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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.; revising and providing definitions;  
4           amending s. 709.2103, F.S.; providing additional  
5           exceptions to the applicability of specified power of  
6           attorney provisions; amending s. 709.2105, F.S.;  
7           authorizing a notary public to sign a principal's name  
8           on a power of attorney in accordance with specified  
9           provisions if the principal is physically unable to  
10          sign; amending s. 709.2106, F.S.; authorizing a third  
11          person to refuse to accept a power of attorney  
12          executed in another state in certain circumstances;  
13          requiring an original of a power of attorney that is  
14          relied upon to affect the title to real property to be  
15          recorded; providing that the original of a properly  
16          executed power of attorney may be presented for  
17          recording in the official records as provided by law;  
18          amending s. 709.2114, F.S.; providing additional  
19          circumstances in which an agent may delegate authority  
20          to a third person; amending s. 709.2116, F.S.;  
21          limiting awards of attorney fees and costs for certain  
22          actions related to powers of attorney to those awarded  
23          in actions in chancery; amending s. 709.2119, F.S.;  
24          authorizing a third person to require an agent to  
25          execute an affidavit stating that the agent's  
26          authority has not been terminated by the filing of an  
27          action for dissolution or annulment of marriage or  
28          legal separation of the agent and principal; revising

29 a form for affidavits; revising cross-references;  
30 revising terminology relating to English translations  
31 of powers of attorney; amending s. 709.2120, F.S.;  
32 conforming provisions to changes made by the act;  
33 requiring a third person who rejects a power of  
34 attorney for certain reasons to state the reasons for  
35 the rejection in writing; amending s. 709.2121, F.S.;  
36 requiring certain notices to broker-dealers to contain  
37 specified information; amending s. 709.2202, F.S.;  
38 authorizing a notary public to sign or initial a power  
39 of attorney for the principal in certain  
40 circumstances; revising language concerning a general  
41 power of attorney with respect to gifts; providing  
42 that broker-dealers do not have a duty to inquire as  
43 to the appropriateness of the agent's exercise of  
44 authority and are not liable for certain actions in  
45 certain circumstances; amending s. 709.2208, F.S.;  
46 providing that broker-dealers have authority to take  
47 certain actions if a power of attorney contains  
48 specific language concerning the agent's authority;  
49 providing an effective date.

50  
51 Be It Enacted by the Legislature of the State of Florida:

52  
53 Section 1. Subsections (2) through (12) and (13) of  
54 section 709.2102, Florida Statutes, are renumbered as  
55 subsections (3) through (13) and (15), respectively, new  
56 subsections (2) and (14) are added to that section, and present

57 subsection (12) of that section is amended, to read:

58 709.2102 Definitions.—As used in this part, the term:

59 (2) "Broker-dealer" means a broker-dealer registered with  
 60 the United States Securities and Exchange Commission or the  
 61 Commodity Futures Trading Commission if the broker-dealer is  
 62 acting in that capacity.

63 (13)-(12) "Sign" means having present intent to  
 64 authenticate or adopt a record to:

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

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

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

73 Section 2. Section 709.2103, Florida Statutes, is amended  
 74 to read:

75 709.2103 Applicability.—This part applies to all powers of  
 76 attorney except:

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

79 (2) A power created on a form prescribed by a government  
 80 or governmental subdivision, agency, or instrumentality for a  
 81 governmental purpose;

82 (3) A power to the extent it is coupled with an interest  
 83 in the subject of the power, including a power given to or for  
 84 the benefit of a creditor in connection with a credit

85 transaction; ~~and~~

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

87 (5) A power given to a transfer agent to facilitate a  
 88 specific transfer or disposition of one or more identified  
 89 stocks, bonds, or other financial instruments;

90 (6) A power authorizing a financial institution or broker-  
 91 dealer, or an employee of the financial institution or broker-  
 92 dealer, to act as agent for the account owner in executing  
 93 trades or transfers of cash, securities, commodities, or other  
 94 financial assets on behalf of the account owner in the regular  
 95 course of business; and

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

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

100 709.2105 Qualifications of agent; execution of power of  
 101 attorney.—

102 (3) If the principal is physically unable to sign the  
 103 power of attorney, the notary public before whom the principal's  
 104 oath or acknowledgment is made may sign the principal's name on  
 105 the power of attorney in accordance with chapter 117.

