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Act. The rights, duties and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under SECTION 2 between that state and the transferor, the minor or the custodian.

Paragraph (11). "Minor" is defined in subdivision (11), to mean an individual who has not attained the age of 18 years (consistent with AS 25.20.010), except that the term "minor" may include an older individual under some circumstances when the term is used with reference to the beneficiary for whose benefit custodial property is held or is to be held for a period past the age of 18 years. See the Comments to Sections 20 and 20.5.

Paragraph (13). The definition of the term "personal representative" is based upon that definition in AS 13.06.050(30).

Paragraph (15). The new definition of "transfer" is necessary to reflect the application of the Act not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by this Act.

Paragraph (16). The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in this Act requires that a transferor be an "adult." If permitted under other law of the state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

Paragraph (17). Only entities authorized to exercise "general" trust powers qualify as "trust companies"; that is, the authority to exercise only limited fiduciary

responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

§ 2. Scope and Jurisdiction

(a) This Act applies to a transfer that refers to this Act in the designation under Section 9(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this Act despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this Act is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

COMMENT

This section has no counterpart in the 1966 Act. It attempts to resolve uncertainties and conflicts-of-laws questions that have frequently arisen because of the present nonuniformity of UGMA in the various states and which may continue to arise during the transition from UGMA to this Act.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under SECTION 9(a). This section provides that a choice of the UTMA of the enacting state is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. This Act continues to govern, and subsection (b) makes the custodian accountable and subject to

personal jurisdiction in the courts of the enacting state for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) recognizes that residents of the enacting state may elect to have the law of another state apply to a transfer. That choice is valid if a nexus with the chosen state exists at the time of the transfer. If personal jurisdiction can be obtained in the enacting state under other law apart from this Act, the custodianship may be enforced in its courts, which are directed to apply the law of the state elected by the transferor.

If the choice of law under subsection (a) or (c) is ineffective because of the absence of the required nexus, the transfer may still be effective under the Act of another state with which a nexus does exist. See SECTION 21.

§ 3. Nomination of Custodian

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for ______________________ (name of minor) under the Alaska Uniform Transfers to Minors Act." The nomination may name one or more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 9(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument

becomes irrevocable or a transfer to the nominated custodian is completed under Section 9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to Section 9.

COMMENT

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. Account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under this Act and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests ownership of the interest in the minor under SECTION 11(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see SECTION 5(b)) and on insurance companies and other obligors who contract to pay in the future (see SECTION 7(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated . . . under Section 3" to whom the transfer must be made under SECTIONS 5(b) and 7(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See SECTION 18.

§ 4. Transfer by Gift or Exercise of Power of Appointment

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 9.

COMMENT

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in SECTIONS 4, 5, 6 and 7. This section in part corresponds to Section 2(a) of the 1966 Act and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 Act. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under SECTION 3.

§ 5. Transfer Authorized by Will or Trust

(a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 3 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian from among those eligible to serve as custodian for property of that kind under Section 9(a).

COMMENT

This section is new and has no counterpart in the 1966 Act. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin and other states to validate distributions

from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testaor fails to make a nomination, or the future custodian nominated under SECTION 3 (and any alternate named) fails to qualify.

§ 6. Other Transfer by Fiduciary

(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 9, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 9.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, and (iii) the transfer is authorized by the court if it exceeds $25,000 in value.

COMMENT

This section is new and has no counterpart in the 1966 Act. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the 1966 Act, to permit custodianships to be used as guardianship or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred, (as measured by its value) must be of such relative small amount that the lack of court supervision and the typically stricter investment standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority of the enacting state apart from this Act, i.e., at the same age a conservatorship of the minor would end. See Section 20 and the Comment thereto.

§ 7. Transfer by Obligor

(a) Subject to subsections (b) and (c), a person not subject to Section 5 or 6 who holds property of or owes a

liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 9.

(b) If a person having the right to do so under Section 3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds $25,000 in value.

