



2009 ASSEMBLY BILL 704

February 5, 2010 – Introduced by Representatives CULLEN, MOLEPSKE JR., TURNER, BERCEAU, VOS, ZEPNICK, SMITH and ROYS, cosponsored by Senators RISSER, TAYLOR and LEHMAN. Referred to Committee on Judiciary and Ethics.

1 **AN ACT** *to repeal* 243.07 and 243.10; *to amend* 46.90 (1) (eg) 3., 50.06 (5) (b),
2 54.01 (9), 54.01 (17) (a) 4., 54.01 (17) (b) 4., 54.10 (3) (c) 3., 54.40 (4) (d) 1., 54.46
3 (3) (a) 4., 54.63 (1) (b) 4., 55.075 (4) (a) 4., 155.70 (4) (a), 180.0722 (2) (a),
4 221.0519 (2) and 854.08 (5) (a); and *to create* chapter 244 of the statutes;
5 **relating to:** uniform power of attorney for finances and property.

Analysis by the Legislative Reference Bureau

Current law includes language that is based on the Uniform Durable Power of Attorney Act, as approved by the National Conference of Commissioners on Uniform State Laws in 1979. Under that uniform act, the traditional power of an agent to act on behalf of the principal in legal or business matters may be made durable. A durable power of attorney is a power that continues or, sometimes, begins after the principal becomes incapacitated. Current law also includes a statutory power of attorney form based on the Uniform Statutory Power of Attorney Act, which provides a statutory power of attorney form that is legally sufficient.

This bill adopts the Uniform Power of Attorney Act to provide the statutory authorization for a person to act on someone else's behalf in legal or business matters. The new uniform act supersedes both prior uniform acts. The person authorized to act is the "agent," and the person granting the authorization is the "principal." The durable power of attorney offers a method of surrogate decision making for persons whose modest assets may not justify incapacity planning with a trust. The durable power of attorney is also used to avoid guardianship.

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This bill includes definitions and general rules that are not in current law. The term “incapacity” replaces the term “disability” used in current law. The bill’s definition of “incapacity” is consistent with the standard for appointment of a guardian under current law. Under the bill, a power of attorney is durable unless it contains express language indicating otherwise. The bill also provides that, unless the principal specifies that the power of attorney is to become effective upon a future date or event, the authority of an agent becomes effective when the power of attorney is executed. Current law requires express language to make the power durable and is silent on when the agent’s authority becomes effective.

The bill provides that the authority granted to a principal’s spouse is revoked upon the commencement of proceedings for legal separation, marital dissolution, or annulment. The bill also provides that the authority granted to the principal’s domestic partner is revoked if the domestic partnership is terminated. The bill also provides guidance where there is none in current law regarding the default rules for co-agents’ and successor agents’ reimbursement and compensation, an agent’s acceptance of appointment, the agent’s duties, and an agent’s resignation. The bill sets out a comprehensive list of persons who may petition the court to review the agent’s conduct, and addresses agent liability.

The bill includes a new provision that protects persons who in good faith accept an acknowledged power of attorney without actual knowledge that the power of attorney is revoked, terminated, or invalid or that the agent is exceeding or improperly exercising the agent’s powers.

The bill specifies when a person may, in good faith, refuse to accept an acknowledged power of attorney. For example, a person may refuse if the power of attorney would be inconsistent with federal law, when the person has actual knowledge of the termination of the agent’s authority, when the person believes the power of attorney is not valid, when the power of attorney becomes effective upon the occurrence of another event that the person does not have evidence of having occurred, and when the person has reasonable belief that the power of attorney is illegal. The bill allows a person whose power of attorney is not accepted to ask a court to order the other person to accept the power of attorney and to pay the costs and attorney fees incurred by the person seeking the court order.

The bill clarifies that the power of attorney is supplemented by the principles of common law to the extent those principles are not displaced by specific provisions and that the new statutory language is not intended to supersede any law applicable to financial institutions or insurance businesses. The bill further provides that the remedies under the bill are not exclusive and do not abrogate any other cause of action or remedy that may be available under current law.

The bill offers detailed descriptions of the authority under the power of attorney relating to subjects such as “real property,” “retirement plans,” and “taxes.” A principal may, under the bill, incorporate a particular authority in full into the power of attorney either by a reference to the short descriptive term for the subject used in the bill or by a reference to the statutory section number. The bill also addresses concerns about certain types of authority that might be used to dissipate the principal’s property or alter the principal’s estate plan by listing specific types of

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authority that cannot be inferred from a grant of general authority, but which may be granted only through express language in the power of attorney. The bill contains a default rule prohibiting an agent, other than the principal's spouse or domestic partner, from making a gift to the agent or certain other persons. Current statutory language is silent on these issues.

Finally, the bill includes the statutory durable power of attorney form. As under current law, the statutory form is optional and is designed for use by lawyers as well as laypersons. The form in this bill contains, in plain language, instructions to the principal and agent. Step-by-step prompts are given for designation of the agent and successor agents, and the granting of of general and specific authority. In the section of the form addressing general authority, the principal must initial the subjects over which the principal wishes to delegate general authority to the agent. The bill also contains a sample agent certification form.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 46.90 (1) (eg) 3. of the statutes is amended to read:

2 46.90 (1) (eg) 3. An agent under a power of attorney under ch. ~~243~~ 244.

3 **SECTION 2.** 50.06 (5) (b) of the statutes is amended to read:

4 50.06 (5) (b) An individual who consents to an admission under this section
5 may not authorize expenditures related to health care if the incapacitated individual
6 has an agent under a durable power of attorney, as defined in s. ~~243.07 (1) (a)~~ 244.02
7 (3), who may authorize expenditures related to health care.

8 **SECTION 3.** 54.01 (9) of the statutes is amended to read:

9 54.01 (9) "Durable power of attorney" has the meaning given in s. ~~243.07 (1)~~
10 ~~(a)~~ 244.02 (3).

11 **SECTION 4.** 54.01 (17) (a) 4. of the statutes is amended to read:

12 54.01 (17) (a) 4. Any individual who is nominated as guardian, any individual
13 who is appointed to act as guardian or fiduciary for the proposed ward by a court of
14 any state, any trustee for a trust established by or for the proposed ward, any person
15 appointed as agent under a power of attorney for health care, as defined in s. 155.01

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1 (4), or any person appointed as agent under a durable power of attorney under ch.
2 ~~243~~ 244.

3 **SECTION 5.** 54.01 (17) (b) 4. of the statutes is amended to read:

4 54.01 (17) (b) 4. Any person appointed as agent under a durable power of
5 attorney under ch. ~~243~~ 244, unless the agency is revoked or terminated by a court.

6 **SECTION 6.** 54.10 (3) (c) 3. of the statutes is amended to read:

7 54.10 (3) (c) 3. Whether the proposed ward has engaged in any advance
8 planning for financial and health care decision making that would avoid
9 guardianship, including by executing a durable power of attorney under ch. ~~243~~ 244,
10 a power of attorney for health care, as defined in s. 155.01 (10), a trust, or a jointly
11 held account.

12 **SECTION 7.** 54.40 (4) (d) 1. of the statutes is amended to read:

13 54.40 (4) (d) 1. Review any power of attorney for health care under ch. 155, any
14 durable power of attorney under ch. ~~243~~ 244 executed by the proposed ward, and any
15 other advance planning for financial and health care decision making in which the
16 proposed ward had engaged.

17 **SECTION 8.** 54.46 (3) (a) 4. of the statutes is amended to read:

18 54.46 (3) (a) 4. Whether the ward had executed a durable power of attorney
19 under s. ~~243.07~~ ch. 244 or a power of attorney for health care under s. 155.05 or had
20 engaged in other advance planning for financial and health care decision making.

