

HOUSE BILL NO. 8

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HUGHES

Introduced: 1/9/15

Referred: Prefiled

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to powers of attorney and other substitute decision-making documents;**
2 **relating to the uniform probate code; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 13.06.050(1) is repealed and reenacted to read:

5 (1) "agent" means a person granted authority to act for a principal
6 under a power of attorney or to whom an agent's authority is delegated, whether
7 denominated an agent, attorney-in-fact, original agent, coagent, successor agent, or
8 otherwise;

9 * **Sec. 2.** AS 13.06.050(46) is amended to read:

10 (46) "state" means a state of the United States, the District of
11 Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or a
12 territory or insular possession subject to the jurisdiction of the United States;

13 * **Sec. 3.** AS 13.06.050 is amended by adding new paragraphs to read:

14 (57) "durable," with respect to a power of attorney, means not

1 terminated by the principal's incapacity; in this paragraph, "incapacity" has the
2 meaning given in AS 13.26.359;

3 (58) "electronic" means relating to technology having electrical, digital,
4 magnetic, wireless, optical, electromagnetic, or similar capabilities;

5 (59) "power of attorney" means a writing or other record that grants
6 authority to an agent to act in the place of the principal, whether or not the term
7 "power of attorney" is used;

8 (60) "principal" means an individual who grants authority to an agent in
9 a power of attorney;

10 (61) "record" means information that is inscribed on a tangible medium
11 or that is stored in an electronic or other medium and is retrievable in perceivable
12 form;

13 (62) "sign" means, with present intent to authenticate or adopt a record,

14 (A) to execute or adopt a tangible symbol; or

15 (B) to attach to or logically associate with the record an
16 electronic sound, symbol, or process.

17 * **Sec. 4.** AS 13.26 is amended by adding new sections to article 5 to read:

18 **Sec. 13.26.326. Agent's acceptance and liability.** (a) Except as otherwise
19 provided in the power of attorney, a person accepts appointment as an agent under a
20 power of attorney by exercising authority or performing duties as an agent or by any
21 other assertion or conduct indicating acceptance.

22 (b) An agent that violates a provision in AS 13.26.326 - 13.26.359 is liable to
23 the principal or the principal's successors in interest for the amount required to

24 (1) restore the value of the principal's property to what it would have
25 been had the violation not occurred; and

26 (2) reimburse the principal or the principal's successors in interest for
27 the attorney fees and costs paid on the agent's behalf.

28 **Sec. 13.26.327. Agent's duties.** (a) Notwithstanding provisions in the power of
29 attorney, an agent that has accepted appointment shall

30 (1) act in accordance with the principal's reasonable expectations to the
31 extent actually known by the agent and, otherwise, in the principal's best interest;

1 (2) act in good faith; and
 2 (3) act only within the scope of authority granted in the power of
 3 attorney.

4 (b) Except as otherwise provided in the power of attorney, an agent that has
 5 accepted appointment shall

6 (1) act loyally for the principal's benefit;
 7 (2) act so as not to create a conflict of interest that impairs the agent's
 8 ability to act impartially in the principal's best interest;

9 (3) act with the care, competence, and diligence ordinarily exercised by
 10 agents in similar circumstances;

11 (4) keep a record of all receipts, disbursements, and transactions made
 12 on behalf of the principal;

13 (5) cooperate with a person that has authority to make health care
 14 decisions for the principal to carry out the principal's reasonable expectations to the
 15 extent actually known by the agent and, otherwise, act in the principal's best interest;
 16 and

17 (6) attempt to preserve the principal's estate plan, to the extent actually
 18 known by the agent, if preserving the plan is consistent with the principal's best
 19 interest based on all relevant factors, including

20 (A) the value and nature of the principal's property;
 21 (B) the principal's foreseeable obligations and need for
 22 maintenance;
 23 (C) minimization of taxes, including income, estate, inheritance,
 24 generation-skipping transfer, and gift taxes; and
 25 (D) eligibility for a benefit, a program, or assistance under a
 26 statute or regulation.

27 (c) An agent that acts in good faith is not liable to any beneficiary of the
 28 principal's estate plan for failure to preserve the plan.

29 (d) An agent that acts with care, competence, and diligence for the best interest
 30 of the principal is not liable solely because the agent also benefits from the act or has
 31 an individual or conflicting interest in relation to the property or affairs of the

1 principal.

2 (e) If an agent is selected by the principal because of special skills or expertise
3 possessed by the agent or in reliance on the agent's representation that the agent has
4 special skills or expertise, the special skills or expertise must be considered in
5 determining whether the agent has acted with care, competence, and diligence under
6 the circumstances.

7 (f) Absent a breach of duty to the principal, an agent is not liable if the value of
8 the principal's property declines.

9 (g) An agent that exercises authority to delegate to another person the authority
10 granted by the principal or that engages another person on behalf of the principal is not
11 liable for an act, error of judgment, or default of that person if the agent exercises care,
12 competence, and diligence in selecting and monitoring the person.

13 (h) Except as otherwise provided in the power of attorney, an agent is not
14 required to disclose receipts, disbursements, or transactions conducted on behalf of the
15 principal unless ordered by a court or requested by the principal, a guardian, a
16 conservator, another fiduciary acting for the principal, a governmental agency having
17 authority to protect the welfare of the principal, or, upon the death of the principal, the
18 personal representative or successor in interest of the principal's estate. If so requested,
19 within 30 days the agent shall comply with the request or provide a writing or other
20 record substantiating why additional time is needed and shall comply with the request
21 within an additional 30 days.

22 **Sec. 13.26.328. Acceptance of power of attorney.** (a) A third party asked to
23 accept a power of attorney may request, and rely upon, without further investigation

24 (1) an agent's certification under penalty of perjury of any factual
25 matter concerning the principal, agent, or power of attorney;

26 (2) an English translation of the power of attorney if the power of
27 attorney contains, in whole or in part, language other than English; and

28 (3) an opinion of counsel as to any matter of law concerning the power
29 of attorney if the person making the request provides in a writing or other record the
30 reason for the request.

31 (b) An English translation or an opinion of counsel requested under this section

1 must be provided at the principal's expense unless the request is made more than seven
2 business days after the power of attorney is presented for acceptance.

3 (c) For purposes of this section, a person that conducts activities through
4 employees is without actual knowledge of a fact relating to a principal, agent, or
5 power of attorney if the employee conducting the transaction involving the power of
6 attorney is without actual knowledge of the fact.

7 (d) Except as otherwise provided in (e) of this section,

8 (1) a person shall accept an acknowledged power of attorney or request
9 a certification, a translation, or an opinion of counsel under (a) of this section not later
10 than seven business days after presentation of the power of attorney for acceptance;

11 (2) if a person requests a certification, a translation, or an opinion of
12 counsel under (a) of this section, the person shall accept the power of attorney not later
13 than five business days after receipt of the certification, translation, or opinion of
14 counsel; and

15 (3) a person may not require an additional or different form of power of
16 attorney for authority granted in the power of attorney presented.

17 (e) A person is not required to accept an acknowledged power of attorney if

18 (1) the person is not otherwise required to engage in a transaction with
19 the principal in the same circumstances;

20 (2) engaging in a transaction with the agent or principal in the same
21 circumstances would be inconsistent with federal law;

22 (3) the person has actual knowledge of the termination of the agent's
23 authority or of the power of attorney before exercise of the power;

24 (4) a request for a certification, a translation, or an opinion of counsel
25 under (a) of this section is refused;

26 (5) the person in good faith believes that the power is not valid or that
27 the agent does not have the authority to perform the act requested, whether or not a
28 certification, a translation, or an opinion of counsel under (a) of this section has been
29 requested or provided; or

30 (6) the person makes, or has actual knowledge that another person has
31 made, a report to Department of Health and Social Services or other governmental

1 agency, stating a good faith belief that the principal may be subject to physical or
 2 financial abuse, neglect, exploitation, or abandonment by the agent or a person acting
 3 for or with the agent.

4 (f) A person that refuses in violation of this section to accept an acknowledged
 5 power of attorney is subject to

6 (1) a court order mandating acceptance of the power of attorney; and

7 (2) liability as provided by court rules of this state for attorney fees and
 8 costs incurred in any action or proceeding that confirms the validity of the power of
 9 attorney or mandates acceptance of the power of attorney.