COMMENT

This section is new and, like SECTION 6, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts, and existing guardianships covered by SECTIONS 5 and 6. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Use of this section is mandatory when a future custodian has been nominated under SECTION 3 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment. It allows the obligor to transfer to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

§ 8. Receipt for Custodial Property

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this Act.

COMMENT

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also SECTION 16 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the 1966 Act.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under SECTION 7, to settle or release a claim of the minor against a third party. Only a conservator, guardian ad litem or other person authorized under other law to act for the minor may release such a claim.

§ 9. Manner of Creating Custodial Property and Effecting Transfer; Designation of Initial Custodian; Control

(a) Custodial property is created and a transfer is made whenever:

(1) an uncertificated security or a certificated security in registered form is either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ______________ (name of minor) under the Alaska Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsectin (b);

(2) money is paid or delivered to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for __ ______________ (name of minor) under the Alaska Uniform Transfers to Minors Act";

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ______________ (name of minor) under the Alaska Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for ___________ (name of minor) under the Alaska Uniform Transfers to Minors Act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for ___________ (name of minor) under the Alaska Uniform Transfers to Minors Act";

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for _________ (name of minor) under the Alaska Uniform Transfers to Minors Act";

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for ______________ (name of minor) under the Alaska Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for ____________ (name of minor) under the Alaska Uniform Transfers to MInors Act"; or

(7) an interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(ii) and (7) of subsection (a):

"TRANSFER UNDER THE ALASKA
UNIFORM TRANSFERS TO MINORS ACT

I, ______________ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to ______________ (name of custodian), as custodian for (name of minor) under the Alaska Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated:______________

____
(Signature)

____________________ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the Alaska Uniform Transfers to Minors Act.

Dated:______________

____________________________"
(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

COMMENT

The 1966 Act contained optional bracketed language permitting an adopting state to limit the class of eligible initial custodians to an adult member of the minor's family or a guardian of the minor. This optional limitation has been deleted because it would preclude the use of an individual and uncompensated custodian if no qualified or willing family member is available.

Otherwise, with respect to transfers of securities, cash, and insurance or annuity contracts, this section tracks the cognate provisions of subsection 2(a) of the 1966 Act, with one exception. Under subsection (a)(1)(ii) of this section, a transfer of securities in registered form may be accomplished without registering the transfer in the name of the custodian so that transfers may be accomplished more expeditiously, and so that securities may be held by custodians in street name. In other words, subsection (a)(1)(i) is not the exclusive manner for making effective transfers of securities in registered form.

In addition, subsection (a) creates new procedures for handling the additional types of property now subject to the Act; specifically:

> Paragraph (3) covers the irrevocable transfer of ownership of life and endowment insurance policies and annuity contracts.
>
> Paragraph (4) covers the irrevocable exercise of a power of appointment and the irrevocable present assignment of future payment rights, such as royalties, interest and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans. The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification.

See SECTION 3 and the Comment thereto for the procedure for revocably "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.

Paragraph (5) is the exclusive method for the transfer of real estate and includes a disposition effected by will. Under the law of those states in which a devise of real estate vests in the devisee without the need for a deed from the personal representative of the decedent, a document such as the will must still be "recorded" under this provision to make the transfer effective. For inter vivos transfers, of course, a conveyance in recordable form would be employed for dispositions of real estate to a custodian.

Paragraph (6) covers the transfer of personal property such as automobiles, aircraft, and other property subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

Paragraph (7) is a residual classification, covering all property not otherwise covered in the preceding paragraphs. Examples would include nonregistered securities, partnership interests, and tangible personal property not subject to title certificates.

The form of transfer document recommended and set forth in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under subsection (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acknowledment, consent, and acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under subsection (a)(1)(ii), insurance and annuity contracts under (a)(3)(ii), and titled personalty under (a)(6)(ii), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of the transferor as custodian renders the transfer invalid under SECTION 11(a)(2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if he appoints himself custodian and dies while serving in that capacity before the minor attains the age of 21. Rev.Rul. 57-366, C.B. 1957-2, 618; Rev.Rul. 59-357, C.B. 1959-2, 212; Rev.Rul. 70-348, C.B. 1970-2, 193; Estate of Prudowsky v. Comm'r, 55 T.C. 890 (1971), affd. per curiam, 465 F.2d 62 (7th Cir. 1972).