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

109 709.2106 Validity of power of attorney.—

110 (3) A power of attorney executed in another state which  
 111 does not comply with the execution requirements of this part is  
 112 valid in this state if, when the power of attorney was executed,

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113 the power of attorney and its execution complied with the law of  
114 the state of execution. A third person who is requested to  
115 accept a power of attorney that is valid in this state solely  
116 because of this subsection may in good faith request, and rely  
117 upon, without further investigation, an opinion of counsel as to  
118 any matter of law concerning the power of attorney, including  
119 the due execution and validity of the power of attorney. An  
120 opinion of counsel requested under this subsection must be  
121 provided at the principal's expense. A third person may refuse  
122 to accept a power of attorney that is valid in this state solely  
123 because of this subsection if the agent does not provide the  
124 requested opinion of counsel, and in such case, a third person  
125 has no liability for refusing to accept the power of attorney.  
126 This subsection does not affect any other rights of a third  
127 person who is requested to accept the power of attorney under  
128 this part, or any other provisions of applicable law.

129 (5) Except as otherwise provided in the power of attorney,  
130 a photocopy or electronically transmitted copy of an original  
131 power of attorney has the same effect as the original, except  
132 that an original of a power of attorney that is relied upon to  
133 affect the title to real property must be recorded in the  
134 official records.

135 (6) The original of a properly executed power of attorney  
136 may be presented for recording in the official records as  
137 provided for in s. 28.222 upon payment of the service charge as  
138 provided by law for the recording of documents in the public  
139 records.

140 Section 5. Paragraph (b) of subsection (1) of section

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141 709.2114, Florida Statutes, is amended to read:

142 709.2114 Agent's duties.—

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

146 (b) May not delegate authority to a third person except:

147 1. As provided in s. 518.112;

148 2. As provided in this part; or

149 3. By execution of a power of attorney on a form  
150 prescribed by a government or governmental subdivision, agency,  
151 or instrumentality for a governmental purpose;

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

154 709.2116 Judicial relief; conflicts of interests.—

155 (3) In any proceeding commenced by filing a petition under  
156 this section, including, but not limited to, the unreasonable  
157 refusal of a third person to allow an agent to act pursuant to  
158 the power of attorney, and in challenges to the proper exercise  
159 of authority by the agent, the court shall award reasonable  
160 attorney ~~attorney's~~ fees and costs as in chancery actions.

161 Section 7. Subsections (2), (3), and (4) of section  
162 709.2119, Florida Statutes, are amended to read:

163 709.2119 Acceptance of and reliance upon power of  
164 attorney.—

165 (2) A third person may require:

166 (a) An agent to execute an affidavit stating where the  
167 principal is domiciled; that the principal is not deceased; that  
168 there has been no revocation, or partial or complete termination

169 by adjudication of incapacity or by the occurrence of an event  
 170 referenced in the power of attorney; that there has been no  
 171 suspension by initiation of proceedings to determine incapacity,  
 172 or to appoint a guardian, of the principal; that the agent's  
 173 authority has not been terminated by the filing of an action for  
 174 dissolution or annulment of marriage or by the legal separation  
 175 of the agent and the principal; and, if the affiant is a  
 176 successor agent, the reasons for the unavailability of the  
 177 predecessor agents, if any, at the time the authority is  
 178 exercised.

179 (b) An officer of a financial institution acting as agent  
 180 to execute a separate affidavit, or include in the form of the  
 181 affidavit, the officer's title and a statement that the officer  
 182 has full authority to perform all acts and enter into all  
 183 transactions authorized by the power of attorney for and on  
 184 behalf of the financial institution in its capacity as agent.

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

187 STATE OF.....  
 188 COUNTY OF.....

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

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

195 2. This Power of Attorney is currently exercisable by  
 196 Affiant. The principal is domiciled in ...(insert name of state,

197 territory, or foreign country)....

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

200 a. The Principal is not deceased;

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

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

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

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

211 5. Affiant is the successor to ...(insert name of  
212 predecessor agent)..., who has resigned, died, become  
213 incapacitated, is no longer qualified to serve, has declined to  
214 serve as agent, or is otherwise unable to act, if applicable.

215 6. Affiant agrees not to exercise any powers granted by  
216 the Durable Power of Attorney if Affiant attains knowledge that  
217 it has been revoked, has been partially or completely terminated  
218 or suspended, or is no longer valid because of the death or  
219 adjudication of incapacity of the Principal.

220 .....  
221 ... (Affiant)...

222 Sworn to (or affirmed) and subscribed before me this ....  
223 day of ...(month)..., ...(year)..., by ...(name of person making  
224 statement)...



225 | ... (Signature of Notary Public-State of Florida) ...  
 226 | ... (Print, Type, or Stamp Commissioned Name of Notary Public) ...  
 227 | Personally Known OR Produced Identification  
 228 | ... (Type of Identification Produced) ...