10 **Sec. 13.26.329. Termination of power of attorney; agent's resignation;**

11 **notice.** (a) Except as provided in AS 13.26.356, a power of attorney terminates when

12 (1) the principal dies;

13 (2) there is an incapacity of the principal, if the power of attorney is not
 14 durable;

15 (3) the principal revokes the power of attorney;

16 (4) the power of attorney provides that it terminates;

17 (5) the purpose of the power of attorney is accomplished; or

18 (6) the principal revokes the agent's authority, there is an incapacity of
 19 the agent, the agent dies, or the agent resigns, and the power of attorney does not
 20 provide for another agent to act under the power of attorney.

21 (b) Unless the power of attorney provides a different method for an agent's
 22 resignation, an agent may resign by giving notice to the principal and, if there is an
 23 incapacity of the principal,

24 (1) to the conservator or guardian, if one has been appointed for the
 25 principal, and a coagent or successor agent; or

26 (2) if there is no person described in (1) of this subsection, to

27 (A) the principal's custodian or caregiver;

28 (B) another person reasonably believed by the agent to have
 29 sufficient interest in the principal's welfare; or

30 (C) a governmental agency having statutory authority to protect
 31 the welfare of the principal.

1 * **Sec. 5.** AS 13.26 is amended by adding a new section to article 5 to read:

2 **Sec. 13.26.331. Validity of power of attorney executed in another state.** A

3 power of attorney executed other than in this state is valid in this state if, when the
4 power of attorney was executed, the execution complied with

5 (1) the law of the jurisdiction where the power of attorney was
6 executed; or

7 (2) the requirements for a military power of attorney under 10 U.S.C.
8 1044b, as amended.

9 * **Sec. 6.** AS 13.26.332 is amended to read:

10 **Sec. 13.26.332. Statutory form power of attorney.** A person who wishes to
11 designate another as [ATTORNEY-IN-FACT OR] agent by a power of attorney may
12 execute a statutory power of attorney set out in substantially the following form:

13 GENERAL POWER OF ATTORNEY

14 THE POWERS GRANTED FROM THE PRINCIPAL TO THE
15 AGENT OR AGENTS IN THE FOLLOWING DOCUMENT ARE
16 VERY BROAD. THEY MAY INCLUDE THE POWER TO
17 DISPOSE, SELL, CONVEY, AND ENCUMBER YOUR REAL AND
18 PERSONAL PROPERTY. ACCORDINGLY, THE FOLLOWING
19 DOCUMENT SHOULD ONLY BE USED AFTER CAREFUL
20 CONSIDERATION. IF YOU HAVE ANY QUESTIONS ABOUT
21 THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE.

22 YOU MAY REVOKE THIS POWER OF ATTORNEY AT
23 ANY TIME.

24 Pursuant to AS 13.26.338 - 13.26.359 [AS 13.26.338 -
25 13.26.353], I, (Name of principal), of (Address of principal), do hereby
26 appoint (Name and address of agent or agents), my agent(s)
27 [ATTORNEY(S)-IN-FACT] to act as indicated below in my name,
28 place, and stead in any way which I myself could do, if I were
29 personally present, with respect to the following matters, as each of
30 them is defined in AS 13.26.344, to the full extent that I am permitted
31 by law to act through an agent:

MARK THE BOXES BELOW TO INDICATE THE POWERS YOU WANT TO GIVE YOUR AGENT OR AGENTS. MARK THE BOX FOR "YES" THAT IS OPPOSITE A CATEGORY BELOW TO GIVE YOUR AGENT OR AGENTS THE POWER IN THAT CATEGORY. MARK THE BOX FOR "NO" THAT IS OPPOSITE A CATEGORY BELOW TO INDICATE THAT YOU ARE NOT GIVING YOUR AGENT OR AGENTS THE POWER IN THAT CATEGORY. MARK A BOX FOR EVERY CATEGORY [THE AGENT OR AGENTS YOU HAVE APPOINTED WILL HAVE ALL THE POWERS LISTED BELOW UNLESS YOU DRAW A LINE THROUGH A CATEGORY, AND INITIAL THE BOX OPPOSITE THAT CATEGORY].

	<u>YES</u>	<u>NO</u>
(A) real estate transactions	()	<u> </u>
(B) transactions involving tangible personal property, chattels, and goods	()	<u> </u>
(C) bonds, shares, and commodities transactions	()	<u> </u>
(D) banking transactions	()	<u> </u>
(E) business operating transactions	()	<u> </u>
(F) insurance transactions	()	<u> </u>
(G) estate transactions	()	<u> </u>
(H) <u>retirement plans</u> [GIFT TRANSACTIONS]	()	<u> </u>
(I) claims and litigation	()	<u> </u>
(J) personal relationships and affairs	()	<u> </u>
(K) benefits from government programs and <u>civil or</u> military service	()	<u> </u>
(L) records, reports, and statements	()	<u> </u>
(M) delegation	()	<u> </u>
(N) voter registration and absentee ballot requests	()	<u> </u>

(O) all other matters, including those
specified as follows:

()

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

The agent or agents you have appointed WILL NOT have the power to do any of the following acts UNLESS you MARK the box opposite that category:

() create, amend, revoke, or terminate an inter vivos trust;

() make a gift, subject to the limitations of AS 13.26.344(q) and any special instructions in this power of attorney;

() create or change a beneficiary designation;

() revoke a transfer on death deed made under AS 13.48.

IF YOU HAVE APPOINTED MORE THAN ONE AGENT,
MARK [CHECK] ONE OF THE FOLLOWING:

() Each agent may exercise the powers conferred separately, without the consent of any other agent.

() All agents shall exercise the powers conferred jointly, with the consent of all other agents.

TO INDICATE WHEN THIS DOCUMENT SHALL BECOME EFFECTIVE, **MARK** [CHECK] ONE OF THE FOLLOWING:

() This document shall become effective upon the date of my signature.

() This document shall become effective upon the date of my **incapacity** [DISABILITY] and shall not otherwise be affected by my **incapacity** [DISABILITY].

IF YOU HAVE INDICATED THAT THIS DOCUMENT SHALL BECOME EFFECTIVE ON THE DATE OF YOUR SIGNATURE, **MARK** [CHECK] ONE OF THE FOLLOWING:

() This document shall not be affected by my subsequent **incapacity**

1 [DISABILITY].

2 () This document shall be revoked by my subsequent incapacity
3 [DISABILITY].

4 IF YOU HAVE INDICATED THAT THIS DOCUMENT
5 SHALL BECOME EFFECTIVE UPON THE DATE OF YOUR
6 SIGNATURE AND WANT TO LIMIT THE TERM OF THIS
7 DOCUMENT, COMPLETE THE FOLLOWING:

8 This document shall only continue in effect for _____ () years from
9 the date of my signature.

10 NOTICE OF REVOCATION OF THE POWERS GRANTED
11 IN THIS DOCUMENT

12 You may revoke one or more of the powers granted in this document.
13 Unless otherwise provided in this document, you may revoke a specific
14 power granted in this power of attorney by completing a special power
15 of attorney that includes the specific power in this document that you
16 want to revoke. Unless otherwise provided in this document, you may
17 revoke all the powers granted in this power of attorney by completing a
18 subsequent power of attorney.

19 NOTICE TO THIRD PARTIES

20 A third party who relies on the reasonable representations of an agent
21 [ATTORNEY-IN-FACT] as to a matter relating to a power granted by
22 a properly executed statutory form power of attorney does not incur
23 any liability to the principal or to the principal's heirs, assigns, or estate
24 as a result of permitting the agent [ATTORNEY-IN-FACT] to exercise
25 the authority granted by the power of attorney. A third party who fails
26 to honor a properly executed statutory form power of attorney may be
27 liable to the principal, the agent [ATTORNEY-IN-FACT], the
28 principal's heirs, assigns, or estate for a civil penalty, plus damages,
29 costs, and fees associated with the failure to comply with the statutory
30 form power of attorney. If the power of attorney is one which becomes
31 effective upon the incapacity [DISABILITY] of the principal, the

incapacity [DISABILITY] of the principal is established by an affidavit, as required by law.

IN WITNESS WHEREOF, I have hereunto signed my name this ____ day of _____, _____.

Signature of Principal

Acknowledged before me at _____
_____ on _____.

Signature of Officer or Notary

* **Sec. 7.** AS 13.26.335 is amended to read:

Sec. 13.26.335. Additional optional provisions to statutory form power of attorney. Each of the following provisions may be included in a statutory form power of attorney:

(1) [REPEALED.