This Act has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See SECTIONS 13 and 14 and the Comments thereto. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian remains. Therefore, despite the fact that this section of the Act permits it in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 I.R.C. and Rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see Section 2036(b), I.R.C. overruling U.S. v. Byrum, 408 U.S. 125 (1972), rehearing denied 409 U.S. 898.

Subsection (c) tracks in substance Section 2(c) of the 1966 Act. However, it replaces the requirement that the transferor "promptly do all things within his power" to complete the transfer, with the requirement that such action must be taken "as soon as practicable." This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term "promptly" may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since "prompt" transfer of dominion is usually practicable.

§ 10. Single Custodianship

A transfer may be made only for one minor, and only one person may be the custodian. All custodial poperty held under this Act by the same custodian for the benefit of the same minor constitutes a single custodianship.

COMMENT

The first sentence follows Section 2(b) of the 1966 Act. The second sentence states what was implicit in the 1966 Act, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under SECTION 18 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made "under this Act." Gifts previously made under the Alaska UGMA or under the UGMA or UTMA of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made "under this Act" and a single custodianship results, custodial

property transferred under SECTIONS 6 and 7 must be accounted for separately from property transferred under SECTIONS 4 and 5 because the custodianship will terminate sooner with respect to the former property since the State of Alaska has a statutory age of majority at 18, which is lower than 21. See SECTION 20 and the Comment thereto.

§ 11. Validity and Effect of Transfer

(a) The validity of a transfer made in a manner prescribed in this Act is not affected by:

(1) failure of the transferor to comply with Section 9(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 9(a); or

(3) death or incapacity of a person nominated under Section 3 or designated under Section 9 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this Act, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this Act.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this Act and grants to the custodian, and to any third peson dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this Act.

(d) A person is not precluded from being a custodian for a minor under this part with respect to some property because the person is a conservator of the minor with respect to other property.

(e) A person who is the conservator of the minor is not precluded from being a custodian for a minor under this part because the custodial property has or will be transferred to the custodian from the guardianship estate of the minor. In such case, for the purposes of Section 9, the custodian shall be deemed to be "an adult other than the transferor."

(f) In the cases described in subdivisions (d) & (e), with respect to the property transferred to the custodian, this part applies to the extent it would apply if the person to whom the custodial property is transferred were not and had not been a conservator of the minor.

COMMENT

Subsection (a) generally tracks Section 2(c) of the 1966 Act, except that the transferor's designation of himself as custodian of property for which he is not eligible to serve under SECTION 9(a) makes the transfer ineffective. See Comment to SECTION 9.

The balance of this section generally tracks Section 3 of the 1966 Act with a number of necessary, and perhaps significant, changes required by the new kinds of property subject to custodianships. The 1966 Act provides that a transfer made in accordance with its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under this Act, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, powers, duties and authority" of the custodian under this Act, a concept that may have been implicit and intended in the 1966 Act, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to

real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer such property while it is custodial property. Upon termination of the custodianship and transfer of the custodial proprty to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see SECTION 16 and the Comment thereto.

Because a custodianship under this Act can extend beyond the age of majority in many states, or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 Act nor its predecessors had such a provision, because spendthirft protection would extend only until 21 in any event and judgments against the minor would then be enforceable, and because the spendthirft qualification on the interest of the minor in the property may be inconsistent with the theory of the Act to convey the property indefeasibly to the minor.