21 **SECTION 9.** 54.63 (1) (b) 4. of the statutes is amended to read:

22 54.63 (1) (b) 4. The agent under the ward's power of attorney for health care
23 under ch. 155, if any, and the agent under the ward's durable power of attorney under
24 ch. ~~243~~ 244, if any.

25 **SECTION 10.** 55.075 (4) (a) 4. of the statutes is amended to read:

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1 55.075 (4) (a) 4. Whether the individual sought to be protectively placed or
2 protectively served had executed a durable power of attorney for finances and
3 property under ~~s. 243.07~~ ch. 244 or a power of attorney for health care under s. 155.05
4 or had provided advance consent to nursing home admission or engaged in other
5 advance planning to avoid protective placement or protective services.

6 **SECTION 11.** 155.70 (4) (a) of the statutes is amended to read:

7 155.70 (4) (a) Nothing in this chapter may be construed to render invalid a
8 durable power of attorney that is executed under s. 243.07, 2007 stats., prior to April
9 28, 1990.

10 **SECTION 12.** 180.0722 (2) (a) of the statutes is amended to read:

11 180.0722 (2) (a) A shareholder entitled to vote at a meeting of shareholders, or
12 to express consent or dissent in writing to any corporate action without a meeting of
13 shareholders, may authorize another person to act for the shareholder by appointing
14 the person as proxy. An appointment of a proxy may be in durable form as provided
15 in s. 243.07 ch. 244.

16 **SECTION 13.** 221.0519 (2) of the statutes is amended to read:

17 221.0519 (2) METHOD OF APPOINTING A PROXY. A shareholder may appoint a
18 proxy to vote or otherwise act for the shareholder by signing an appointment form,
19 either personally or by his or her attorney-in-fact. An appointment of a proxy may
20 be in durable form as provided in s. 243.07 244.04.

21 **SECTION 14.** 243.07 of the statutes is repealed.

22 **SECTION 15.** 243.10 of the statutes, as affected by 2009 Wisconsin Act 28, is
23 repealed.

24 **SECTION 16.** Chapter 244 of the statutes, as affected by 2009 Wisconsin Act 28,
25 is created to read:

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CHAPTER 244

UNIFORM POWER OF ATTORNEY

FOR FINANCES AND PROPERTY

SUBCHAPTER I

GENERAL PROVISIONS

244.01 Short title. This chapter may be cited as the Uniform Power of Attorney for Finances and Property Act.

244.02 Definitions. In this chapter:

(1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise.

(2) “Domestic partner” has the meaning given in s. 770.01 (1).

(3) “Durable power of attorney” means a power of attorney that is not terminated by the principal’s incapacity.

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) “Genuine” means free of forgery or counterfeiting.

(6) “Good faith” means honesty in fact.

(7) “Incapacity” means inability of an individual to manage property, finances, or business affairs because the individual meets one of the following criteria:

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

(b) Is missing.

(c) Is detained, including incarceration in a correctional facility.

(d) Is outside the United States and unable to return.

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1 **(8)** “Person” means an individual, corporation, business trust, estate, trust,
2 partnership, limited liability company, association, joint venture, public corporation,
3 government or governmental subdivision, agency, or instrumentality, or any other
4 legal or commercial entity.

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

8 **(10)** “Presently exercisable general power of appointment,” with respect to
9 property or a property interest subject to a power of appointment, means power
10 exercisable at the time in question to vest absolute ownership in the principal
11 individually, the principal’s estate, the principal’s creditors, or the creditors of the
12 principal’s estate. The term does not include a power exercisable in a fiduciary
13 capacity or only by will. The term includes a power of appointment that is exercisable
14 only when one of the following circumstances exists:

15 (a) The occurrence of a specified event.

16 (b) The satisfaction of an ascertainable standard.

17 (c) The passage of a specified period only after the occurrence of the specified
18 event, the satisfaction of the ascertainable standard, or the passage of the specified
19 period.

20 **(11)** “Principal” means an individual who grants authority to an agent in a
21 power of attorney.

22 **(12)** “Property” means anything that may be the subject of ownership,
23 including real or personal property, or any interest or right in that property.

24 **(13)** “Record” means information that is inscribed on a tangible medium or that
25 is stored in an electronic or other medium and is retrievable in perceivable form.

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1 (14) “Sign” means, with present intent to authenticate or adopt a record, any
2 of the following:

3 (a) To execute or adopt a tangible symbol.

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

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

10 **244.03 Applicability.** This chapter applies to all powers of attorney except for
11 the following:

12 (1) A power to the extent it is coupled with an interest in the subject of the
13 power, including a power given to or for the benefit of a creditor in connection with
14 a credit transaction.

15 (2) A power to make health–care decisions.

16 (3) A proxy or other delegation to exercise voting rights or management rights
17 with respect to an entity.

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

20 **244.04 Power of attorney is durable.** A power of attorney created under this
21 chapter is durable unless it expressly provides that it is terminated by the incapacity
22 of the principal.

23 **244.05 Execution of power of attorney.** To execute a power of attorney the
24 principal must sign the power of attorney or another individual, in the principal’s
25 conscious presence and directed by the principal, must sign the principal’s name on

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1 the power of attorney. A signature of the principal on a power of attorney is presumed
2 to be genuine if the principal makes an acknowledgment of the power of attorney
3 before a notarial officer authorized under s. 706.07 to take acknowledgments.

4 **244.06 Validity of power of attorney. (1)** A power of attorney executed in
5 this state on or after the effective date of this subsection [LRB inserts date], is
6 valid if its execution complies with s. 244.05.

7 **(2)** A power of attorney executed in this state before the effective date of this
8 subsection [LRB inserts date], is valid if its execution complied with the law of this
9 state as it existed at the time of execution.

10 **(3)** A power of attorney executed outside this state is valid in this state if, when
11 the power of attorney was executed, the execution complied with one of the following:

12 (a) The law of the jurisdiction that determines the meaning and effect of the
13 power of attorney, as provided under s. 244.07.

14 (b) The requirements for a military power of attorney under 10 USC 1044b.

15 **(4)** A photocopy or electronically transmitted copy of an original power of
16 attorney has the same effect as the original.

17 **244.07 Meaning and effect of power of attorney. (1)** The meaning and
18 effect of a power of attorney is determined by the law of the jurisdiction indicated in
19 the power of attorney and, in the absence of an indication of jurisdiction in the power
20 of attorney, by the law of the jurisdiction in which the power of attorney was executed.

21 **(2)** Unless specifically stated, a power of attorney does not authorize gifting,
22 self-dealing, or oral amendment of the power of attorney, and any such specific
23 authority shall be strictly construed.

24 **244.08 Nomination of guardian; relation of agent to court-appointed**
25 **fiduciary. (1)** In a power of attorney, a principal may nominate a guardian of the

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1 principal's estate or guardian of the principal's person for consideration by the court
2 if protective proceedings for the principal's estate or person are begun after the
3 principal executes the power of attorney.

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

9 **244.09 When a power of attorney is effective.** (1) A power of attorney is
10 effective when executed unless the principal provides in the power of attorney that
11 it becomes effective at a future date or upon the occurrence of a future event or
12 contingency.

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

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

21 (a) A physician licensed under ch. 448 or a psychologist licensed under ch. 455
22 that the principal is incapacitated within the meaning of s. 244.02 (7) (a).

23 (b) An attorney at law, a judge, or an appropriate governmental official that the
24 principal is incapacitated within the meaning of s. 244.02 (7) (b), (c), or (d).

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1 (c) A person authorized by the principal in the power of attorney to determine
2 that the principal is incapacitated may act as the principal's personal representative
3 under 42 USC 1320d, the Health Insurance Portability and Accountability Act, and
4 applicable regulations, to obtain access to the principal's health-care information
5 and communicate with the principal's health care provider.

6 **244.10 Termination of power of attorney or agent's authority. (1)** A
7 power of attorney terminates when any of the following occurs:

8 (a) The principal dies.