(2)] YOU MAY DESIGNATE AN ALTERNATE **AGENT** [ATTORNEY-IN-FACT]. ANY ALTERNATE YOU DESIGNATE WILL BE ABLE TO EXERCISE THE SAME POWERS AS THE AGENT(S) YOU NAMED AT THE BEGINNING OF THIS DOCUMENT. IF YOU WISH TO DESIGNATE AN ALTERNATE OR ALTERNATES, COMPLETE THE FOLLOWING:
If the agent(s) named at the beginning of this document is unable or unwilling to serve or continue to serve, then I appoint the following agent to serve with the same powers:

First alternate or successor agent [ATTORNEY-IN-FACT]

(Name and address of alternate)

Second alternate or successor **agent** [ATTORNEY-IN-FACT]

(Name and address of alternate)

(3) YOU MAY NOMINATE A GUARDIAN OR

1 CONSERVATOR. IF YOU WISH TO NOMINATE A GUARDIAN
2 OR CONSERVATOR, COMPLETE THE FOLLOWING:

3 In the event that a court decides that it is necessary to appoint a
4 guardian or conservator for me, I hereby nominate (Name and address
5 of person nominated) to be considered by the court for appointment to
6 serve as my guardian or conservator, or in any similar representative
7 capacity.

8 * **Sec. 8.** AS 13.26.341 is amended to read:

9 **Sec. 13.26.341. Applicability of provisions of statutory form power of**
10 **attorney.** In the instrument set out in AS 13.26.332 - 13.26.335,

11 (1) if the principal has appointed more than one person to act as
12 [ATTORNEY-IN-FACT OR] agent and failed to mark [CHECK] whether the agents
13 may act "jointly" or "severally," the agents are required to act jointly;

14 (2) if the principal has failed to indicate when the instrument shall
15 become effective, the instrument shall become effective upon the date of the
16 principal's signature;

17 (3) if the principal has indicated that the instrument shall become
18 effective upon the date of the principal's signature or has failed to indicate when the
19 instrument shall become effective and has failed to indicate the effect of the principal's
20 subsequent incapacity [DISABILITY] on the instrument, the instrument shall be
21 revoked by the subsequent incapacity [DISABILITY] of the principal;

22 (4) if the principal has failed to indicate a specific term for the
23 instrument, the instrument shall continue in effect until revoked.

24 * **Sec. 9.** AS 13.26.344(a) is amended to read:

25 (a) In a statutory form power of attorney, the language conferring general
26 authority with respect to real estate transactions shall be construed to mean that, as to
27 an estate or interest in land of the principal, whether in the state or elsewhere, the
28 principal authorizes the agent to

29 (1) accept as a gift or as security for a loan, demand, buy, lease,
30 receive, or otherwise acquire either ownership or possession of any estate or interest in
31 land;

1 (2) sell, exchange, convey, quitclaim, release, surrender, mortgage,
2 encumber, partition or consent to the partitioning, [REVOKE, CREATE OR MODIFY
3 A TRUST,] grant options concerning, lease or sublet, or otherwise to dispose of, an
4 estate or interest in land;

5 (3) release in whole or in part, assign the whole or a part of, satisfy in
6 whole or in part, and enforce a mortgage, encumbrance, lien, or other claim to land
7 that exists, or is claimed to exist, in favor of the principal;

8 (4) do any act of management or of conservation with respect to an
9 estate or interest in land owned, or claimed to be owned, by the principal, including by
10 way of illustration, but not of restriction, power to insure against any casualty,
11 liability, or loss, obtain or regain possession or protect the estate or interest, pay,
12 compromise, or contest taxes or assessments, or apply for refunds in connection with a
13 payment, compromise, or tax, purchase supplies, hire assistance of labor, and make
14 repairs or alterations in the structures or land;

15 (5) use, develop, modify, alter, replace, remove, erect, or install
16 structures or other improvements on land in which the principal has, or claims to have,
17 an estate or interest;

18 (6) demand, receive, or obtain money or any other thing of value to
19 which the principal is, or may become, or may claim to be entitled as the proceeds of
20 an interest in land or of one or more of the transactions enumerated in this subsection;
21 conserve, invest, disburse, or use anything so received for purposes enumerated in this
22 subsection; and reimburse the agent for an expenditure properly made in the execution
23 of the powers conferred by the statutory form power of attorney;

24 (7) participate in any reorganization with respect to real property and
25 receive and hold any shares of stock or instrument of similar character received under
26 a plan of reorganization, and act with respect to a plan of reorganization, including by
27 way of illustration, but not of restriction, power to sell or otherwise to dispose of
28 shares, to exercise or to sell an option, conversion, or similar right, and to vote in
29 person by the granting of a proxy;

30 (8) agree and contract, in any manner, and with any person and on any
31 terms that the agent may select, for the accomplishment of any of the purposes

1 enumerated in this subsection, and perform, rescind, reform, release, or modify an
2 agreement or contract made by or on behalf of the principal;

3 (9) execute, acknowledge, seal, and deliver a deed, [REVOCAION,
4 DECLARATION OR MODIFICATION OF TRUST,] mortgage, lease, notice, check,
5 or other instrument that the agent considers useful for the accomplishment of any of
6 the purposes enumerated in this subsection;

7 (10) prosecute, defend, submit to arbitration, settle, and propose or
8 accept a compromise with respect to, a claim existing in favor of, or against, the
9 principal based on or involving a real estate transaction or intervene in any related
10 action;

11 (11) hire, discharge, and compensate an attorney, accountant, expert
12 witness, or assistant when the agent considers that action to be desirable for the proper
13 execution of a power described in this subsection, and for the keeping of records about
14 that action; and

15 (12) do any other act or acts that the principal can do through an agent
16 with respect to any estate or interest in land.

17 * **Sec. 10.** AS 13.26.344(b) is amended to read:

18 (b) In a statutory form power of attorney, the language conferring general
19 authority with respect to tangible personal property, chattels, and goods transactions
20 shall be construed to mean that, as to tangible personal property, chattels, or goods
21 owned by the principal, whether located in the state or elsewhere, the principal
22 authorizes the agent to

23 (1) accept as a gift, or as a security for a loan, reject, demand, buy,
24 receive, or otherwise acquire either ownership or possession of chattels or goods or an
25 interest in the tangible personal property, chattels, or goods;

26 (2) sell, exchange, convey, release, surrender, mortgage, encumber,
27 pledge, hypothecate, pawn, [REVOKE, CREATE, OR MODIFY A TRUST,] grant
28 options concerning, lease or sublet to others, or otherwise dispose of tangible personal
29 property, chattels, or goods or an interest in them;

30 (3) release in whole or in part, assign the whole or a part of, satisfy in
31 whole or in part, and enforce a mortgage, encumbrance, lien, or other claim that exists,

1 or is claimed to exist, in favor of the principal with respect to any tangible personal
2 property, chattels, or goods or an interest in them;

3 (4) do any act of management or of conservation with respect to any
4 tangible personal property, chattels, or goods or to an interest in any tangible personal
5 property, chattels, or goods owned, or claimed to be owned, by the principal, including
6 by way of illustration, but not of restriction, power to insure against any casualty,
7 liability, or loss, obtain or regain possession, or protect the tangible personal property,
8 chattels, or goods or an interest in them, pay, compromise, or contest taxes or
9 assessments, apply for refunds in connection with a payment, compromise, or tax,
10 move from place to place, store for hire or on a gratuitous bailment, use, alter, and
11 make repairs or alterations of any tangible personal property, chattels, or goods, or an
12 interest in them;

13 (5) demand, receive, and obtain money or any other thing of value to
14 which the principal is, or may become, or may claim to be, entitled as the proceeds of
15 any tangible personal property, chattels, or goods or of an interest in them, or of one or
16 more of the transactions enumerated in this subsection, conserve, invest, disburse, or
17 use anything so received for purposes enumerated in this subsection, and reimburse
18 the agent for any expenditures properly made in the execution of the powers conferred
19 by the power of attorney;

20 (6) agree and contract, in any manner, and with any person and on any
21 terms that the agent may select, for the accomplishment of the purposes enumerated in
22 this subsection, and perform, rescind, reform, release, or modify any agreement or
23 contract or any other similar agreement or contract made by or on behalf of the
24 principal;

25 (7) execute, acknowledge, seal, and deliver a conveyance,
26 [REVOCAION, DECLARATION OR MODIFICATION OF TRUST,] mortgage,
27 lease, notice, check or other instrument that the agent considers useful for the
28 accomplishment of the purposes enumerated in this subsection;

29 (8) prosecute, defend, submit to arbitration, settle, and propose or
30 accept a compromise with respect to, a claim existing in favor of, or against, the
31 principal based on or involving a transaction involving tangible personal property,

1 chattels, or goods, or intervene in an action or proceeding;

2 (9) hire, discharge, and compensate an attorney, accountant, expert
3 witness, or assistant when the agent considers the action to be desirable to the proper
4 execution of a power described in this subsection, and for the keeping of records about
5 that action;

6 (10) do any other act or acts that the principal can do through an agent
7 with respect to any chattels or goods or interest in any tangible personal property,
8 chattels, or goods.