Subdivisions (d), (e), and (f) of Section 11 are not included in the Uniform Transfers to Minors Act. These subdivisions are included in Section 11 to make clear that (1) a person serving as guardian of the estate of the minor may also serve as custodian under this Act and in this case the custodial property does not become a part of the guardianship estate and (2) property may be transferred from a guardianship estate to the person who serves as guardian to be held by that person as custodian under this Act, and in such case the property is no longer a part of the guardianship estate but instead is governed solely by this Act. [17 Cal.L.Rev.Comm.Reports 61 (1984)].

§ 12. Care of Custodial Property

(a) A custodian shall:

(1) take control of custodial property;

(2) register or record title to custodial property if appropriate; and

(3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another peson in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words: "as a custodian for _______ (name of minor) under the Alaska Uniform Transfers

to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

COMMENT

Subsection (a) expands Section 4(a) of the 1966 Act to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subsection (b) restates and makes somewhat stricter the prudent man fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property of another" rather than one "who is seeking a reasonable income and the preservation of his capital," as under the 1966 Act. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels secton 7-302 of the Uniform Probate Code in order to refer to the existing and growing body of law interpreting that standard. The 1966 Act permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

In order to eliminate any uncertainty that existed under the 1966 Act, subsection (c) grants specific authority to invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate, or the custodian in his custodial capacity is made the beneficiary of such policies.

Subsection (d) generally tracks Section 4(g) of the 1966 Act but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest

custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the Act does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 Act, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

§ 13. Powers of Custodian

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 12.

COMMENT

Subsection (a) replaces the specific list of custodian's powers in Section 4(f) of the 1966 Act which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the Act and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in SECTION 12. This

approach permits the Act to be self-contained and more readily understandable by volunteer, nonprofessional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in his capacity as custodian. This provision is intended to prevent the exercise of those prowers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, I.R.C.; but compare Terriberry v. U.S., 517 F.2d 286 (5th Cir. 1975), and Rose v. U.S., 511 F.2d 259 (5th Cir. 1975).

§ 14. Use of Custodial Property

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers available for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect

any obligation of a person to support the minor.

COMMENT

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 Act, but with two significant changes. The standard for expendiure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 Act. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

The IRS has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev.Rul. 56-484, C.B. 1956-2, 23; Rev.Rul. 59-357, C.B. 1959-2, 212. However, Reg. 1.662(a)-4 provides that the term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. Thus, if under local law a parent may use the resources of a child for the child's support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child's resouces are adequate. See, Bittker, Federal Taxation of Income Estates and Gifts Para. 80.44 (1981).

For this reason, new subsection (c) has been added to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. Other possible methods of avoiding the attribution of custodial property income to the person obligated to support the minor would be to prohibit the use of custodial property or its income for that purpose, or to

provide that any such use gives rise to a cause of action by the minor against his parent to the extent that custodial property or income is so used. The first alternative was rejected as too restrictive, and the second as too cumbersome.

The "use and benefit" standard in subsections (a) and (b) is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims.

An "interested person" entitled to seek court ordered distributions under subsection (b) would include not only the parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

§ 15. Custodian's Expenses, Compensation, and Bond

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 4, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in Section 18(f), a custodian need not give a bond.

COMMENT

This section parallels and restates Section 5 of the 1966 Act. It deletes the statement that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also

the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This provision is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship.

This section deletes as surplusage the bracketed optional standards contained in the 1966 Act for determining "reasonable compensation" which included, "in the order stated." a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under this Act because property requiring increased management may now be subject to custodianship, compensation can still be determined by agreement, by reference to a statute or by court order, without the need to so state in this Act.

§ 16. Exemption of Third Person from Liability

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(a) the validity of the purported custodian's designation;

(2) the propriety of, or the authority under this Act for, any act of the purported custodian;

(3) the validity or propriety under the Act of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

COMMENT

This section carries forward, but shortens and simplifies, Section 6 of the 1966 Act, with no substantive change intended. The 1966 revision permitted a 14 year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (SECTION 1(7), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "persons," it is not necessary to specify here or in SECTION 11(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 Act. See the definition of "person" in SECTION 1(12).

