

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 under certain circumstances;  
9           amending s. 709.2106, F.S.; clarifying and revising  
10          language; providing that an original power of attorney  
11          may be required under certain circumstances; providing  
12          that an original power of attorney may recorded in the  
13          official records for a fee; amending s. 709.2114,  
14          F.S.; adding exceptions to a provision that prohibits  
15          an agent who has accepted appointment from delegating  
16          authority to a third person; amending s. 709.2116,  
17          F.S.; providing for the award of attorney fees and  
18          costs as in chancery actions; amending s. 709.2119,  
19          F.S.; authorizing a third person to require an agent  
20          to execute an affidavit stating that the agent's  
21          authority was not terminated because of certain  
22          circumstances; revising a form for affidavits;  
23          revising a cross-reference; revising terminology;  
24          amending s. 709.2120, F.S.; conforming provisions to  
25          changes made by the act; requiring a third person who  
26          rejects a power of attorney for certain reasons to  
27          state the reason for the rejection in writing;  
28          amending s. 709.2121, F.S.; providing for notice to a

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

41

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

43

44 Section 1. Subsections (2) through (12) of section  
 45 709.2102, Florida Statutes, are renumbered as subsections (3)  
 46 through (13), respectively, subsection (13) of that section is  
 47 renumbered as subsection (15), new subsections (2) and (14) are  
 48 added to that section, and present subsection (12) of that  
 49 section is amended, to read:

50 709.2102 Definitions.—As used in this part, the term:

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

55 (13)-(12) "Sign" means having present intent to  
 56 authenticate or adopt a record to:

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

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

61 (14) "Another state" means a state of the United States,  
 62 the District of Columbia, Puerto Rico, the United States Virgin  
 63 Islands, or any territory or insular possession subject to the  
 64 jurisdiction of the United States.

65 Section 2. Section 709.2103, Florida Statutes, is amended  
 66 to read:

67 709.2103 Applicability.—This part applies to all powers of  
 68 attorney except:

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

71 (2) A power created on a form prescribed by a government  
 72 or governmental subdivision, agency, or instrumentality for a  
 73 governmental purpose;

74 (3) A power to the extent it is coupled with an interest  
 75 in the subject of the power, including a power given to or for  
 76 the benefit of a creditor in connection with a credit  
 77 transaction; ~~and~~

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

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

82 (6) A power authorizing a financial institution or broker-  
 83 dealer, or an employee of the financial institution or broker-  
 84 dealer, to act as agent for the account owner in executing

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

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

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

91 709.2105 Qualifications of agent; execution of power of  
 92 attorney.—

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

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

100 709.2106 Validity of power of attorney.—

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

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

120 |       (5) Except as otherwise provided in the power of attorney,  
121 | a photocopy or electronically transmitted copy of an original  
122 | power of attorney has the same effect as the original.

123 | Notwithstanding this subsection, an original power of attorney  
124 | that is relied upon to affect the title to real property may be  
125 | required for recording in the official records.

126 |       (6) An original of a properly executed power of attorney  
127 | may be presented to the clerk of the circuit court for recording  
128 | in the official records as provided under s. 28.222 upon payment  
129 | of the service charge as provided under s. 28.24.

130 |       Section 5. Paragraph (b) of subsection (1) of section  
131 | 709.2114, Florida Statutes, is amended to read:

132 |       709.2114 Agent's duties.—

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

136 |       (b) May not delegate authority to a third person except as  
137 | authorized under ~~provided in~~ s. 518.112 or this part or by  
138 | executing a power of attorney on a form prescribed by a  
139 | government or governmental subdivision, agency, or  
140 | instrumentality for a governmental purpose;

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

143 709.2116 Judicial relief; conflicts of interests.—

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

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

152 709.2119 Acceptance of and reliance upon power of  
153 attorney.—

154 (2) A third person may require:

155 (a) An agent to execute an affidavit stating where the  
156 principal is domiciled; that the principal is not deceased; that  
157 there has been no revocation, or partial or complete termination  
158 by adjudication of incapacity or by the occurrence of an event  
159 referenced in the power of attorney; that there has been no  
160 suspension by initiation of proceedings to determine incapacity,  
161 or to appoint a guardian, of the principal; that the agent's  
162 authority has not been terminated by the filing of an action for  
163 dissolution or annulment of marriage or legal separation of the  
164 agent and principal; and, if the affiant is a successor agent,  
165 the reasons for the unavailability of the predecessor agents, if  
166 any, at the time the authority is exercised.

167 (b) An officer of a financial institution acting as agent  
168 to execute a separate affidavit, or include in the form of the

169 affidavit, the officer's title and a statement that the officer  
 170 has full authority to perform all acts and enter into all  
 171 transactions authorized by the power of attorney for and on  
 172 behalf of the financial institution in its capacity as agent.