9 * **Sec. 11.** AS 13.26.344(c) is amended to read:

10 (c) In a statutory form power of attorney, the language conferring general
11 authority with respect to bonds, shares, and commodities transactions shall be
12 construed to mean that, with respect to a bond, share, or commodity of the principal,
13 whether in the state or elsewhere, the principal authorizes the agent to

14 (1) accept as a gift, or as a security for a loan, reject, demand, buy,
15 receive, or otherwise acquire either ownership or possession of, a bond, share, or
16 instrument of similar character including, by way of illustration, but not of restriction,
17 stock in a corporation organized under 43 U.S.C. 1601 et seq. (Alaska Native Claims
18 Settlement Act), commodity interest, or an instrument with respect to a bond, share, or
19 instruments of similar character, together with the interest, dividends, proceeds, or
20 other distributions connected with a bond, share, or instrument of a similar character;

21 (2) sell, exchange, transfer, release, surrender, hypothecate, pledge,
22 [REVOKE, CREATE, OR MODIFY A TRUST,] grant options concerning, loan, trade
23 in, or otherwise dispose of a bond, share, instrument of similar character, commodity
24 interest, or a related instrument;

25 (3) release, assign the whole or part of, satisfy in whole or in part, and
26 enforce a pledge, encumbrance, lien, or other claim as to a bond, share, instrument of
27 similar character, commodity interest, or a related interest, when the pledge,
28 encumbrance, lien, or other claim is owned, or claimed to be owned, by the principal;

29 (4) do any act of management or of conservation with respect to a
30 bond, share, instrument of similar character, commodity interest, or a related
31 instrument, owned or claimed to be owned by the principal or in which the principal

1 has or claims to have an interest, including by way of illustration, but not of
2 restriction, power to insure against a casualty, liability, or loss, obtain or regain
3 possession or protect the principal's interest, pay, compromise, or contest taxes or
4 assessments, apply for a refund in connection with a payment, compromise, or tax,
5 consent to and participate in a reorganization, recapitalization, liquidation, merger,
6 consolidation, sale or lease or other change in or revival of a corporation or other
7 association, or in the financial structure of a corporation or other association, or in the
8 priorities, voting rights, or other special rights with respect to a corporation or
9 association, become a depositor with a protective, reorganization or similar committee
10 of the bond, share, other instrument of similar character, commodity interest or a
11 related instrument, belonging to the principal, make a payment reasonably incident to
12 them, and exercise or sell an option, conversion, or similar right, or vote in person or
13 by the granting of a proxy for the accomplishment of the purposes enumerated in this
14 subsection;

15 (5) carry in the name of a nominee selected by the agent evidence of
16 the ownership of a bond, share, other instrument of similar character, commodity
17 interest, or related instrument belonging to the principal;

18 (6) employ, in any way believed to be desirable by the agent, a bond,
19 share, other instrument of similar character, commodity interest, or a related
20 instrument, in which the principal has or claims to have an interest, for the protection
21 or continued operation of a speculative or margin transaction personally begun or
22 personally guaranteed, in whole or in part, by the principal;

23 (7) demand, receive, or obtain money or any other thing of value to
24 which the principal is, or may claim to be, entitled as the proceeds of an interest in a
25 bond, share, other instrument of similar character, commodity interest or a related
26 instrument, or of one or more of the transactions enumerated in this subsection,
27 conserve, invest, disburse, or use anything so received for purposes enumerated in this
28 subsection; and reimburse the agent for an expenditure properly made in the execution
29 of the powers conferred by the statutory form power of attorney;

30 (8) agree and contract, in any manner, and with a broker or other
31 person, and on terms that the agent may select, for the accomplishment of the purposes

1 enumerated in this subsection, and perform, rescind, reform, release, or modify the
 2 agreement or contract or other similar agreement made by or on behalf of the
 3 principal;

4 (9) execute, acknowledge, seal, and deliver a consent, agreement,
 5 authorization, assignment, [REVOCAION, DECLARATION OR MODIFICATION
 6 OF TRUST,] notice, waiver of notice, check, or other instrument that the agent
 7 considers useful for the accomplishment of the purposes enumerated in this
 8 subsection;

9 (10) execute, acknowledge and file a report or certificate required by
 10 law or regulation;

11 (11) prosecute, defend, submit to arbitration, settle, and propose or
 12 accept a compromise with respect to, a claim existing in favor of, or against, the
 13 principal based on or involving a bond, share, or commodity transactions, or intervene
 14 in a related action or proceeding;

15 (12) hire, discharge, and compensate an attorney, accountant, expert
 16 witness, or assistant when the agent considers that action to be desirable for the proper
 17 execution of the powers described in this subsection, and for the keeping of records
 18 about that action; and

19 (13) do any other act or acts that the principal can do through an agent,
 20 with respect to an interest in a bond, share, or other instrument of similar character,
 21 commodity, or instrument with respect to a commodity.

22 * **Sec. 12.** AS 13.26.344(d) is amended to read:

23 (d) In a statutory form power of attorney, the language conferring general
 24 authority with respect to banking transactions shall be construed to mean that, as to a
 25 banking transaction engaged in by the principal, whether in the state or elsewhere, the
 26 principal authorizes the agent to

27 (1) continue, modify, or terminate a deposit account or other banking
 28 arrangement made by or on the behalf of the principal before the execution of the
 29 power of attorney;

30 (2) open, either in the name of the agent alone or in the name of the
 31 principal alone, or in both their names jointly, a deposit account of any type in a

1 financial institution selected by the agent, hire a safe deposit box or vault space, and
2 enter into contracts for the procuring of other services made available by the
3 institution that the agent considers desirable;

4 (3) make, sign, and deliver checks or drafts for any purpose, and
5 withdraw funds or property of the principal deposited with or left in the custody of a
6 financial institution, wherever located, either before or after the execution of the
7 power of attorney;

8 (4) prepare financial statements concerning the assets and liabilities or
9 income and expenses of the principal, and deliver the statements to a financial
10 institution or person whom the agent believes to be reasonably entitled to them;

11 (5) receive statements, vouchers, notices, or other documents from a
12 financial institution and act with respect to them;

13 (6) have free access to a safe deposit box or vault to which the principal
14 would have access if personally present;

15 (7) borrow money as the agent may determine, give security out of the
16 assets of the principal as the agent considers necessary for the borrowing, and pay,
17 renew, or extend the time of payment of a financial institution by any other procedure
18 made available by the institution;

19 (8) make, assign, endorse, discount, guarantee, use, and negotiate
20 promissory notes, bills of exchange, checks, drafts, credit and debit cards, electronic
21 transaction authorizations, or other negotiable or nonnegotiable paper of the
22 principal, or payable to the principal or to the principal's order, receive the cash or
23 other proceeds of them; and accept any bill of exchange or draft drawn by any person
24 upon the principal, and pay it when due;

25 (9) receive for the principal and deal in and with a negotiable or
26 nonnegotiable instrument in which the principal has or claims to have an interest;

27 (10) apply for and receive letters of credit or traveler's checks from a
28 banker or banking institution selected by the agent, giving indemnity or other
29 agreements in connection with the applications or receipts that the agent considers
30 desirable or necessary;

31 (11) consent to an extension in the time of payment with respect to

commercial paper or a banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way;

(12) pay, compromise, or contest taxes or assessments and apply for refunds in connection with the payment, compromise, or contest;

(13) demand, receive, or obtain money or any other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any banking transaction conducted by the principal or by the agent in the execution of the powers described in this subsection, or partly by the principal and partly by the agent; conserve, invest, disburse, or use anything received for purposes enumerated in this subsection, and reimburse the agent for an expenditure properly made in the execution of the powers conferred by the statutory form power of attorney;

(14) execute, acknowledge, seal, and deliver an instrument, in the name of the principal or otherwise, that the agent considers useful for the accomplishment of a purpose enumerated in this subsection;

(15) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to, a claim existing in favor of, or against, the principal based on or involving a banking transaction, or intervene in an action or proceeding relating to a banking transaction;

(16) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers that the action is desirable for the proper execution of the powers described in this subsection, and for the keeping of records about that action; and

(17) do any other act or acts that the principal can do through an agent in connection with a banking transaction that does or might in any way affect the financial or other interests of the principal.