229 |         (3) A third person who is asked to accept a power of  
 230 | attorney that appears to be executed in accordance with s.  
 231 | 709.2105 ~~709.2103~~ may in good faith request, and rely upon,  
 232 | without further investigation:

233 |             (a) A certified ~~verified~~ English translation of the power  
 234 | of attorney if the power of attorney contains, in whole or in  
 235 | part, language other than English;

236 |             (b) An opinion of counsel as to any matter of law  
 237 | concerning the power of attorney if the third person making the  
 238 | request provides in a writing or other record the reason for the  
 239 | request; or

240 |             (c) The affidavit described in subsection (2).

241 |         (4) An English translation or an opinion of counsel  
 242 | requested under this section must be provided at the principal's  
 243 | expense unless the request is made after the time specified in  
 244 | s. 709.2120 ~~709.2120(1)~~ for acceptance or rejection of the power  
 245 | of attorney.

246 |         Section 8. Section 709.2120, Florida Statutes, is amended  
 247 | to read:

248 |         709.2120 Refusal to accept power of attorney.—

249 |         ~~(1) Except as provided in subsection (2):~~

250 |         (1) ~~(a)~~ A third person must accept or reject a power of  
 251 | attorney within a reasonable time. A third person who rejects a  
 252 | power of attorney must state in writing the reason for the

253 rejection.

254 ~~(2)(b)~~ Four days, excluding Saturdays, Sundays, and legal  
 255 holidays, are presumed to be a reasonable time for a financial  
 256 institution or broker-dealer to accept or reject a power of  
 257 attorney with respect to:

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

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

264 ~~(3)(e)~~ A third person may not require an additional or  
 265 different form of power of attorney for authority granted in the  
 266 power of attorney presented.

267 (4) A third person who rejects a power of attorney for any  
 268 reason other than as provided in paragraph (5)(a) must state in  
 269 writing the reasons for the rejection.

270 ~~(5)(2)~~ A third person is not required to accept a power of  
 271 attorney if:

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

274 (b) The third person has knowledge of the termination or  
 275 suspension of the agent's authority or of the power of attorney  
 276 before exercising the power;

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

280 (d) Except as provided in paragraph (b), the third person

281 | believes in good faith that the power is not valid or that the  
 282 | agent does not have authority to perform the act requested; or

283 |       (e) The third person makes, or has knowledge that another  
 284 | person has made, a report to the local adult protective services  
 285 | office stating a good faith belief that the principal may be  
 286 | subject to physical or financial abuse, neglect, exploitation,  
 287 | or abandonment by the agent or a person acting for or with the  
 288 | agent.

289 |       (6)~~(3)~~ A third person who, in violation of this section,  
 290 | refuses to accept a power of attorney is subject to:

291 |       (a) A court order mandating acceptance of the power of  
 292 | attorney; and

293 |       (b) Liability for damages, including reasonable attorney  
 294 | ~~attorney's~~ fees and costs, incurred in any action or proceeding  
 295 | that confirms, for the purpose tendered, the validity of the  
 296 | power of attorney or mandates acceptance of the power of  
 297 | attorney.

298 |       Section 9. Subsection (3) of section 709.2121, Florida  
 299 | Statutes, is amended to read:

300 |       709.2121 Notice.—

301 |       (3) Notice to a financial institution or broker-dealer  
 302 | must contain the principal's name and~~7~~ address~~7~~ and the last  
 303 | four digits of the principal's taxpayer identification number  
 304 | and be directed to an officer or a manager of the financial  
 305 | institution or broker-dealer in this state.

306 |       Section 10. Section 709.2202, Florida Statutes, is amended  
 307 | to read:

308 |       709.2202 Authority that requires separate signed

309 enumeration.—

310 (1) Notwithstanding s. 709.2201, an agent may exercise the  
 311 following authority only if the principal signed or initialed  
 312 next to each specific enumeration of the authority, the exercise  
 313 of the authority is consistent with the agent's duties under s.  
 314 709.2114, and the exercise is not otherwise prohibited by  
 315 another agreement or instrument:

316 (a) Create an inter vivos trust;

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

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

322 (d) Create or change rights of survivorship;

323 (e) Create or change a beneficiary designation;

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

327 (g) Disclaim property and powers of appointment.

328 (2) In addition to signing the power of attorney on behalf  
 329 of the principal pursuant to s. 709.2105(3) and chapter 117, if  
 330 the principal is physically unable to sign or initial next to  
 331 any enumerated authority for which subsection (1) requires the  
 332 principal to sign or initial, the notary public before whom the  
 333 principal's oath or acknowledgment is made may sign the  
 334 principal's name or initials on the power of attorney if:

335 (a) The principal directs the notary public to sign the  
 336 principal's name or write the principal's initials on the power

337 of attorney next to any enumerated authority for which  
 338 subsection (1) requires the principal to sign or initial;

339 (b) The signing or initialling of the power of attorney by  
 340 the notary public is done in the presence of the principal and  
 341 witnessed by two disinterested subscribing witnesses; and

342 (c) The notary public writes, "Signature or initials  
 343 affixed by the notary pursuant to s. 117.05(14), Florida  
 344 Statutes," below each and every signature or initial the notary  
 345 writes.