9 (b) The principal becomes incapacitated, if the power of attorney so provides.

10 (c) The principal revokes the power of attorney.

11 (d) The power of attorney provides that it terminates.

12 (e) The purpose of the power of attorney is accomplished.

13 (f) The principal revokes the agent's authority or the agent dies, becomes
14 incapacitated, or resigns, and the power of attorney does not provide for another
15 agent to act under the power of attorney.

16 **(2)** An agent's authority terminates when any of the following occurs:

17 (a) The principal revokes the authority.

18 (b) The agent dies, becomes incapacitated, or resigns.

19 (c) An action is filed for the dissolution or annulment of the agent's marriage
20 to the principal or their legal separation, unless the power of attorney otherwise
21 provides.

22 (d) The power of attorney terminates.

23 (e) The domestic partnership of the principal and agent under ch. 770 is
24 terminated unless the power of attorney otherwise provides.

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

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

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

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

18 **244.11 Coagents and successor agents. (1)** A principal may designate in
19 a power of attorney 2 or more persons to act as coagents. Unless the power of attorney
20 otherwise provides, each coagent may exercise its authority independently.

21 **(2)** A principal may designate in a power of attorney one or more successor
22 agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve,
23 or declines to serve. A principal may grant authority to designate one or more
24 successor agents to an agent or other person designated by name, office, or function.

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1 Unless the power of attorney otherwise provides, a successor agent is subject to all
2 of the following:

3 (a) Has the same authority as that granted to the original agent.

4 (b) May not act until all predecessor agents have resigned, died, become
5 incapacitated, are no longer qualified to serve, or have declined to serve.

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

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

16 **244.12 Reimbursement and compensation of agent.** Except as otherwise
17 provided in the power of attorney, an agent is entitled to reimbursement of any
18 expenses reasonably incurred on behalf of the principal and to compensation that is
19 reasonable under the circumstances.

20 **244.13 Agent's acceptance.** Except as otherwise provided in the power of
21 attorney, a person accepts appointment as an agent under a power of attorney by
22 exercising authority or performing duties as an agent or by any other assertion or
23 conduct indicating acceptance.

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1 **244.14 Agent’s duties. (1)** Notwithstanding any provisions to the contrary
2 in the power of attorney, an agent who has accepted appointment shall do all of the
3 following:

4 (a) Act in accordance with the principal’s reasonable expectations to the extent
5 actually known by the agent and, if those expectations are not known, in the
6 principal’s best interest,

7 (b) Act in good faith.

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

9 **(2)** Except as otherwise provided in the power of attorney, an agent who has
10 accepted an appointment shall do all of the following:

11 (a) Act loyally for the principal’s benefit.

12 (b) Act so as not to create a conflict of interest that impairs the agent’s ability
13 to act impartially in the principal’s best interest.

14 (c) Act with the care, competence, and diligence ordinarily exercised by agents
15 in similar circumstances.

16 (d) Keep a record of all receipts, disbursements, and transactions made on
17 behalf of the principal.

18 (e) Cooperate with a person that has authority to make health-care decisions
19 for the principal to carry out the principal’s reasonable expectations to the extent
20 actually known by the agent and, if those expectations are not known, act in the
21 principal’s best interest.

22 (f) Attempt to preserve the principal’s estate plan, to the extent actually known
23 by the agent, if preserving the plan is consistent with the principal’s best interest
24 based on all relevant factors, including all of the following:

25 1. The value and nature of the principal’s property.

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- 1 2. The principal's foreseeable obligations and need for maintenance.
- 2 3. The minimization of taxes, including income, estate, inheritance,
3 generation-skipping transfer, and gift taxes.
- 4 4. Eligibility for a benefit, a program, or assistance under a statute, rule, or
5 regulation.
- 6 **(3)** An agent who acts in good faith is not liable to any beneficiary of the
7 principal's estate plan for failure to preserve the plan.
- 8 **(4)** An agent who acts with care, competence, and diligence for the best interest
9 of the principal is not liable solely because the agent also benefits from the act or has
10 an individual or conflicting interest in relation to the property or affairs of the
11 principal.
- 12 **(5)** If an agent is selected by the principal because of special skills or expertise
13 possessed by the agent or in reliance on the agent's representation that the agent has
14 special skills or expertise, the special skills or expertise must be considered in
15 determining whether the agent has acted with care, competence, and diligence under
16 the circumstances.
- 17 **(6)** Absent a breach of duty to the principal, an agent is not liable if the value
18 of the principal's property declines.
- 19 **(7)** An agent who exercises authority to delegate to another person the
20 authority granted by the principal or that engages another person on behalf of the
21 principal is not liable for an act, error of judgment, or default of that person if the
22 agent exercises care, competence, and diligence in selecting and monitoring the
23 person.

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1 (8) Except as otherwise provided in the power of attorney, an agent is not
2 required to disclose receipts, disbursements, or transactions conducted on behalf of
3 the principal unless ordered by a court or requested by one of the following:

4 (a) The principal.

5 (b) A guardian, a conservator, or another fiduciary acting for the principal.

6 (c) A governmental agency having regulatory authority to protect the welfare
7 of the principal.

8 (d) Upon the death of the principal, by the personal representative or successor
9 in interest of the principal's estate.

10 (9) If ordered or requested to disclose information under sub. (8), the agent
11 shall comply with the request within 30 days or provide a writing or other record
12 substantiating why additional time is needed and shall comply with the request
13 within an additional 30 days.

14 **244.15 Exoneration of agent.** A provision in a power of attorney relieving
15 an agent of liability for breach of duty is binding on the principal and the principal's
16 successors in interest except to the extent that the provision does any of the
17 following:

18 (1) Relieves the agent of liability for breach of duty committed dishonestly, with
19 an improper motive, or with reckless indifference to the purposes of the power of
20 attorney or the best interest of the principal.

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

23 **244.16 Judicial relief.** (1) The following persons may petition the circuit
24 court of the county where the principal is present or of the county of the principal's

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1 legal residence to construe a power of attorney or review the agent's conduct, and
2 grant appropriate relief:

- 3 (a) The principal or the agent.
- 4 (b) A guardian, conservator, or other fiduciary acting for the principal.
- 5 (c) A person authorized to make health-care decisions for the principal.
- 6 (d) The principal's spouse, parent, or descendant.
- 7 (e) The principal's domestic partner.
- 8 (f) An individual who would qualify as a presumptive heir of the principal.
- 9 (g) A person named as a beneficiary to receive any property, benefit, or
10 contractual right on the principal's death or as a beneficiary of a trust created by or
11 for the principal that has a financial interest in the principal's estate.
- 12 (h) A governmental agency having regulatory authority to protect the welfare
13 of the principal.
- 14 (i) The principal's caregiver or another person that demonstrates sufficient
15 interest in the principal's welfare.
- 16 (j) A person asked to accept the power of attorney.

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

20 **244.17 Agent's liability.** An agent who violates this chapter is liable to the
21 principal or the principal's successors in interest for the amount required to do all
22 of the following:

- 23 **(1)** Restore the value of the principal's property to what it would have been had
24 the violation not occurred.

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

3 **244.18 Agent’s resignation; notice.** Unless the power of attorney provides
4 a different method for an agent’s resignation, an agent may resign by giving notice
5 to the principal and, if the principal is incapacitated, to any of the following:

6 (1) To the guardian, if one has been appointed for the principal, and a coagent
7 or successor agent.

8 (2) If there is no person described in sub. (1), to any of the following:

9 (a) The principal’s caregiver.

10 (b) Another person reasonably believed by the agent to have sufficient interest
11 in the principal’s welfare.

12 (c) A governmental agency having regulatory authority to protect the welfare
13 of the principal.

14 **244.19 Protection of persons that accept and rely upon an**
15 **acknowledged power of attorney.** (1) For purposes of this section and s. 244.20,
16 “acknowledged” means the taking of an acknowledgment before a notarial officer
17 authorized to take acknowledgements under s. 706.07.