*** Sec. 13.** AS 13.26.344(e) is amended to read:

(e) In a statutory form power of attorney, the language conferring general authority with respect to business operating transactions shall be construed to mean that, with respect to a business in which the principal has an interest, whether in the state or elsewhere, the principal authorizes the agent

(1) to the extent that an agent is permitted by law to act for a principal,

1 to discharge and perform any duty or liability and exercise any right, power, privilege,
2 or option that the principal has, or claims to have, under a contract of partnership,
3 whether as a general or special partner, enforce the terms of the partnership agreement
4 for the protection of the principal that the agent considers desirable or necessary, and
5 defend, submit to arbitration, settle, or compromise an action to which the principal is
6 a party because of membership in a partnership;

7 (2) to exercise in person or by proxy or enforce a right, power,
8 privilege, or option that the principal has as the holder of a bond, share, or other
9 instrument of similar character, and defend, submit to arbitration, settle, or
10 compromise an action to which the principal is a party because of a bond, share, or
11 other instrument of similar character;

12 (3) with respect to a business enterprise that is owned solely by the
13 principal, to

14 (A) continue, modify, renegotiate, extend and terminate a
15 contractual arrangement made with a person, firm, association, or corporation
16 by or on behalf of the principal;

17 (B) determine the policy of the enterprise as to the location of
18 the site or sites to be used for its operation, the nature and extent of the
19 business to be undertaken by it, the methods of manufacturing, selling,
20 merchandising, financing, accounting, and advertising to be employed in its
21 operation, the amount and types of insurance to be carried, the mode of
22 securing compensation and dealing with accountants, attorneys, and employees
23 required for its operation, agree and contract, in any manner, and with any
24 person and on any terms, that the agent considers desirable or necessary to
25 carry out any or all of the decisions of the agent as to policy, and perform,
26 rescind, reform, release, or modify an agreement or contract or any other
27 similar agreement or contract made by or on behalf of the principal;

28 (C) change the name or form of organization under which the
29 business is operated and enter into a partnership agreement with others or
30 organize a corporation to take over the operation of the business, or any part of
31 it, that the agent considers desirable or necessary;

1 (D) demand and receive all money that is or may become due to
2 the principal, or that may be claimed by the principal or on the principal's
3 behalf, in the operation of the enterprise, and control and disburse the funds in
4 the operation of the enterprise in any way that the agent considers desirable or
5 necessary, and engage in banking transactions that the agent considers
6 desirable or necessary to carry out the execution of the powers of the agent
7 described in this subparagraph;

8 (4) to prepare, sign, file, and deliver all reports, compilations of
9 information, returns, and other papers with respect to a business operating transaction
10 of the principal that is required by a government agency or that the agent considers
11 desirable or necessary for any purpose, and make any payments with respect to the
12 agency;

13 (5) to pay, compromise, or contest taxes or assessments and do any act
14 or acts that the agent considers desirable or necessary to protect the principal from
15 illegal or unnecessary taxation, fines, penalties, or assessments in connection with the
16 business operations;

17 (6) to demand, receive, or obtain money or any other thing of value to
18 which the principal is or may claim to be entitled as the proceeds of a business
19 operation of the principal, conserve, invest, disburse, and use anything so received for
20 purposes enumerated in this subsection, and reimburse the agent for expenditures
21 properly made in the execution of the powers conferred by the statutory form power of
22 attorney;

23 (7) to execute, acknowledge, seal, and deliver a deed, assignment,
24 mortgage, lease, notice, consent, agreement, authorization check, or other instrument
25 that the agent considers useful for the accomplishment of any of the purposes
26 enumerated in this subsection;

27 (8) to prosecute, defend, submit to arbitration, settle, and propose or
28 accept a compromise with respect to, a claim existing in favor of, or against, the
29 principal based on or involving a business operating transaction or intervene in a
30 related action;

31 (9) to hire, discharge, and compensate an attorney, accountant, expert

witness, or assistant when the agent reasonably believes that the action is desirable for the proper execution of the powers described in this subsection, and for the keeping of records about that action;

(10) to operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

(11) to put additional capital into an entity or business in which the principal has an interest;

(12) to join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(13) to sell or liquidate all or part of an entity or business; and

(14) to establish the value of an entity or business under a buy-out agreement to which the principal is a party; and

(15) to [AND (10)] do any other act or acts that the principal can do through an agent in connection with a business operated by the principal that the agent considers desirable or necessary for the furtherance or protection of the interests of the principal.

* **Sec. 14.** AS 13.26.344(f) is amended to read:

(f) In a statutory form power of attorney, the language conferring general authority with respect to insurance transactions shall be construed to mean that, as to a contract of insurance in which the principal has an interest, whether in the state or elsewhere, the principal authorizes the agent to

(1) continue, pay the premium or assessment on, modify, rescind, release, or terminate any contract of life, accident, health, disability, or liability insurance, or any combination of insurance, procured by or on behalf of the principal before the creation of the agency that insures either the principal or any other person without regard to whether the principal is or is not a beneficiary under the insurance coverage;

(2) procure new, different, or additional contracts on the life of the principal or protecting the principal with respect to ill health, disability, accident, or liability of any sort, select the amount, the type of insurance contract, and the mode of payment under each policy, pay the premium or assessment on, modify, rescind,

1 release, or terminate a contract so procured by the agent; and designate the beneficiary
2 of the contract of insurance, except that the agent cannot be the beneficiary unless the
3 agent is spouse, child, grandchild, parent, brother, or sister of the principal;

4 (3) apply for and receive a loan on the security of the contract of
5 insurance, whether for the payment of a premium or for the procuring of cash;
6 surrender and receive the cash surrender value; exercise an election as to beneficiary
7 or mode of payment, change the manner of paying premiums, change or convert the
8 type of insurance contract with respect to any insurance that the principal has, or
9 claims to have, as to any power described in this subsection; and change the
10 beneficiary of a contract of insurance, except that the agent cannot be the new
11 beneficiary unless the agent is spouse, child, grandchild, parent, brother, or sister of
12 the principal;

13 (4) demand, receive, or obtain money or any other thing of value to
14 which the principal is, or may become, or may claim to be entitled as the proceeds of a
15 contract of insurance or of one or more of the transactions enumerated in this
16 subsection; conserve, invest, disburse, or use anything received for purposes
17 enumerated in this subsection and reimburse the agent for expenditures properly made
18 in the execution of the powers conferred by the statutory form power of attorney;

19 (5) apply for and procure available government aid in the guaranteeing
20 or paying of premiums of a contract of insurance on the life of the principal;

21 (6) sell, assign, hypothecate, borrow upon, or pledge the interest of the
22 principal in any contract of insurance;

23 (7) pay, from the proceeds of an insurance contract or otherwise,
24 compromise, or contest, and apply for refunds in connection with, a tax or assessment
25 levied by a taxing authority with respect to a contract of insurance or the proceeds of
26 or liability accruing by reason of a tax or assessment;

27 (8) agree and contract, in any manner and with any person and on any
28 terms that the agent may select, for the accomplishment of the purposes enumerated in
29 this subsection, and perform, rescind, reform, release, or modify any agreement or
30 contract;

31 (9) execute, acknowledge, seal, and deliver any consent, demand,

1 request, application, agreement, indemnity, authorization, assignment, pledge, notice,
 2 check, receipt, waiver, or other instrument that the agent considers useful for the
 3 accomplishment of a purpose enumerated in this subsection;

4 (10) continue, procure, pay the premium or assessment on, modify,
 5 rescind, release, terminate, or otherwise deal with any contract of insurance, other than
 6 those enumerated in (1) and (2) of this subsection, or any combination of insurance;
 7 and do any act with respect to the contract or with respect to its proceeds or
 8 enforcement that the agent considers desirable or necessary for the promotion or
 9 protection of the interests of the principal;

10 (11) prosecute, defend, submit to arbitration, settle, and propose or
 11 accept a compromise with respect to a claim existing in favor of, or against, the
 12 principal based on or involving an insurance transaction, or intervene in an action
 13 relating to an insurance transaction;

14 (12) hire, discharge, and compensate an attorney, accountant, expert
 15 witness, or assistant when the agent considers the action to be desirable for the proper
 16 execution of a power described in this subsection, and for the keeping of records about
 17 that action; [AND]

18 (13) **exercise investment powers available under a contract of**
 19 **insurance or annuity; and**

20 **(14)** do any other act or acts that the principal can do through an agent
 21 in connection with procuring, supervising, managing, modifying, enforcing, and
 22 terminating contracts of insurance in which the principal is the insured or has an
 23 interest.