346  
 347 Only one notarial certificate in substantially the same form as  
 348 those described in s. 117.05(14), which states the circumstances  
 349 of all signatures and initials written by the notary public, is  
 350 required to be completed by the notary public.

351 (3)-(2) Notwithstanding a grant of authority to do an act  
 352 described in subsection (1), unless the power of attorney  
 353 otherwise provides, an agent who is not an ancestor, spouse, or  
 354 descendant of the principal may not exercise authority to create  
 355 in the agent, or in an individual to whom the agent owes a legal  
 356 obligation of support, an interest in the principal's property,  
 357 whether by gift, right of survivorship, beneficiary designation,  
 358 disclaimer, or otherwise.

359 (4)-(3) Unless the power of attorney otherwise provides, a  
 360 provision in a power of attorney granting general authority with  
 361 respect to gifts authorizes the agent to only:

362 (a) Make outright to, or for the benefit of, a person a  
 363 gift of any of the principal's property, including by the  
 364 exercise of a presently exercisable general power of appointment

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365 held by the principal, in an amount per donee per calendar year  
366 not to exceed the annual dollar limits of the federal gift tax  
367 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard  
368 to whether the federal gift tax exclusion applies to the gift,  
369 or if the principal's spouse agrees to consent to a split gift  
370 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per  
371 donee per calendar year not to exceed twice the annual federal  
372 gift tax exclusion limit; and

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

377 (5)~~(4)~~ Notwithstanding subsection (1), if a power of  
378 attorney is otherwise sufficient to grant an agent authority to  
379 conduct banking transactions, as provided in s. 709.2208(1),  
380 conduct investment transactions as provided in s. 709.2208(2),  
381 or otherwise make additions to or withdrawals from an account of  
382 the principal, making a deposit to or withdrawal from an  
383 insurance policy, retirement account, individual retirement  
384 account, benefit plan, bank account, or any other account held  
385 jointly or otherwise held in survivorship or payable on death,  
386 is not considered to be a change to the survivorship feature or  
387 beneficiary designation, and no further specific authority is  
388 required for the agent to exercise such authority. A ~~bank or~~  
389 ~~other~~ financial institution or broker-dealer does not have a  
390 duty to inquire as to the appropriateness of the agent's  
391 exercise of that authority and is not liable to the principal or  
392 any other person for actions taken in good faith reliance on the

393 | appropriateness of the agent's actions. This subsection does not  
 394 | eliminate the agent's fiduciary duties to the principal with  
 395 | respect to any exercise of the power of attorney.

396 | ~~(6)~~<sup>(5)</sup> This section does not apply to a power of attorney  
 397 | executed before October 1, 2011.

398 | Section 11. Subsection (2) of section 709.2208, Florida  
 399 | Statutes, is amended to read:

400 | 709.2208 Banks and other financial institutions.—

401 | (2) A power of attorney that specifically includes the  
 402 | statement that the agent has "authority to conduct investment  
 403 | transactions as provided in section 709.2208(2), Florida  
 404 | Statutes" grants general authority to the agent with respect to  
 405 | securities held by financial institutions or broker-dealers to  
 406 | take the following actions without additional specific  
 407 | enumeration in the power of attorney:

408 | (a) Buy, sell, and exchange investment instruments.

409 | (b) Establish, continue, modify, or terminate an account  
 410 | with respect to investment instruments.

411 | (c) Pledge investment instruments as security to borrow,  
 412 | pay, renew, or extend the time of payment of a debt of the  
 413 | principal.

414 | (d) Receive certificates and other evidences of ownership  
 415 | with respect to investment instruments.

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

419 | (f) Sell commodity futures contracts and call and put  
 420 | options on stocks and stock indexes.

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421  
422 For purposes of this subsection, the term "investment  
423 instruments" means stocks, bonds, mutual funds, and all other  
424 types of securities and financial instruments, whether held  
425 directly, indirectly, or in any other manner, including shares  
426 or interests in a private investment fund, including, but not  
427 limited to, a private investment fund organized as a limited  
428 partnership, a limited liability company, a statutory or common  
429 law business trust, a statutory trust, or a real estate  
430 investment trust, joint venture, or any other general or limited  
431 partnership; derivatives or other interests of any nature in  
432 securities such as options, options on futures, and variable  
433 forward contracts; mutual funds; common trust funds; money  
434 market funds; hedge funds; private equity or venture capital  
435 funds; insurance contracts; and other entities or vehicles  
436 investing in securities or interests in securities whether  
437 registered or otherwise, except commodity futures contracts and  
438 call and put options on stocks and stock indexes.

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