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 Act. See, e.g., State ex rel. Paden v. Currel, 597 S.W.2d 167 (Mo.App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

§ 17. Liability to Third Persons

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial propety or for a tort committed during the custodianship unless the minor is personally at fault.

COMMENT

This section has no counterpart in the 1966 Act and is based upon Section 5-429 of the Uniform Probate Code, relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under this Act can give rise to liabilities as well as benefits (e.g., general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Committee believes it is necessary to protect the minor and other assets he might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section generally limits the claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subsectoin (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subdivision (c) only for actual fault.

If custodial property is subjected to claims of third parties under this section, the minor the minor's legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See SECTION 19 and the Comment thereto.

§ 18. Renunciation, Resignation, Death, or Removal of Custodian; Designation of Successor Custodian

(a) A person nominated under Section 3 or designated under Section 9 as custodian may decline to serve by delivering a valid disclaimer to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 9(a). The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may

designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 4 or to require the custodian to give appropriate bond.

COMMENT

This section tracks but condenses Section 7 of the 1966 Act to provide that the custodian, or if the custodian does not do so, the minor if he is 14, may appoint the successor custodian, or failing tnat, that the conservator of the minor or a court appointee shall serve. It also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

This Act broadens the category of persons who may be designated by the initial custodian as successor custodian from an adult member of the minor's family, his conservator, or a trust company to any adult or trust company. However, the minor's designation remains limited to an adult member of his family (expanded to include a spouse and a stepparent, see SECTION 1(10), his conservator, or a trust company.

§ 19. Accounting by and Determination of Liability of Custodian

(a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determinaiton of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 17 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this Act or in any other proceeding, may require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under Section 18(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

COMMENT

This section carries forward Section 8 of the 1966 Act, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to the custodian (or any such person's legal represntative), the

minor's guardian of the person, and the successor custodian.

Subsection (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subsection (a) may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under SECTION 17, unless that issue has already been adjudicated in an action under that Section to which the minor was a party.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 Act has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

§ 20. Termination of custodianship

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of the following:

(a) The minor's attainment of 18 years of age unless the time of transfer of the custodial property to the minor is delayed under Section 20.5 to a time after the time the minor attains the age of 18 years.

(b) The time specified in the transfer pursuant to Section 9 if the time of transfer of the custodial property to the minor

is delayed under Section 20.5 to a time after the time the minor attains the age of 18 years.

(c) The minor's death.

COMMENT

Section 20 is drawn from Section 20 of the Uniform Transfers to Minors Act. Section 20 and 20.5 supersede subdivision (d) of former AS 45.60.031.

COMMENT

This section tracks AS 45.60.031(d) (Section 4(d) of the 1966 Act) and provides that custodianships created by fiduciaries without express authority from the donor of the property under SECTION 6 and by obligors of the minor under SECTION 7 terminate upon the minor's attaining age 18, since these custodianships are substitutes for conservatorships that would otherwise terminate at that time. All other custodianships terminate at the time the minor attains 18 years of age unless the time of transfer of the custodial property is delayed under section 20.5 to a time after the time the minor attains the age of 18 years. Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to SECTION 10.

§ 20.5. Delay in transfer of custodial property after minor attains age eighteen

(a) Subject to the requirements and limitations of this section, the time for transfer to the minor of custodial property transferred under or pursuant to Section 3, 4, or 5 may be delayed until a specified time after the time the minor attains the age of 18 years, which time shall be specified in the transfer pursuant to Section 9.

(b) To specify a delayed time for transfer to the minor of the custodial property under Section 3, 4 (except for the transfer by irrevocable gift), or Section 5, the words "as custodian for _________ (name of minor) until age _________ (Age

for delivery of property to minor) under the Alaska Uniform Transfers to Minors Act" or for the transfer to the minor of custodial property under Section 4 by irrevocable gift, the words "as custodian for __________ (name of minor) under the Alaska Uniform Transfer to Minors Act until age ________ (age for delivery of property to minor) [provided that such minor shall have the right to compel the immediate distribution of the property by giving written noice to the custodian within a 6 month period beginning on the minor's 21st birthday] under the Alaska Uniform Transfers to Minors Act" shall be substituted in substance for the words "as custodian for (name of minor) under the Alaska Uniform Transfers to Minors Act" in making the transfer pursuant to Section 9.