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

175  
 176 STATE OF.....  
 177 COUNTY OF.....  
 178

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

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

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

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

- 190 a. The Principal is not deceased;
- 191 b. Affiant's authority has not been suspended by  
 192 initiation of proceedings to determine incapacity or to appoint  
 193 a guardian or a guardian advocate;

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

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

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

201 | 5. Affiant is the successor to ...(insert name of  
202 | predecessor agent)..., who has resigned, died, become  
203 | incapacitated, is no longer qualified to serve, has declined to  
204 | serve as agent, or is otherwise unable to act, if applicable.

205 | 6. Affiant agrees not to exercise any powers granted by  
206 | the ~~Durable~~ Power of Attorney if Affiant attains knowledge that  
207 | the power of attorney ~~it~~ has been revoked, has been partially or  
208 | completely terminated or suspended, or is no longer valid  
209 | because of the death or adjudication of incapacity of the  
210 | Principal.

211 | .....  
212 | ...(Affiant)...

213 | Sworn to (or affirmed) and subscribed before me this ....  
214 | day of ...(month)..., ...(year)..., by ...(name of person making  
215 | statement)...

216 | ...(Signature of Notary Public-State of Florida)...

217 |  
218 | ...(Print, Type, or Stamp Commissioned Name of Notary Public)...

219 |  
220 | Personally Known OR Produced Identification

221 | ...(Type of Identification Produced)...

222 |  
223 | (3) A third person who is asked to accept a power of  
224 | attorney that appears to be executed in accordance with s.



225 | 709.2105 ~~709.2103~~ may in good faith request, and rely upon,  
 226 | without further investigation:

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

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

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

235 |       Section 8. Section 709.2120, Florida Statutes, is amended  
 236 | to read:

237 |       709.2120 Rejecting ~~Refusal to accept~~ power of attorney.—

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

239 |       (1)(a) A third person must accept or reject a power of  
 240 | attorney within a reasonable time. ~~A third person who rejects a~~  
 241 | ~~power of attorney must state in writing the reason for the~~  
 242 | ~~rejection.~~

243 |       ~~(b)~~ Four days, excluding Saturdays, Sundays, and legal  
 244 | holidays, are presumed to be a reasonable time for a financial  
 245 | institution or broker-dealer to accept or reject a power of  
 246 | attorney with respect to:

247 |       (a)1. A banking transaction, if the power of attorney  
 248 | expressly contains authority to conduct banking transactions  
 249 | pursuant to s. 709.2208(1); or

250 |       (b)2. An investment ~~A security~~ transaction, if the power  
 251 | of attorney expressly contains authority to conduct investment  
 252 | ~~security~~ transactions pursuant to s. 709.2208(2).

253        ~~(2)(e)~~ A third person may not require an additional or  
254 different form of power of attorney for authority granted in the  
255 power of attorney presented.

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

259        ~~(4)(2)~~ A third person is not required to accept a power of  
260 attorney if:

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

263        (b) The third person has knowledge of the termination or  
264 suspension of the agent's authority or of the power of attorney  
265 before exercising the power;

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

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

272        (e) The third person makes, or has knowledge that another  
273 person has made, a report to the local adult protective services  
274 office stating a good faith belief that the principal may be  
275 subject to physical or financial abuse, neglect, exploitation,  
276 or abandonment by the agent or a person acting for or with the  
277 agent.

278        (5)(3) A third person who, in violation of this section,  
279 rejects ~~refuses to accept~~ a power of attorney is subject to:

280        (a) A court order mandating acceptance of the power of

281 attorney; and

282 (b) Liability for damages, including reasonable attorney  
 283 ~~attorney's~~ fees and costs, incurred in any action or proceeding  
 284 that confirms, for the purpose tendered, the validity of the  
 285 power of attorney or mandates acceptance of the power of  
 286 attorney.

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

289 709.2121 Notice.—

290 (3) Notice to a financial institution or broker-dealer  
 291 must contain the principal's name and ~~address~~, and the last  
 292 four digits of the principal's taxpayer identification number  
 293 and be directed to an officer or a manager of the financial  
 294 institution or broker-dealer in this state.

295 Section 10. Section 709.2202, Florida Statutes, is amended  
 296 to read:

297 709.2202 Authority that requires separate signed  
 298 enumeration.—

299 (1) Notwithstanding s. 709.2201, an agent may exercise the  
 300 following authority only if the principal signed or initialed  
 301 next to each specific enumeration of the authority, the exercise  
 302 of the authority is consistent with the agent's duties under s.  
 303 709.2114, and the exercise is not otherwise prohibited by  
 304 another agreement or instrument:

305 (a) Create an inter vivos trust;

306 (b) With respect to a trust created by or on behalf of the  
 307 principal, amend, modify, revoke, or terminate the trust, but  
 308 only if the trust instrument explicitly provides for amendment,

309 modification, revocation, or termination by the settlor's agent;

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

311 (d) Create or change rights of survivorship;

312 (e) Create or change a beneficiary designation;

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

316 (g) Disclaim property and powers of appointment.