24 * **Sec. 15.** AS 13.26.344(h) is repealed and reenacted to read:

25 (h) In a statutory form power of attorney, the language conferring authority
 26 with respect to retirement plans shall be construed to mean that the principal
 27 authorizes the agent to

28 (1) select the form and timing of payments under a retirement plan and
 29 withdraw benefits from a plan;

30 (2) make a rollover, including a direct trustee-to-trustee rollover, of
 31 benefits from one retirement plan to another;

- (3) establish a retirement plan in the principal's name;
- (4) make contributions to a retirement plan;
- (5) exercise investment powers available under a retirement plan; and
- (6) borrow from, sell assets to, or purchase assets from a retirement plan.

* **Sec. 16.** AS 13.26.344(j) is amended to read:

(j) In a statutory form power of attorney, the language conferring general authority with respect to personal relationships **is neither dependent on, nor limited by, authority that an agent may or may not have with respect to gifts under AS 13.26.326 - 13.26.359, and** shall be construed to mean that, as to real and personal property owned by the principal, whether in the state or elsewhere, the principal authorizes the agent to

(1) do all acts necessary to maintain the customary standard of living of the spouse, children, [AND] other dependents of the principal, **whether living when the power of attorney is executed or later born, and individuals whom the principal has customarily supported or indicated the intent to support,** including by way of illustration and not by way of restriction, power to provide living quarters by purchase, **by** lease, or by other contract, or by any payment of the operating costs, including interest, amortization payments, repairs, and taxes, of premises owned by the principal and occupied by the principal's family or dependents, to provide normal domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide usual educational facilities, [AND] to provide funds for all the current living costs of the spouse, children, and other dependents, including, among other things, shelter, clothing, food, and incidentals, **and to make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;**

(2) provide, whenever necessary, medical, dental, and surgical care, hospitalization, and custodial care for the spouse, children, and other dependents of the principal;

(3) continue whatever provision has been made by the principal for the principal's spouse, children, and other dependents, with respect to automobiles, or

1 other means of transportation, including by way of illustration, but not by way of
2 restriction, power to license, insure, and replace automobiles owned by the principal
3 and customarily used by the spouse, children, or other dependents of the principal;

4 (4) continue whatever charge accounts have been opened for the
5 convenience of the principal's spouse, children, or other dependents, open any new
6 accounts that the agent considers desirable to accomplish the purposes enumerated in
7 this subsection, and pay the items charged on these accounts by a person authorized or
8 permitted by the principal to make the charges;

9 (5) continue the discharge of any services or duties assumed by the
10 principal to a parent, relative, or friend of the principal;

11 (6) supervise, enforce, defend, or settle any claim by or against the
12 principal arising out of property damages or personal injuries suffered by or caused by
13 the principal, or under any circumstance that the resulting loss will or may fall on the
14 principal;

15 (7) continue payments incidental to the membership or affiliation of the
16 principal in a church, club, society, order, or other organization, or continue
17 contributions to the organization;

18 (8) demand, receive, or obtain money or any other thing of value to
19 which the principal is or may become or may claim to be entitled as remuneration for
20 services performed, or as a stock dividend or distribution, or as interest or principal
21 upon indebtedness, or as a periodic distribution of profits from any partnership or
22 business in which the principal has or claims an interest, and endorse, collect, or
23 otherwise realize upon an instrument for the payment received;

24 (9) prepare, execute, and file all tax, social security, unemployment
25 insurance, and information returns required by the laws of the United States or of any
26 state or subdivision, or of any foreign government; prepare, execute, and file all other
27 papers and instruments that the agent considers desirable or necessary for the
28 safeguarding of the principal against excess or illegal taxation or against penalties
29 imposed for claimed violation of a law or regulation; and pay, compromise, or contest
30 or apply for refunds in connection with a tax or assessment for which the principal is
31 or may be liable;

(10) use an asset of the principal to perform a power enumerated in this subsection, including by way of illustration and not by way of restriction, power to draw money by check or otherwise from a bank deposit of the principal, to sell land or a chattel, bond, share, commodity interest, or other asset of the principal, to borrow money, and to pledge as security for the loan any asset, including insurance, that belongs to the principal;

(11) execute, acknowledge, verify, seal, file, and deliver an application, consent, petition, notice, release, waiver, agreement, or other instrument that the agent considers useful to accomplish a purpose enumerated in this subsection;

(12) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of, or against, the principal based on or involving a transaction enumerated in this subsection, or intervene in any action or proceeding related to a transaction;

(13) hire, discharge, and compensate an attorney, accountant, expert witness, or assistant when the agent considers the action to be desirable for the proper execution of any of the powers described in this subsection, and for the keeping of records, about that action; [AND]

(14) do any other act or acts that the principal can do through an agent, for the welfare of the spouse, children, or dependents of the principal or for the preservation and maintenance of the other personal relationships of the principal to a parent, relative, friend, or organization; and

(15) act as the principal's personal representative under 42 U.S.C. 1320d (Health Insurance Portability and Accountability Act and secs. 1171 - 1179, Social Security Act), as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal.

* **Sec. 17.** AS 13.26.344(k) is amended to read:

(k) In a statutory form power of attorney, the language conferring general authority with respect to benefits from government programs or civil or [AND] military service shall be construed to mean that, whether the benefits from the

1 government programs or civil or military service have accrued to the principal in the
 2 state or elsewhere, the principal authorizes the agent to

3 (1) prepare and execute vouchers, applications, requests, forms, and
 4 other legal documents in the name of the principal for all benefits, bonuses, dividends,
 5 allowances, and reimbursements payable under any government program or military
 6 service of the United States, a state, or a subdivision, including allowances and
 7 reimbursements for transportation of the individuals described in (j)(1) of this
 8 section, and for shipment of their household effects, and receive, endorse, and
 9 collect the proceeds of a check payable to the order of the principal drawn on the
 10 treasurer or other fiscal officer or depository of the United States, a state, or a
 11 subdivision;

12 (2) take possession and order the removal and shipment of property of
 13 the principal from any post, warehouse, depot, dock, or other place or storage or
 14 safekeeping and execute and deliver any release, voucher, receipt, bill of lading,
 15 shipping ticket, certificate, or other instrument that the agent considers desirable or
 16 necessary for that purpose;

17 (3) prepare, file, and prosecute the claim of the principal to any benefit
 18 or assistance to which the principal is, or claims to be, entitled under the provisions of
 19 a statute or regulation of the United States, a state, or a subdivision;

20 (4) receive the financial proceeds of a claim of the type described in
 21 this subsection; conserve, invest, disburse or use anything received for purposes
 22 enumerated in this subsection; and reimburse the agent for expenditures properly made
 23 in the execution of the powers conferred by the statutory form power of attorney;

24 (5) prosecute, defend, submit to arbitration, settle, and propose or
 25 accept a compromise with respect to a claim existing in favor of, or against, the
 26 principal based on or involving a benefit from a government program or military
 27 service, or intervene in an action relating to a claim;

28 (6) hire, discharge, or compensate an attorney, accountant, expert
 29 witness, or assistant when the agent considers that action to be desirable for the proper
 30 execution of any of the powers described in this subsection; [AND]

31 (7) enroll in, apply for, select, reject, change, amend, or

discontinue, on the principal's behalf, a benefit or program; and

(8) do any other act or acts that the principal can do through an agent, and **that** [WHICH] the agent considers desirable or necessary to assure to the principal and to the dependents of the principal [,] the maximum possible benefit from the government programs **or civil** or military service of the United States, a state, or a subdivision.

* **Sec. 18.** AS 13.26.344 is amended by adding a new subsection to read:

(q) In a statutory form power of attorney, unless the power of attorney otherwise provides, the language conferring specific authority with respect to gift transactions shall be construed to mean that the principal authorizes the agent only

(1) to make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including

(A) the value and nature of the principal's property;

(B) the principal's foreseeable obligations and need for maintenance;

(C) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

(D) eligibility for a benefit, a program, or assistance under a statute or regulation; and

(E) the principal's personal history of making or joining in making gifts;

(2) subject to (1) of this subsection, to make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount for each donee not to exceed the annual dollar limits of the federal gift tax exclusion under 26 U.S.C. 2503(b) (Internal Revenue Code), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift under 26 U.S.C. 2513 (Internal Revenue Code), as amended, in an amount for each donee not to exceed twice the annual federal gift

1 tax exclusion limit; in this paragraph, "presently exercisable general power of
 2 appointment," with respect to property or a property interest subject to a power of
 3 appointment, means power exercisable at the time in question to vest absolute
 4 ownership in the principal individually, the principal's estate, the principal's creditors,
 5 or the creditors of the principal's estate; the term includes a power of appointment not
 6 exercisable until the occurrence of a specified event, the satisfaction of an
 7 ascertainable standard, or the passage of a specified period only after the occurrence of
 8 the specified event, the satisfaction of the ascertainable standard, or the passage of the
 9 specified period; the term does not include a power exercisable in a fiduciary capacity
 10 or only by will; and

11 (3) subject to (1) of this subsection, to consent, under 26 U.S.C. 2513
 12 (Internal Revenue Code), as amended, to the splitting of a gift made by the principal's
 13 spouse in an amount for each donee not to exceed the aggregate annual gift tax
 14 exclusions for both spouses.