(c) The time for transfer to the minor of custodial property transferred under or pursuant to Section 3 or 5 may be delayed under this section only if the governing will or trust or nomination provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age, and in that case the governing will or trust or nomination shall determine the time to be specified in the transfer pursuant to Section 9.

(d) The time for transfer to the minor of custodial property transferred under Section 4 may be delayed under this section only if the transfer pursuant to Section 9 provides in substance that the custodianship is to continue until the time the minor attains a specified age, which time may not be later than the time the minor attains 25 years of age.

(e) If the transfer pursuant to Section 9 does not specify any age, the time for the transfer of the custodial property to the minor under Section 20 is the time when the minor attains 18 years of age.

(f) If the transfer pursuant to Section 9 provides in substance that the duration of the custodianship is for a time longer than the maximum time permitted by this section for the

duration of a custodianship created by that type of transfer, the custodianship shall be deemed to continue only until the time the minor attains the maximum age permitted by this section for the duration of a custodianship created by that type of transfer.

COMMENT

This section is adopted from the California Uniform Transfers to Minors Act. Section 20.5 is new. There is no provision for choice as to when custodial property shall be transferred to the minor under the Uniform Transfers to Minors Act or under prior Alaska law. Section 20.5 gives this choice since most transferors who specifically authorize a custodian wish to preserve the custodianship as long as possible. This is most likely to be the case, for example, where the custodial property is intended to be preserved and used to finance a college education.

A transferor client may feel that a particular child at 18 does not have, or will not have, sufficient maturity to manage a substantial gift, particularly when the transferor's client wishes to make the gift for a particular purpose, e.g. education. A custodian under the Alaska Uniform Gifts to Minors Act must deliver the property to the minor when he reaches 18 (AS 45.60.031(d)). Therefore, a testamentary or inter vivos trust may be necessary to achieve the transferor's client's goals. Continuing the custodianship past the age of 18 permits the transferor donor to avoid the expense of preparing a trust instrument to create a trust that otherwise would be required in order to retain the property under custodial management until the minor reaches the specified age.

The custodian is required to transfer the property to the minor when the minor attains the age of 18 years unless the transfer pursuant to Section 9 specifies a later time. See Section 20.

Subsection (b) contains optional bracketed language which would allow a minor the option of terminating the custodianship

for a six month period beginning on the minor's 21st birthday. In order to exercise this option, a minor must provide written notice of the minor's intention to terminate to the custodian within 6 months of the minor's 21st birthday. This option has been provided so that a transferor may transfer property by irrevocable gift, pursuant to Section 4, into a custodianship in a manner consistent with Section 2503(c) of the Internal Revenue Code and the Internal Revenue Service's position as put forth in Rev.Rul. 74-73.

Rev. Rul. 74-43 provides, in relevant part, that a gift into a trust for the benefit of a minor, when such a trust contains a provision that the minor has the right to compel distribution at age 21 by giving written notice to the trustee, qualifies as a gift of a present interest, and, therefore, also qualifies for the annual exclusion provided in Section 2503(b) of the Internal Revenue Code.

The use of the optional bracketed language contained in subsection (b) should qualify a transfer of property by irrevocable gift pursuant to Section 4 as a gift of a present interest under Section 2503(c) of the Internal Revenue Code.

Subsection (c) of Section 20.5 permits the custodianship to continue until not later than the time the minor attains the age of 25 years where the transfer is made pursuant to a provision in a will or trust that provides that the custodianship is to continue until the specified age, not later than the time the beneficiary attains the age of 25. A custodianship may be established pursuant to a provision in a will or trust that provides that the custodianship is to continue until a specified age after age 18 even though the beneficiary has attained an age older than 18 but younger than the specified age at which the custodianship is to terminate. See Section 1(11).

