration in the power of attorney:

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

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

423 (c) Pledge investment instruments as security to borrow,
424 pay, renew, or extend the time of payment of a debt of the
425 principal.

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

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

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

433

434 For purposes of this subsection, the term "investment
435 instruments" means stocks, bonds, mutual funds, and all other

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436 types of securities and financial instruments, whether held
437 directly, indirectly, or in any other manner, including shares
438 or interests in a private investment fund, including, but not
439 limited to, a private investment fund organized as a limited
440 partnership, a limited liability company, a statutory or common
441 law business trust, a statutory trust, or a real estate
442 investment trust, joint venture, or any other general or limited
443 partnership; derivatives or other interests of any nature in
444 securities such as options, options on futures, and variable
445 forward contracts; mutual funds; common trust funds; money
446 market funds; hedge funds; private equity or venture capital
447 funds; insurance contracts; and other entities or vehicles
448 investing in securities or interests in securities whether
449 registered or otherwise, except commodity futures contracts and
450 call and put options on stocks and stock indexes.

451 Section 12. This act shall take effect upon becoming a law.