15 * **Sec. 19.** AS 13.26.347 is amended to read:

16 **Sec. 13.26.347. Validity of modified statutory form power of attorney.** A
 17 power of attorney that satisfies the requirements of AS 13.26.332 - 13.26.344 is not
 18 prevented from being a statutory form power of attorney by the fact that it also
 19 contains additional language that

20 (1) eliminates from the power of attorney one or more of the powers
 21 enumerated in one or more of the subsections of AS 13.26.344 with respect to a
 22 section of the statutory form power of attorney that is not eliminated by the principal;

23 (2) supplements one or more of the powers enumerated in one or more
 24 of the subsections of AS 13.26.344 with respect to a section of the statutory form
 25 power of attorney that is not eliminated by the principal by specifically listing
 26 additional powers of the agent; [OR]

27 (3) makes an additional provision that is not substantially inconsistent
 28 with the other provisions of the statutory form power of attorney; or

29 (4) relieves an agent of liability for breach of a duty under
 30 AS 13.26.327, except to the extent the provision

31 (A) relieves the agent of liability for breach of duty

committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

(B) was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

* Sec. 20. AS 13.26.350 is amended to read:

Sec. 13.26.350. When statutory form power of attorney is not affected by incapacity [DISABILITY OR INCOMPETENCE] of principal. (a) The subsequent incapacity [DISABILITY OR INCOMPETENCE] of a principal does not revoke or terminate the authority of an agent [ATTORNEY-IN-FACT] who acts under a power of attorney in a writing executed by a principal if the writing contains the words "This power of attorney shall become effective upon the incapacity [DISABILITY] of the principal," or contains the words "This power of attorney shall not be affected by the subsequent incapacity [DISABILITY] of the principal," or words substantially similar showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity [DISABILITY, INCOMPETENCE,] or uncertainty as to whether the principal is dead or alive.

(b) An act done by an agent [ATTORNEY-IN-FACT] under a power granted in a power of attorney under AS 13.26.332 - 13.26.344 during a period of incapacity [DISABILITY, INCOMPETENCE,] or uncertainty as to whether the principal is dead or alive has the same effect and enures to the benefit of and binds a principal and the principal's distributees, devisees, legatees, and personal representatives as if there were no incapacity of the principal [WERE COMPETENT AND NOT DISABLED]. If a conservator is later appointed for the principal, during the continuance of the appointment, the agent is accountable to the conservator as well as to the principal [THE ATTORNEY-IN-FACT SHALL ACCOUNT TO THE CONSERVATOR RATHER THAN TO THE PRINCIPAL]. The conservator has the same power to revoke, suspend, or terminate the power of attorney that the principal would have if there was no incapacity of the principal [WERE NOT DISABLED OR INCOMPETENT TO REVOKE, SUSPEND, OR TERMINATE THE POWER OF

1 ATTORNEY].

2 * **Sec. 21.** AS 13.26.353(a) is repealed and reenacted to read:

3 (a) For purposes of AS 13.26.332 - 13.26.344,

4 (1) the incapacity of a principal shall be established by affidavit stating
5 that the principal is unable to manage property or business affairs because the
6 principal

7 (A) has an impairment in the ability to receive and evaluate
8 information or make or communicate decisions even with the use of
9 technological assistance, and this impairment is the result of mental illness,
10 mental deficiency, physical illness, physical disability, advanced age, use of
11 drugs, chronic intoxication, or other similar medical or psychological reason,
12 to such an extent that the principal is unable to manage the principal's property
13 or affairs; or

14 (B) is

15 (i) missing;

16 (ii) detained, including incarcerated in a penal system; or

17 (iii) outside the United States and unable to return; and

18 (2) if the incapacity is based on (1)(A) of this subsection, two
19 physicians or similarly qualified medical professionals who have personally examined
20 the principal shall sign the affidavit; however, the affidavit may be signed by only one
21 physician or similarly qualified medical professional if only one physician or similarly
22 qualified medical professional is available and the affidavit executed by the person
23 states that only one physician or similarly qualified medical professional is available.

24 * **Sec. 22.** AS 13.26.353(b) is amended to read:

25 (b) A third party who relies on the reasonable representations of an **agent**
26 [ATTORNEY-IN-FACT] designated under **AS 13.26.332 - 13.26.347** [AS 13.26.332 -
27 13.26.344] as to a matter relating to a power granted by a properly executed statutory
28 form power of attorney does not incur a liability to the principal or the principal's
29 heirs, assigns, or estate as a result of permitting the **agent** [ATTORNEY-IN-FACT] to
30 exercise the authority granted by the power of attorney.

31 * **Sec. 23.** AS 13.26 is amended by adding new sections to read:

1 **Sec. 13.26.354. Judicial relief.** (a) The following persons may petition a court
 2 in accordance with the provisions of AS 13.26.165 - 13.26.324 to construe a power of
 3 attorney, review the agent's conduct, and grant appropriate relief:

- 4 (1) the principal or the agent;
- 5 (2) the principal's attorney or other legal representative;
- 6 (3) a guardian, conservator, or other fiduciary acting for the principal;
- 7 (4) a person authorized to make health care decisions for the principal;
- 8 (5) the principal's spouse, parent, or descendant;
- 9 (6) an individual who would qualify as a presumptive heir of the
 10 principal;
- 11 (7) a person named as a beneficiary to receive any property, benefit, or
 12 contractual right on the principal's death or as a beneficiary of a trust created by or for
 13 the principal that has a financial interest in the principal's estate;
- 14 (8) the Department of Health and Social Services, the Department of
 15 Administration, or other governmental agency having statutory authority to protect the
 16 welfare of the principal;
- 17 (9) the principal's caregiver, custodian, or another person that
 18 demonstrates sufficient interest in the principal's welfare; and
- 19 (10) a person asked to accept the power of attorney.

20 (b) Upon motion by the principal, the court shall dismiss a petition filed under
 21 this section, unless the court finds that the principal lacks capacity to revoke the
 22 agent's authority or the power of attorney.

23 **Sec. 13.26.355. Relationship to other laws.** (a) Except as provided in (c) of
 24 this section, AS 13.26.326 - 13.26.359 do not supersede any other law applicable to a
 25 financial institution or other entity, and the other law controls if inconsistent with
 26 AS 13.26.326 - 13.26.359.

27 (b) The remedies in AS 13.26.326 - 13.26.359 are not exclusive and do not
 28 abrogate any right or remedy under the law of this state.

29 (c) AS 13.26.326 - 13.26.359 modify, limit, or supersede 15 U.S.C. 7001 -
 30 7031 (Electronic Signatures in Global and National Commerce Act), but do not
 31 modify, limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any

of the notices described in 15 U.S.C. 7003(b).

* **Sec. 24.** AS 13.26.356 is amended to read:

Sec. 13.26.356. Powers of attorney not revoked until notice of death or incapacity [DISABILITY]. (a) The death [, DISABILITY] or incapacity [INCOMPETENCE] of a principal who has executed a power of attorney in writing does not revoke or terminate the agency as to the [ATTORNEY-IN-FACT,] agent [,] or other person who, without actual knowledge of the death [, DISABILITY,] or incapacity [INCOMPETENCE] of the principal, acts in good faith under the power of attorney [OR AGENCY]. Action so taken, unless otherwise invalid or unenforceable, binds the principal and the heirs, devisees, and personal representatives of the principal.

(b) An affidavit executed by the [ATTORNEY-IN-FACT OR] agent stating that the [ATTORNEY-IN-FACT OR] agent did not have, at the time of doing an act under the power of attorney, actual knowledge of the revocation or termination of the power of attorney by death [, DISABILITY] or incapacity [INCOMPETENCE], is, in the absence of fraud, conclusive proof of the nonrevocation or nontermination of the power of attorney at that time. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the affidavit when authenticated for record is likewise recordable.

(c) A special power of attorney created before September 4, 1988, shall be construed to grant the agent [ATTORNEY-IN-FACT] the powers set out in that special power of attorney.

* **Sec. 25.** AS 13.26.358(a) is amended to read:

(a) A public home care provider may not accept a designation as [ATTORNEY-IN-FACT OR] agent by general or special power of attorney for an individual to whom the provider furnishes services unless the designation is held jointly with another individual who is not a public home care provider.