317 (2) In addition to signing the power of attorney on behalf  
 318 of the principal pursuant to s. 709.2105(3), if the principal is  
 319 physically unable to sign or initial next to any enumerated  
 320 authority for which subsection (1) requires the principal to  
 321 sign or initial, the notary public before whom the principal's  
 322 oath or acknowledgment is made may sign the principal's name or  
 323 initials if:

324 (a) The principal directs the notary to sign the  
 325 principal's name or initials on the power of attorney next to  
 326 any enumerated authority for which subsection (1) requires the  
 327 principal to sign or initial;

328 (b) The signing or initialling by the notary is done in  
 329 the presence of the principal and witnessed by two disinterested  
 330 subscribing witnesses; and

331 (c) The notary writes the statement "Signature or initials  
 332 affixed by the notary pursuant to s. 709.2202(2), Florida  
 333 Statutes," below each signature or initial that the notary  
 334 writes on behalf of the principal.

335  
 336 Only one notarial certificate in substantially the same form as

337 those described in s. 117.05(14), which states the circumstances  
338 of all signatures and initials written by the notary public, is  
339 required to be completed by the notary public.

340 ~~(3)~~<sup>(2)</sup> Notwithstanding a grant of authority to do an act  
341 described in subsection (1), unless the power of attorney  
342 otherwise provides, an agent who is not an ancestor, spouse, or  
343 descendant of the principal may not exercise authority to create  
344 in the agent, or in an individual to whom the agent owes a legal  
345 obligation of support, an interest in the principal's property,  
346 whether by gift, right of survivorship, beneficiary designation,  
347 disclaimer, or otherwise.

348 ~~(4)~~<sup>(3)</sup> Unless the power of attorney otherwise provides, a  
349 provision in a power of attorney granting general authority with  
350 respect to gifts authorizes the agent to only:

351 (a) Make outright to, or for the benefit of, a person a  
352 gift of any of the principal's property, including by the  
353 exercise of a presently exercisable general power of appointment  
354 held by the principal, in an amount per donee per calendar year  
355 not to exceed the annual dollar limits of the federal gift tax  
356 exclusion under 26 U.S.C. s. 2503(b), as amended, without regard  
357 to whether the federal gift tax exclusion applies to the gift,  
358 or if the principal's spouse agrees to consent to a split gift  
359 pursuant to 26 U.S.C. s. 2513, as amended, in an amount per  
360 donee per calendar year not to exceed twice the annual federal  
361 gift tax exclusion limit; and

362 (b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to  
363 the splitting of a gift made by the principal's spouse in an  
364 amount per donee per calendar year not to exceed the aggregate

365 annual gift tax exclusions for both spouses.

366 ~~(5)~~<sup>(4)</sup> Notwithstanding subsection (1), if a power of  
367 attorney is otherwise sufficient to grant an agent authority to  
368 conduct banking transactions, as provided in s. 709.2208(1),  
369 conduct investment transactions as provided in s. 709.2208(2),  
370 or otherwise make additions to or withdrawals from an account of  
371 the principal, making a deposit to or withdrawal from an  
372 insurance policy, retirement account, individual retirement  
373 account, benefit plan, bank account, or any other account held  
374 jointly or otherwise held in survivorship or payable on death,  
375 is not considered to be a change to the survivorship feature or  
376 beneficiary designation, and no further specific authority is  
377 required for the agent to exercise such authority. A ~~bank or~~  
378 ~~other~~ financial institution or broker-dealer does not have a  
379 duty to inquire as to the appropriateness of the agent's  
380 exercise of that authority and is not liable to the principal or  
381 any other person for actions taken in good faith reliance on the  
382 appropriateness of the agent's actions. This subsection does not  
383 eliminate the agent's fiduciary duties to the principal with  
384 respect to any exercise of the power of attorney.

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

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

389 709.2208 Banks and other financial institutions.—

390 (2) A power of attorney that specifically includes the  
391 statement that the agent has "authority to conduct investment  
392 transactions as provided in section 709.2208(2), Florida

393 Statutes" grants general authority to the agent with respect to  
394 securities held by financial institutions or broker-dealers to  
395 take the following actions without additional specific  
396 enumeration in the power of attorney:

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

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

400 (c) Pledge investment instruments as security to borrow,  
401 pay, renew, or extend the time of payment of a debt of the  
402 principal.

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

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

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

410

411 For purposes of this subsection, the term "investment  
412 instruments" means stocks, bonds, mutual funds, and all other  
413 types of securities and financial instruments, whether held  
414 directly, indirectly, or in any other manner, including shares  
415 or interests in a private investment fund, including, but not  
416 limited to, a private investment fund organized as a limited  
417 partnership, a limited liability company, a statutory or common  
418 law business trust, a statutory trust, or a real estate  
419 investment trust, joint venture, or any other general or limited  
420 partnership; derivatives or other interests of any nature in

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421 securities such as options, options on futures, and variable  
422 forward contracts; mutual funds; common trust funds; money  
423 market funds; hedge funds; private equity or venture capital  
424 funds; insurance contracts; and other entities or vehicles  
425 investing in securities or interests in securities whether  
426 registered or otherwise, except commodity futures contracts and  
427 call and put options on stocks and stock indexes.

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