18 (2) A person that in good faith accepts an acknowledged power of attorney
19 without actual knowledge that the signature is not genuine may rely upon the
20 presumption under s. 244.05 that the signature is genuine.

21 (3) (a) A person that in good faith accepts an acknowledged power of attorney
22 without actual knowledge of any of the following may act as provided in par. (b):

23 1. That the power of attorney is void, invalid, or terminated.

24 2. That the purported agent’s authority is void, invalid, or terminated.

25 3. That the agent is exceeding or improperly exercising the agent’s authority.

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1 (b) A person described in par. (a) may rely upon the power of attorney as if the
2 power of attorney were genuine, valid, and still in effect, the agent's authority were
3 genuine, valid, and still in effect, and the agent had not exceeded and had properly
4 exercised the authority.

5 (4) A person who is asked to accept an acknowledged power of attorney may
6 request and rely upon, without further investigation, all of the following:

7 (a) An agent's certification under penalty of perjury of any factual matter
8 concerning the principal, agent, or power of attorney.

9 (b) An English translation of the power of attorney if the power of attorney
10 contains, in whole or in part, language other than English.

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

14 (5) An English translation or an opinion of counsel requested under this section
15 must be provided at the principal's expense.

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

20 **244.20 Refusal to accept acknowledged power of attorney.** (1) A person
21 may, in good faith, refuse to accept an acknowledged power of attorney within 10
22 business days of presentment if any of the following applies:

23 (a) The person is not otherwise required to engage in a transaction with the
24 principal in the same circumstances.

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1 (b) Engaging in a transaction with the agent or the principal in the same
2 circumstances would be inconsistent with federal or state law.

3 (c) The person has actual knowledge of the termination of the agent's authority
4 or of the power of attorney before exercise of the power of attorney.

5 (d) A request for a certification, a translation, or an opinion of counsel under
6 s. 244.19 (4) is refused.

7 (e) The person believes that the power of attorney is not valid, that the agent
8 does not have the authority to perform the act requested, or that the person
9 presenting the power of attorney is not the agent named in the power of attorney,
10 whether or not a certification, a translation, or an opinion of counsel under s. 244.19
11 (4) has been requested or provided.

12 (f) The person makes, or has actual knowledge that another person has made,
13 a report to the designated adult at risk or elder adult at risk agency, or to a law
14 enforcement agency, stating a good faith belief that the principal may be subject to
15 physical or financial abuse, neglect, exploitation, or abandonment by the agent or a
16 person acting for or with the agent.

17 (g) The person brought, or has actual knowledge that another person has
18 brought, an action under s. 244.16 for construction of a power of attorney or review
19 of the agent's conduct.

20 (h) The power of attorney becomes effective upon the occurrence of an event or
21 contingency, and neither a certification nor evidence of the occurrence of the event
22 or contingency is presented to the person being asked to accept the power of attorney.

23 (i) The person has any other reasonable belief that the power of attorney is
24 illegal or unenforceable and should be refused.

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1 **(2)** A person may not refuse to accept an acknowledged power of attorney if any
2 of the following applies:

3 (a) The person's reason for refusal is based exclusively on the date the power
4 of attorney was executed.

5 (b) The person's reason for refusal is based exclusively on a mandate that an
6 additional or different power of attorney form must be used.

7 (c) The person has no good faith basis for refusal under sub. (1).

8 **(3)** If a person requests a certification, a translation, or an opinion of counsel
9 under s. 244.19 (4), the person shall accept the power of attorney no later than 5
10 business days after receipt of the certification, translation, or opinion of counsel,
11 provided that there is no other good faith reason to refuse under sub. (1).

12 **(4)** It is not a refusal to accept an acknowledged power of attorney if any of the
13 following applies:

14 (a) The person requests but does not require that an additional or different
15 power of attorney form be used.

16 (b) The person has requested but has not received a certification, a translation,
17 or an opinion of counsel under s. 244.19 (4).

18 **(5)** If a person refuses to accept an acknowledged power of attorney in violation
19 of this section, the person requesting the acceptance may request that a court order
20 all of the following:

21 (a) Acceptance of the power of attorney.

22 (b) In any action or proceeding that confirms the validity of the power of
23 attorney or mandates acceptance of the power of attorney, payment of reasonable
24 attorney fees, notwithstanding s. 814.04 (1), and costs by the person who refuses to
25 accept the power of attorney.

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1 **(2)** Notwithstanding a grant of authority to do an act described in sub. (1),
2 unless the power of attorney otherwise provides, an agent who is not a spouse or
3 domestic partner of the principal, may not do any of the following:

4 (a) Exercise authority under a power of attorney to create in the agent an
5 interest in the principal's property, whether by gift, right of survivorship, beneficiary
6 designation, disclaimer, or otherwise.

7 (b) Exercise authority under a power of attorney to create in an individual to
8 whom the agent owes a legal obligation of support, an interest in the principal's
9 property, whether by gift, right of survivorship, beneficiary designation, disclaimer,
10 or otherwise.

11 **(3)** Subject to subs. (1), (2), (4), and (5), if a power of attorney grants to an agent
12 the authority to do all acts that a principal could do, the agent has the general
13 authority described in ss. 244.44 to 244.56.

14 **(4)** Unless the power of attorney otherwise provides, a grant of authority to
15 make a gift is subject to s. 244.57.

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

18 **(6)** Authority granted in a power of attorney is exercisable with respect to
19 property that the principal has when the power of attorney is executed or acquires
20 later, whether or not the property is located in this state and whether or not the
21 authority is exercised or the power of attorney is executed in this state.

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

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1 **244.42 Incorporation of authority.** (1) An agent has the authority
2 described in this subchapter if the power of attorney refers to general authority as
3 indicated by section titles for ss. 244.44 to 244.56 or cites the section in which the
4 authority is described.

5 (2) A reference in a power of attorney to general authority with respect to the
6 descriptive term for a subject in ss. 244.44 to 244.56 or a citation to any of ss. 244.44
7 to 244.57 incorporates the entire section as if it were set out in full in the power of
8 attorney.

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

10 **244.43 Construction of authority generally.** Except as otherwise provided
11 in the power of attorney, by executing a power of attorney that incorporates by
12 reference a subject described in ss. 244.44 to 244.56 or that grants to an agent
13 authority to do all acts that a principal could do under s. 244.41 (3), a principal
14 authorizes the agent, with respect to that subject, to do all of the following:

15 (1) Demand, receive, and obtain by any lawful means, money or another thing
16 of value to which the principal is, may become, or claims to be entitled, and conserve,
17 invest, disburse, or use anything so received or obtained for the purposes intended.

18 (2) Contract with any person, on terms agreeable to the agent, to accomplish
19 a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,
20 release, or modify the contract or another contract made by or on behalf of the
21 principal.

22 (3) Execute, acknowledge, seal, deliver, file, or record any instrument or
23 communication the agent considers desirable to accomplish a purpose of a
24 transaction, including creating a schedule listing some or all of the principal's
25 property and attaching it to the power of attorney.

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1 (4) Initiate, participate in, submit to alternative dispute resolution, settle,
2 oppose, or propose or accept a compromise with respect to a claim existing in favor
3 of or against the principal or intervene in litigation relating to the claim.

4 (5) Seek on the principal's behalf the assistance of a court or other
5 governmental agency to carry out an act authorized in the power of attorney.

6 (6) Engage, compensate, and discharge an attorney, accountant, discretionary
7 investment manager, expert witness, or other advisor.

8 (7) Prepare, execute, and file a record, report, or other document to safeguard
9 or promote the principal's interest under a statute, rule, or regulation.

10 (8) Communicate with any representative or employee of a government or
11 governmental subdivision, agency, or instrumentality, on behalf of the principal.

12 (9) Access communications intended for, and communicate on behalf of, the
13 principal by any means.