* **Sec. 26.** AS 13.26 is amended by adding a new section to article 5 to read:

Sec. 13.26.359. Definitions. In AS 13.26.326 - 13.26.359,

(1) "benefits from government programs or civil or military service" means a benefit, a program, or assistance provided under a statute or regulation,

1 including Social Security, Medicare, and Medicaid; and

2 (2) "good faith" means honesty in fact;

3 (3) "incapacity" means inability of an individual to manage property or
4 business affairs because the individual

5 (A) has an impairment in the ability to receive and evaluate
6 information or make or communicate decisions even with the use of
7 technological assistance; or

8 (B) is

9 (i) missing;

10 (ii) detained, including incarcerated in a penal system; or

11 (iii) outside the United States and unable to return; and

12 (4) "retirement plan" means a plan or account created by an employer,
13 the principal, or another individual to provide retirement benefits or deferred
14 compensation of which the principal is a participant, beneficiary, or owner, including a
15 plan or account under the following sections of 26 U.S.C. (Internal Revenue Code):

16 (A) an individual retirement account under 26 U.S.C. 408
17 (Internal Revenue Code), as amended;

18 (B) a Roth IRA under 26 U.S.C. 408A (Internal Revenue Code),
19 as amended;

20 (C) an individual retirement account under 26 U.S.C. 408(q)
21 (Internal Revenue Code), as amended;

22 (D) an annuity or custodial account under 26 U.S.C. 403(b)
23 (Internal Revenue Code), as amended;

24 (E) a pension, profit-sharing, stock bonus, or other retirement
25 plan qualified under 26 U.S.C. 401(a) (Internal Revenue Code), as amended;

26 (F) a plan under 26 U.S.C. 457(b) (Internal Revenue Code), as
27 amended; and

28 (G) a nonqualified deferred compensation plan under 26 U.S.C.
29 409A (Internal Revenue Code), as amended.

30 * **Sec. 27.** AS 13 is amended by adding a new chapter to read:

31 **Chapter 28. Recognition of Substitute Decision-Making Documents.**

1 **Sec. 13.28.010. Validity of substitute decision-making document.** (a) Except
 2 as provided in AS 13.26.331, a substitute decision-making document for property
 3 executed outside this state is valid in this state if, when the document was executed,
 4 the execution complied with the law of the jurisdiction indicated in the document or, if
 5 jurisdiction is not indicated, the law of the jurisdiction in which the document was
 6 executed.

7 (b) Except as provided in AS 13.52.010 and 13.52.247, a substitute decision-
 8 making document for health care or personal care executed outside this state is valid in
 9 this state if, when the document was executed, the execution complied with

10 (1) the law of the jurisdiction indicated in the document or, if
 11 jurisdiction is not indicated, the law of the jurisdiction in which the document was
 12 executed; or

13 (2) the laws of this state other than this chapter.

14 (c) Except as otherwise provided by a law of this state other than this chapter, a
 15 photocopy or electronically transmitted copy of an original substitute decision-making
 16 document has the same effect as the original.

17 **Sec. 13.28.020. Meaning and effect of substitute decision-making**
 18 **document.** The meaning and effect of a substitute decision-making document and the
 19 authority of the decision maker are determined by the law of the jurisdiction indicated
 20 in the substitute decision-making document or, if jurisdiction is not indicated, the law
 21 of the jurisdiction in which the substitute decision-making document was executed.

22 **Sec. 13.28.030. Reliance on substitute decision-making document.** (a)
 23 Except as otherwise provided in AS 13.26.328, a person that in good faith accepts a
 24 substitute decision-making document without actual knowledge that the document is
 25 void, invalid, or terminated, or that the purported decision maker's authority is void,
 26 invalid, or terminated, may, without inquiry, assume that the document is genuine,
 27 valid, and still in effect and that the decision maker's authority is genuine, valid, and
 28 still in effect.

29 (b) A person that is asked to accept a substitute decision-making document
 30 may request and may, without further investigation, rely on

31 (1) the decision maker's assertion of a fact concerning the individual for

1 whom a decision will be made, the decision maker, or the document;

2 (2) a translation of the document if the document contains, in whole or
3 in part, a language other than English; and

4 (3) an opinion of counsel regarding any matter of law concerning the
5 document if the person requesting the opinion provides in a record the reason for the
6 request.

7 **Sec. 13.28.040. Obligation to accept substitute decision-making document.**

8 (a) Except as otherwise provided in (b) of this section or by a law of this state other
9 than this chapter, a person shall, within a reasonable time, accept a substitute decision-
10 making document that purportedly meets the validity requirements of AS 13.28.010
11 and may not require an additional or different form of document for authority granted
12 in the document presented.

13 (b) A person is not required to accept a substitute decision-making document if

14 (1) the person otherwise would not be required in the same
15 circumstances to act if requested by the individual who executed the document;

16 (2) the person has actual knowledge of the termination of the decision
17 maker's authority or the document;

18 (3) the person's request under AS 13.28.030(b) for the decision maker's
19 assertion of fact, a translation, or an opinion of counsel is refused;

20 (4) the person in good faith believes that the document is not valid or
21 that the decision maker does not have the authority to request a particular transaction
22 or action; or

23 (5) the person makes, or has actual knowledge that another person has
24 made, a report to the office of the Department of Health and Social Services that
25 administers adult protective services stating a belief that the individual for whom a
26 decision will be made may be subject to abuse, neglect, exploitation, or abandonment
27 by the decision maker or a person acting for or with the decision maker.

28 (c) A person that, in violation of this section, refuses to accept a substitute
29 decision-making document is subject to

30 (1) a court order mandating acceptance of the document; and

31 (2) liability as provided by the court rules of this state for attorney fees

1 and costs incurred in an action or proceeding that mandates acceptance of the
2 document.

3 **Sec. 13.28.050. Remedies under other law.** The remedies under this chapter
4 are not exclusive and do not abrogate any right or remedy under a law of this state
5 other than this chapter.

6 **Sec. 13.28.060. Uniformity of application and construction.** In applying and
7 construing this chapter, consideration shall be given to the need to promote uniformity
8 of the law with respect to its subject matter among the states that enact it.

9 **Sec. 13.28.070. Relation to Electronic Signatures in Global and National**
10 **Commerce Act.** This chapter modifies, limits, or supersedes 15 U.S.C. 7001 - 7031
11 (Electronic Signatures in Global and National Commerce Act), but does not modify,
12 limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the
13 notices described in 15 U.S.C. 7003(b).

14 **Sec. 13.28.090. Definitions.** In this chapter,

15 (1) "decision maker" means a person authorized to act for an individual
16 under a substitute decision-making document or to whom a decision maker's authority
17 is delegated, whether denominated a decision maker, agent, attorney-in-fact, proxy,
18 representative, original decision maker, co-decision maker, successor decision maker,
19 or otherwise;

20 (2) "good faith" means honesty in fact;

21 (3) "health care" means a service or procedure to maintain, diagnose,
22 treat, or otherwise affect an individual's physical or mental condition;

23 (4) "person" means an individual, estate, business or nonprofit entity,
24 public corporation, government or governmental subdivision, agency, or
25 instrumentality, or other legal entity;

26 (5) "personal care" means an arrangement or a service to provide an
27 individual with shelter, food, clothing, transportation, education, recreation, social
28 contact, or assistance with the activities of daily living;

29 (6) "property" means anything that may be subject to ownership,
30 whether real or personal or legal or equitable, or any interest or right in the thing;

31 (7) "record" means information that is inscribed on a tangible medium

1 or that is stored in an electronic or other medium and is retrievable in perceivable
2 form;

3 (8) "substitute decision-making document" means a record created by
4 an individual to authorize a decision maker to act for the individual with respect to
5 property, health care, or personal care.

6 **Sec. 13.28.095. Short title.** This chapter may be cited as the Uniform
7 Recognition of Substitute Decision-Making Documents Act.

8 * **Sec. 28.** AS 13.26.338(a) and 13.26.353(c) are repealed.

9 * **Sec. 29.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

11 **APPLICABILITY.** (a) This Act

12 (1) applies to a power of attorney or substitute decision-making document
13 created on or after the effective date of this Act;

14 (2) applies to a judicial proceeding commenced on or after the effective date of
15 this Act concerning a power of attorney or substitute decision-making document created on or
16 after the effective date of this Act; and

17 (3) does not apply to an act done before the effective date of this Act.

18 (b) In this section, "substitute decision-making document" has the meaning given in
19 AS 13.28.090, enacted in sec. 27 of this Act.

20 * **Sec. 30.** This Act takes effect January 1, 2016.