14 (10) Do any lawful act with respect to a subject described in ss. 244.44 to 244.56
15 and all property related to that subject.

16 **244.44 Real property.** Unless the power of attorney otherwise provides,
17 language in a power of attorney granting general authority with respect to real
18 property authorizes the agent to do all of the following:

19 (1) Demand, buy, lease, receive, accept as a gift or as security for an extension
20 of credit, or otherwise acquire or reject an interest in real property or a right incident
21 to real property.

22 (2) Sell; exchange; convey with or without covenants, representations, or
23 warranties; quit claim; release; surrender; retain title for security; encumber;
24 partition; consent to partitioning; subject to an easement or covenant; subdivide;
25 apply for zoning or other governmental permits; plat or consent to platting; develop;

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1 grant an option concerning; lease; sublease; contribute to an entity in exchange for
2 an interest in that entity; or otherwise grant or dispose of an interest in real property
3 or a right incident to real property.

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

7 (4) Release, assign, satisfy, or enforce by any lawful means a mortgage, deed
8 of trust, conditional sale contract, encumbrance, lien, or other claim to real property
9 which exists or is asserted.

10 (5) Manage or conserve an interest in real property or a right incident to real
11 property owned or claimed to be owned by the principal, including by doing any of
12 the following:

13 (a) Insuring against liability or casualty or other loss.

14 (b) Obtaining or regaining possession of or protecting the interest or right by
15 litigation or otherwise.

16 (c) Paying, assessing, compromising, or contesting taxes or assessments or
17 applying for and receiving refunds in connection with taxes or assessments.

18 (d) Purchasing supplies, hiring assistance or labor, and making repairs or
19 alterations to the real property.

20 (6) Use, develop, alter, replace, remove, erect, or install structures or other
21 improvements upon real property in or incident to which the principal has, or claims
22 to have, an interest or right.

23 (7) Participate in a reorganization with respect to real property or an entity
24 that owns an interest in or right incident to real property and receive, hold, and act

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1 with respect to stocks and bonds or other property received in a plan of
2 reorganization, including by doing any of the following:

3 (a) Selling or otherwise disposing of the stocks, bonds, or property.

4 (b) Exercising or selling an option, right of conversion, or similar right with
5 respect to the stocks, bonds, or property.

6 (c) Exercising any voting rights in person or by proxy.

7 (8) Change the form of title of an interest in or right incident to real property.

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

10 **244.45 Tangible personal property.** Unless the power of attorney otherwise
11 provides, language in a power of attorney granting general authority with respect to
12 tangible personal property authorizes the agent to do all of the following:

13 (1) Demand, buy, receive, accept as a gift or as security for an extension of
14 credit, or otherwise acquire or reject ownership or possession of tangible personal
15 property or an interest in tangible personal property.

16 (2) Sell; exchange; convey with or without covenants, representations, or
17 warranties; quit claim; release; surrender; create a security interest in; grant options
18 concerning; lease; sublease; or otherwise dispose of tangible personal property or an
19 interest in tangible personal property.

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

23 (4) Release, assign, satisfy, or enforce by litigation or otherwise, a security
24 interest, lien, or other claim on behalf of the principal, with respect to tangible
25 personal property or an interest in tangible personal property.

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1 **(5)** Manage or conserve tangible personal property or an interest in tangible
2 personal property on behalf of the principal, including by doing any of the following:

3 (a) Insuring against liability or casualty or other loss.

4 (b) Obtaining or regaining possession of or protecting the property or interest,
5 by litigation or otherwise.

6 (c) Paying, assessing, compromising, or contesting taxes or assessments or
7 applying for and receiving refunds in connection with taxes or assessments.

8 (d) Moving the property from place to place.

9 (e) Storing the property for hire or under a gratuitous bailment.

10 (f) Using and making repairs, alterations, or improvements to the property.

11 **(6)** Change the form of title of an interest in tangible personal property.

12 **244.46 Stocks and bonds.** Unless the power of attorney otherwise provides,
13 language in a power of attorney granting general authority with respect to stocks and
14 bonds authorizes the agent to do all of the following:

15 **(1)** Buy, sell, and exchange stocks and bonds.

16 **(2)** Establish, continue, modify, or terminate an account with respect to stocks
17 and bonds.

18 **(3)** Pledge stocks and bonds as security to borrow, pay, renew, or extend the time
19 of payment of a debt of the principal.

20 **(4)** Receive certificates and other evidences of ownership with respect to stocks
21 and bonds.

22 **(5)** Exercise voting rights with respect to stocks and bonds in person or by
23 proxy, enter into voting trusts, and consent to limitations on the right to vote.

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1 **(6)** Exercise in person or by proxy, or enforce by litigation or otherwise, a right,
2 power, privilege, or option the principal has or claims to have as the holder of stocks
3 and bonds.

4 **(7)** Initiate, participate in, submit to alternative dispute resolution, settle,
5 oppose, or propose or accept a compromise with respect to litigation to which the
6 principal is a party concerning stocks and bonds.

7 **244.47 Commodities and options.** Unless the power of attorney otherwise
8 provides, language in a power of attorney granting general authority with respect to
9 commodities and options authorizes the agent to do all of the following:

10 **(1)** Buy, sell, exchange, assign, settle, and exercise commodity futures
11 contracts and call or put options on stocks or stock indexes traded on a regulated
12 option exchange.

13 **(2)** Establish, continue, modify, and terminate option accounts.

14 **244.48 Banks and other financial institutions.** Unless the power of
15 attorney otherwise provides, language in a power of attorney granting general
16 authority with respect to banks and other financial institutions authorizes the agent
17 to do all of the following:

18 **(1)** Continue, modify, and terminate an account or other banking arrangement
19 made by or on behalf of the principal.

20 **(2)** Establish, modify, and terminate an account or other banking arrangement
21 with a bank, trust company, savings and loan association, credit union, thrift
22 company, brokerage firm, or other financial institution selected by the agent.

23 **(3)** Contract for services available from a financial institution, including
24 renting a safe deposit box or space in a vault.

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1 (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money
2 or property of the principal deposited with or left in the custody of a financial
3 institution.

4 (5) Receive statements of account, vouchers, notices, and similar documents
5 from a financial institution and act with respect to them.

6 (6) Enter a safe deposit box or vault and withdraw or add to the contents.

7 (7) Borrow money and pledge as security personal property of the principal
8 necessary to borrow money or pay, renew, or extend the time of payment of a debt of
9 the principal or a debt guaranteed by the principal.

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

15 (9) Receive for the principal and act upon a sight draft, warehouse receipt, or
16 other document of title whether tangible or electronic, or other negotiable or
17 nonnegotiable instrument.

18 (10) Apply for, receive, and use letters of credit, credit and debit cards,
19 electronic transaction authorizations, and traveler's checks from a financial
20 institution and give an indemnity or other agreement in connection with letters of
21 credit.

22 (11) Consent to an extension of the time of payment with respect to commercial
23 paper or a financial transaction with a financial institution.

24 **244.49 Operation of entity or business.** Subject to the terms of a document
25 or an agreement governing an entity or business or an entity or business ownership

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1 interest, and unless the power of attorney otherwise provides, language in a power
2 of attorney granting general authority with respect to operation of an entity or
3 business authorizes the agent to do all of the following:

4 (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.

5 (2) Perform a duty or discharge a liability and exercise in person or by proxy
6 a right, power, privilege, or option that the principal has, may have, or claims to have.

7 (3) Enforce the terms of an ownership agreement.

8 (4) Initiate, participate in, submit to alternative dispute resolution, settle,
9 oppose, or propose or accept a compromise with respect to litigation to which the
10 principal is a party because of an ownership interest.

11 (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right,
12 power, privilege, or option the principal has or claims to have as the holder of stocks
13 and bonds.

14 (6) Initiate, participate in, submit to alternative dispute resolution, settle,
15 oppose, or propose or accept a compromise with respect to litigation to which the
16 principal is a party concerning stocks and bonds.

17 (7) With respect to an entity or business owned solely by the principal, do all
18 of the following:

19 (a) Continue, modify, renegotiate, extend, and terminate a contract made by or
20 on behalf of the principal with respect to the entity or business before execution of
21 the power of attorney.

22 (b) Determine all of the following:

23 1. The location of its operation.

24 2. The nature and extent of its business.

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1 3. The methods of manufacturing, selling, merchandising, financing,
2 accounting, and advertising employed in its operation.

3 4. The amount and types of insurance carried.

4 5. The mode of engaging, compensating, and dealing with its employees and
5 accountants, attorneys, or other advisors.

6 (c) Change the name or form of organization under which the entity or business
7 is operated and enter into an ownership agreement with other persons to take over
8 all or part of the operation of the entity or business.

9 (d) Demand and receive money due or claimed by the principal or on the
10 principal's behalf in the operation of the entity or business and control and disburse
11 the money in the operation of the entity or business.

12 **(8)** Put additional capital into an entity or business in which the principal has
13 an interest.

14 **(9)** Join in a plan of reorganization, consolidation, conversion, domestication,
15 or merger of the entity or business.

16 **(10)** Sell or liquidate all or part of an entity or business.

17 **(11)** Establish the value of an entity or business under a buy-out agreement
18 to which the principal is a party.

19 **(12)** Prepare, sign, file, and deliver reports, compilations of information,
20 returns, or other papers with respect to an entity or business and make related
21 payments.

22 **(13)** Pay, compromise, or contest taxes, assessments, fines, or penalties and
23 perform any other act to protect the principal from illegal or unnecessary taxation,
24 assessments, fines, or penalties, with respect to an entity or business, including

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1 attempts to recover, in any manner permitted by law, money paid before or after the
2 execution of the power of attorney.

3 **244.50 Insurance and annuities.** Unless the power of attorney otherwise
4 provides, language in a power of attorney granting general authority with respect to
5 insurance and annuities authorizes the agent to do all of the following:

6 (1) Continue, pay the premium or make a contribution on, modify, exchange,
7 rescind, release, or terminate a contract procured by or on behalf of the principal
8 which insures or provides an annuity to either the principal or another person,
9 whether or not the principal is a beneficiary under the contract.

10 (2) Procure new, different, and additional contracts of insurance and annuities
11 for the principal and the principal's spouse or domestic partner, children, and other
12 dependents, and select the amount, type of insurance or annuity, and mode of
13 payment.

14 (3) Pay the premium or make a contribution on, modify, exchange, rescind,
15 release, or terminate a contract of insurance or annuity procured by the agent.

16 (4) Apply for and receive a loan secured by a contract of insurance or annuity.

17 (5) Surrender and receive the cash surrender value on a contract of insurance
18 or annuity.

19 (6) Exercise an election.

20 (7) Exercise investment powers available under a contract of insurance or
21 annuity.

22 (8) Change the manner of paying premiums on a contract of insurance or
23 annuity.

24 (9) Change or convert the type of insurance or annuity with respect to which
25 the principal has or claims to have authority described in this section.

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1 (10) Apply for and procure a benefit or assistance under a statute, rule, or
2 regulation to guarantee or pay premiums of a contract of insurance on the life of the
3 principal.

4 (11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest
5 of the principal in a contract of insurance or annuity.

6 (12) Select the form and timing of the payment of proceeds from a contract of
7 insurance or annuity.

8 (13) Pay, from proceeds or otherwise, compromise or contest, and apply for
9 refunds in connection with, a tax or assessment levied by a taxing authority with
10 respect to a contract of insurance or annuity or its proceeds or liability accruing by
11 reason of the tax or assessment.

12 **244.51 Estates, trusts, and other beneficial interests.** (1) In this section,
13 “estates, trusts, and other beneficial interests” means a trust, probate estate,
14 guardianship, conservatorship, escrow, or custodianship or a fund from which the
15 principal is, may become, or claims to be, entitled to a share or payment.

16 (2) Unless the power of attorney otherwise provides, language in a power of
17 attorney granting general authority with respect to estates, trusts, and other
18 beneficial interests authorizes the agent to do all of the following:

19 (a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or
20 payment from an estate, trust, or beneficial interest.

21 (b) Demand or obtain money or another thing of value to which the principal
22 is, may become, or claims to be, entitled by reason of an estate, trust, or beneficial
23 interest, by litigation or otherwise.

24 (c) Exercise for the benefit of the principal a presently exercisable general
25 power of appointment held by the principal.

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

5 (e) Initiate, participate in, submit to alternative dispute resolution, settle,
6 oppose, or propose or accept a compromise with respect to litigation to remove,
7 substitute, or surcharge a fiduciary.

8 (f) Conserve, invest, disburse, or use anything received for an authorized
9 purpose.

10 (g) Transfer an interest of the principal in real property, stocks and bonds,
11 accounts with financial institutions or securities intermediaries, insurance,
12 annuities, and other property to the trustee of a revocable trust created by the
13 principal as settlor.

14 (h) Sign a waiver or consent in a probate matter.

15 (i) Reject, renounce, disclaim, release, or consent to a reduction in or
16 modification of a share in or payment from an estate, trust, or beneficial interest.

17 **244.52 Claims and litigation.** Unless the power of attorney otherwise
18 provides, language in a power of attorney granting general authority with respect to
19 claims and litigation authorizes the agent to do all of the following:

20 (1) Assert and maintain before a court or administrative agency a claim, claim
21 for relief, cause of action, counterclaim, offset, recoupment, or defense, including an
22 action to recover property or other thing of value, recover damages sustained by the
23 principal, eliminate or modify tax liability, or seek an injunction, specific
24 performance, or other relief.

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1 (2) Bring an action to determine adverse claims or intervene or otherwise
2 participate in litigation.

3 (3) Seek an attachment, garnishment, order of arrest, or other preliminary,
4 provisional, or intermediate relief and use any available procedure to effect or satisfy
5 a judgment, order, or decree.

6 (4) Make or accept a tender, offer of judgment, or admission of facts, submit a
7 controversy on an agreed statement of facts, consent to examination, and bind the
8 principal in litigation.

9 (5) Submit to alternative dispute resolution, settle, and propose or accept a
10 compromise.

11 (6) Waive the issuance and service of process upon the principal, accept service
12 of process, appear for the principal, designate persons upon which process directed
13 to the principal may be served, execute and file or deliver stipulations on the
14 principal's behalf, verify pleadings, seek appellate review, procure and give surety
15 and indemnity bonds, contract and pay for the preparation and printing of records
16 and briefs, receive, execute, and file or deliver a consent, waiver, release, confession
17 of judgment, satisfaction of judgment, notice, agreement, or other instrument in
18 connection with the prosecution, settlement, or defense of a claim or litigation.

19 (7) Act for the principal with respect to bankruptcy or insolvency, whether
20 voluntary or involuntary, concerning the principal or some other person, or with
21 respect to a reorganization, receivership, or application for the appointment of a
22 receiver or trustee which affects an interest of the principal in property or other thing
23 of value.

24 (8) Pay a judgment, award, or order against the principal or a settlement made
25 in connection with a claim or litigation.

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1 **(9)** Receive money or other thing of value paid in settlement of or as proceeds
2 of a claim or litigation.

3 **244.53 Personal and family maintenance.** **(1)** Unless the power of
4 attorney otherwise provides, language in a power of attorney granting general
5 authority with respect to personal and family maintenance authorizes the agent to
6 do all of the following:

7 (a) Perform the acts necessary to maintain the customary standard of living of
8 the principal, the principal's spouse or the principal's domestic partner, and the
9 following individuals, whether living when the power of attorney is executed or later
10 born:

11 1. The principal's children.

12 2. Other individuals legally entitled to be supported by the principal.

13 3. The individuals whom the principal has customarily supported or indicated
14 the intent to support.

15 (b) Make periodic payments of child support and other family maintenance
16 required by a court or governmental agency or an agreement to which the principal
17 is a party.

18 (c) Provide living quarters for the individuals described in par. (a) by doing any
19 of the following:

20 1. Purchasing, leasing, or entering into a contract.

21 2. Paying the operating costs, including interest, amortization payments,
22 repairs, improvements, and taxes, for premises owned by the principal or occupied
23 by those individuals.

24 (d) Provide normal domestic help, usual vacations and travel expenses, and
25 funds for shelter, clothing, food, appropriate education, including postsecondary and

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1 vocational education, and other current living costs for the individuals described in
2 par. (a).

3 (e) Pay expenses for necessary health care and custodial care on behalf of the
4 individuals described in par. (a).

5 (f) Act as the principal's personal representative under 42 USC 1320d, the
6 Health Insurance Portability and Accountability Act, and applicable regulations, in
7 making decisions related to the past, present, or future payment for the provision of
8 health care consented to by the principal or anyone authorized under the law of this
9 state to consent to health care on behalf of the principal.

10 (g) Continue any provision made by the principal for motor vehicles or other
11 means of transportation, including registering, licensing, insuring, and replacing
12 the vehicles, for the individuals described in par. (a).

13 (h) Maintain credit and debit accounts for the convenience of the individuals
14 described in par. (a) and open new accounts.

15 (i) Continue payments incidental to the membership or affiliation of the
16 principal in a religious institution, club, society, order, or other organization or to
17 continue contributions to those organizations.

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

21 **244.54 Benefits from governmental programs or civil or military**
22 **service. (1)** In this section, "benefits from governmental programs or civil or
23 military service" means any benefit, program or assistance provided under a statute,
24 rule, or regulation, including social security, medicare, and medicaid.

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1 (2) Unless the power of attorney otherwise provides, language in a power of
2 attorney granting general authority with respect to benefits from governmental
3 programs or civil or military service authorizes the agent to do all of the following:

4 (a) Execute vouchers in the name of the principal for allowances and
5 reimbursements payable by the United States or a foreign government or by a state
6 or subdivision of a state to the principal, including allowances and reimbursements
7 for transportation of the individuals described in s. 244.53 (1) (a), and for shipment
8 of their household effects.

9 (b) Take possession and order the removal and shipment of property of the
10 principal from a post, warehouse, depot, dock, or other place of storage or
11 safekeeping, either governmental or private, and execute and deliver a release,
12 voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for
13 that purpose.

14 (c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the
15 principal's behalf, a benefit or program.

16 (d) Prepare, file, and maintain a claim of the principal for a benefit or
17 assistance, financial or otherwise, to which the principal may be entitled under a
18 statute, rule, or regulation.

19 (e) Initiate, participate in, submit to alternative dispute resolution, settle,
20 oppose, or propose or accept a compromise with respect to litigation concerning any
21 benefit or assistance the principal may be entitled to receive under a statute, rule,
22 or regulation.

23 (f) Receive the financial proceeds of a claim described in par. (d) and conserve,
24 invest, disburse, or use for a lawful purpose anything so received.

ASSEMBLY BILL 704**SECTION 16**

1 **244.55 Retirement plans. (1)** In this section, “retirement plan” means a plan
2 or account created by an employer, the principal, or another individual to provide
3 retirement benefits or deferred compensation of which the principal is a participant,
4 beneficiary, or owner, including the following plans or accounts:

5 (a) An individual retirement account under section 408 of the Internal Revenue
6 Code.

7 (b) A Roth individual retirement account under section 408A of the Internal
8 Revenue Code.

9 (c) A deemed individual retirement account under section 408 (q) of the
10 Internal Revenue Code.

11 (d) An annuity or mutual fund custodial account under section 403 (b) of the
12 Internal Revenue Code.

13 (e) A pension, profit-sharing, stock bonus, or other retirement plan qualified
14 under section 401 (a) of the Internal Revenue Code.

15 (f) A plan under section 457 (b) of the Internal Revenue Code.

16 (g) A nonqualified deferred compensation plan under section 409A of the
17 Internal Revenue Code.

18 **(2)** Unless the power of attorney otherwise provides, language in a power of
19 attorney granting general authority with respect to retirement plans authorizes the
20 agent to do all of the following:

21 (a) Select the form and timing of payments under a retirement plan and
22 withdraw benefits from a plan.

23 (b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits
24 from one retirement plan to another.

25 (c) Establish a retirement plan in the principal’s name.

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1 (d) Make contributions to a retirement plan.

2 (e) Exercise investment powers available under a retirement plan.

3 (f) Borrow from, sell assets to, or purchase assets from a retirement plan.

4 **244.56 Taxes.** Unless the power of attorney otherwise provides, language in
5 a power of attorney granting general authority with respect to taxes authorizes the
6 agent to do all of the following:

7 (1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
8 property, Federal Insurance Contributions Act, and other tax returns, claims for
9 refunds, requests for extension of time, petitions regarding tax matters, and any
10 other tax-related documents, including receipts, offers, waivers, consents, including
11 consents and agreements under 2032A of the Internal Revenue Code, closing
12 agreements, and any power of attorney required by the Internal Revenue Service or
13 other taxing authority with respect to a tax year upon which the statute of
14 limitations has not run and the following 25 tax years.

15 (2) Pay taxes due, collect refunds, post bonds, receive confidential information,
16 and contest deficiencies determined by the Internal Revenue Service or other taxing
17 authority.

18 (3) Exercise any election available to the principal under federal, state, local,
19 or foreign tax law.

20 (4) Act for the principal in all tax matters for all periods before the Internal
21 Revenue Service, or other taxing authority.

22 **244.57 Gifts.** (1) In this section, a gift “for the benefit of” a person includes
23 a gift to a trust, an account under ss. 54.854 to 54.898, and a tuition savings account
24 or prepaid tuition plan as defined under section 529 of the Internal Revenue Code.

ASSEMBLY BILL 704**SECTION 16**

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

4 (a) Make outright to, or for the benefit of, a person, a gift of any of the principal's
5 property, including by the exercise of a presently exercisable general power of
6 appointment held by the principal, in an amount per donee not to exceed the annual
7 dollar limits of the federal gift tax exclusion under section 2503 (b) of the Internal
8 Revenue Code, without regard to whether the federal gift tax exclusion applies to the
9 gift, or if the principal's spouse agrees to consent to a split gift under section 2513 of
10 the Internal Revenue Code, in an amount per donee not to exceed twice the annual
11 federal gift tax exclusion limit.

12 (b) Consent, under section 2513 of the Internal Revenue Code, to the splitting
13 of a gift made by the principal's spouse in an amount per donee not to exceed the
14 aggregate annual gift tax exclusions for both spouses.

15 (c) Make a gift of the principal's property only as the agent determines is
16 consistent with the principal's objectives if actually known by the agent and, if
17 unknown, as the agent determines is consistent with the principal's best interest
18 based on all relevant factors, including all of the following:

19 1. The value and nature of the principal's property.

20 2. The principal's foreseeable obligations and need for maintenance.

21 3. Minimization of taxes, including income, estate, inheritance, generation
22 skipping transfer, and gift taxes.

23 4. Eligibility for a benefit, a program, or assistance under a statute, rule, or
24 regulation.

25 5. The principal's personal history of making or joining in making gifts.

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1 YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION
2 UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.

3 THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU
4 WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A COAGENT IN
5 THE SPECIAL INSTRUCTIONS. COAGENTS ARE NOT REQUIRED TO ACT
6 TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL
7 INSTRUCTIONS.

8 IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR
9 POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A
10 SUCCESSOR AGENT. YOU MAY ALSO NAME A 2ND SUCCESSOR AGENT.

11 THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY
12 UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS. THIS
13 POWER OF ATTORNEY DOES NOT REVOKE ANY POWER OF ATTORNEY
14 EXECUTED PREVIOUSLY UNLESS YOU SO PROVIDE IN THE SPECIAL
15 INSTRUCTIONS.

16 IF YOU REVOKE THIS POWER OF ATTORNEY, YOU SHOULD NOTIFY
17 YOUR AGENT AND ANY OTHER PERSON TO WHOM YOU HAVE GIVEN A
18 COPY. IF YOUR AGENT IS YOUR SPOUSE OR DOMESTIC PARTNER AND
19 YOUR MARRIAGE IS ANNULLED OR YOU ARE DIVORCED OR LEGALLY
20 SEPARATED OR THE DOMESTIC PARTNERSHIP IS TERMINATED AFTER
21 SIGNING THIS DOCUMENT, THE DOCUMENT IS INVALID.

22 IF YOU HAVE QUESTIONS ABOUT THE POWER OF ATTORNEY OR THE
23 AUTHORITY YOU ARE GRANTING TO YOUR AGENT, YOU SHOULD SEEK
24 LEGAL ADVICE BEFORE SIGNING THIS FORM.

25

DESIGNATION OF AGENT

ASSEMBLY BILL 704

1 I (name of principal) name the following person as my agent:

2 Name of agent:

3 Agent's address:

4 Agent's telephone number:

5 DESIGNATION OF SUCCESSOR AGENT(S)

6 (OPTIONAL)

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

8 Name of successor agent:

9 Successor agent's address:

10 Successor agent's telephone number:

11 If my successor agent is unable or unwilling to act for me, I name as my 2nd
12 successor agent:

13 Name of 2nd successor agent:

14 Second successor agent's address:

15 Second successor agent's telephone number:

16 GRANT OF GENERAL AUTHORITY

17 I grant my agent and any successor agent general authority to act for me with
18 respect to the following subjects as defined in the Uniform Power of Attorney for
19 Finances and Property Act in chapter 244 of the Wisconsin statutes:

20 INITIAL each subject you want to include in the agent's general authority.

21 Real property

22 Tangible personal property

23 Stocks and bonds

24 Commodities and options

25 Banks and other financial institutions

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1 Name of nominee for guardian of my estate:

2 Nominee's address:

3 Nominee's telephone number:

4 Name of nominee for guardian of my person:

5 Nominee's address:

6 Nominee's telephone number:

7 RELIANCE ON THIS POWER OF

8 ATTORNEY FOR FINANCES AND PROPERTY

9 Any person, including my agent, may rely upon the validity of this power of
10 attorney or a copy of it unless that person knows that the power of attorney has been
11 terminated or is invalid.

12 SIGNATURE AND ACKNOWLEDGMENT

13 Your signature Date

14 Your name printed

15 Your address

16 Your telephone number

17 State of

18 County of

19 This document was acknowledged before me on (date), by (name of
20 principal).

21 (Seal, if any)

22 Signature of notary

23 My commission expires:

24 This document prepared by:

25 IMPORTANT INFORMATION FOR AGENT

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AGENT'S DUTIES

WHEN YOU ACCEPT THE AUTHORITY GRANTED UNDER THIS POWER OF ATTORNEY, A SPECIAL LEGAL RELATIONSHIP IS CREATED BETWEEN YOU AND THE PRINCIPAL. THIS RELATIONSHIP IMPOSES UPON YOU LEGAL DUTIES THAT CONTINUE UNTIL YOU RESIGN OR THE POWER OF ATTORNEY IS TERMINATED OR REVOKED. YOU MUST DO ALL OF THE FOLLOWING:

(1) DO WHAT YOU KNOW THE PRINCIPAL REASONABLY EXPECTS YOU TO DO WITH THE PRINCIPAL'S PROPERTY OR, IF YOU DO NOT KNOW THE PRINCIPAL'S EXPECTATIONS, ACT IN THE PRINCIPAL'S BEST INTEREST.

(2) ACT IN GOOD FAITH.

(3) DO NOTHING BEYOND THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY.

(4) DISCLOSE YOUR IDENTITY AS AN AGENT WHENEVER YOU ACT FOR THE PRINCIPAL BY WRITING OR PRINTING THE NAME OF THE PRINCIPAL AND SIGNING YOUR OWN NAME AS "AGENT" IN THE FOLLOWING MANNER:

.... (principal's name) by (your signature) as agent

UNLESS THE SPECIAL INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE OTHERWISE, YOU MUST ALSO DO ALL OF THE FOLLOWING:

(1) ACT LOYALLY FOR THE PRINCIPAL'S BENEFIT.

(2) AVOID CONFLICTS THAT WOULD IMPAIR YOUR ABILITY TO ACT IN THE PRINCIPAL'S BEST INTEREST.

(3) ACT WITH CARE, COMPETENCE, AND DILIGENCE.

ASSEMBLY BILL 704**SECTION 16**

1 ATTORNEY STATE THAT SUCH AN ACTION WILL NOT TERMINATE YOUR
2 AUTHORITY.

3 (6) IF YOU ARE THE PRINCIPAL'S DOMESTIC PARTNER AND YOUR
4 DOMESTIC PARTNERSHIP IS TERMINATED, UNLESS THE SPECIAL
5 INSTRUCTIONS IN THIS POWER OF ATTORNEY STATE THAT SUCH AN
6 ACTION WILL NOT TERMINATE YOUR AUTHORITY.

7 **LIABILITY OF AGENT**

8 THE MEANING OF THE AUTHORITY GRANTED TO YOU IS DEFINED IN
9 THE UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT
10 IN CHAPTER 244 OF THE WISCONSIN STATUTES. IF YOU VIOLATE THE
11 UNIFORM POWER OF ATTORNEY FOR FINANCES AND PROPERTY ACT IN
12 CHAPTER 244 OF THE WISCONSIN STATUTES OR ACT OUTSIDE THE
13 AUTHORITY GRANTED, YOU MAY BE LIABLE FOR ANY DAMAGES CAUSED
14 BY YOUR VIOLATION.

15 IF THERE IS ANYTHING ABOUT THIS DOCUMENT OR YOUR DUTIES
16 THAT YOU DO NOT UNDERSTAND, YOU SHOULD SEEK LEGAL ADVICE.

17 **OPTIONAL SIGNATURE OF AGENT**

18 I HAVE READ AND ACCEPT THE DUTIES AND LIABILITIES OF THE
19 AGENT AS SPECIFIED IN THIS POWER OF ATTORNEY.

20 Agent's signature

Date

21 (APPENDIX FOLLOWS)

22 **244.62 Agent's certification.** The following optional form may be used by an
23 agent to certify facts concerning a power of attorney for finances and property:

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1 This document prepared by:

2 **244.63 Distribution of forms.** The department of health and family services
3 shall prepare and provide copies of the Wisconsin statutory form power of attorney
4 for finances and property for distribution in quantities to financial institutions,
5 health care professionals, hospitals, nursing homes, multipurpose senior centers,
6 county clerks and local bar associations and individually to private persons. The
7 department of health and family services may charge a reasonable fee for the cost
8 of preparation and distribution of the forms.

9 **244.64 Relation to power of attorney for health care.** The execution of
10 a Wisconsin statutory form power of attorney for finances and property under this
11 chapter does not confer on the agent any of the powers or duties conferred on a health
12 care agent by the power of attorney for health care under ch. 155.

13 **SECTION 17.** 854.08 (5) (a) of the statutes is amended to read:

14 854.08 (5) (a) In this subsection, “agent” means an agent under a durable power
15 of attorney, as defined in s. ~~243.07 (1) (a)~~ 244.02 (3).

16 **SECTION 18. Effective date.**

17 (1) This act takes effect on the first day of the 4th month beginning after
18 publication.

19 (END)