Subsection (d) of Section 20.5 permits the custodianship to continue until not later than the time the minor attains the age of 25 years where the custodial property is transferred under Section 4 if the transfer specifies that the custodianship is to

continue until the specified age.

Section 20.5 does not provide for continuance beyond age 18 of a custodianship created under or pursuant to Sections 12, 13, 2, 11, 6, or 7. These custodianships terminate at age 18 because they are substitutes for a guardianship that otherwise would terminate at that time (see Section 16). And, in the cases where Section 20.5 permits the custodianship to continue after the minor attains the age of 18 years, if the transfer pursuant to Section 9 does not specify any age, the custodianship terminates when the minor attains 18 years of age. See subdivision (e) of Section 20.5.

Subdivision (f) validiates a transfer that specifies a maximum time for the duration of the custodianship that is longer than permitted by Section 20.5 by reducing the duration of the custodianship to the maximum duration permitted for a custodianship created by that type of transfer.

Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to Section 10. Also see [17 Cal.L.Rev.Comm. Reports 601 (1984); 84 Cal. S.J. 11794].

§ 21. Applicability

This Act applies to a transfer within the scope of Section 2 made after its effective date if:

(1) the transfer purports to have been made under the Alaska Uniform Gifts to Minors Act; or

(2) the instrument by which the transfer purports to have been made uses in substance the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the Uniform Transfers to Minors Act" of any other state, and the application of this Act is necessary to validate the transfer.

COMMENT

This section is new and has two purposes. First, it operates as a "savings clause" to validate transfers made after

its effective date which mistakenly refer to the enacting state's UGMA rather than to this Act. Second, it validates transfers attempted under UGMA of another state which would not permit transfers from the source or of property of that kind or under the UTMA of another state with no nexus to the transactions, provided in each case that the enacting state has a sufficient nexus to the transaction under SECTION 2.

§ 22. Effect on Existing Custodianships

(a) Any transfer of custodial property as now defined in this Act made before [the effective date of this Act] is validated notwithstanding that there was no specific authority in the Alaska Uniform Gifts to Minors Act for coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This Act applies to all transfers made before the effective date of this Act in a manner and form prescribed in the Alaska Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this Act.

[(c) Sections 1 and 20 with respect to the age of a minor for whom custodial property is held under this Act do not apply to custodial property held in a custodianship that terminated because of the minor's attainment of the age of 18 after December 31, 1980 and before [the effective date of this Act].]

COMMENT

Subsection (a) is new and is based on Section 45-109a of the Connecticut Act which validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under that Act. However, this provision goes further and purports also to validate prior transfers of the kind now covered by that Act, i.e., transfers from estates, trusts, guardianships, and obligators.

All states have previously enacted some version of UGMA, and it will be more orderly to subject gifts or other transfers under the prior Act to the procedures of this Act. rather than to keep both Acts in force, presumably for 18 or 21 years until all custodianhips created under prior law have terminated. Subsection (b) is intended to apply this Act to prior gifts and existing custodianships insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed under the prior Act.

Subsection (c) is also new and is based upon Section 45-109b of the Connecticut Act. It is intended for adoption in those states that amended their Acts to reduce the age of majority to 18, but which adopt the recommended return to 21 as the age at which custodianships terminate. Its purpose is to avoid resurrecting custodianships for persons not yet 21 which terminated during the period that the age of 18 governed termination.

§ 23. Uniformity of Application and Construction

This Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this Act among states enacting it.

§ 24. Short Title

This Act may be cited as the "Alaska Uniform Transfers to Minors Act."

§ 25. Severability

If any provisions of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be iven effect without the invalid provisions or application, and to this end provisions of this Act are severable.

§ 26. Effective Date

This Act takes effect ______________.

§ 27. Repeals

AS 45.60 .11-§.101, the Alaska Uniform Gifts to Minors Act is hereby repealed. To the extent that this Act by virtue of Section 22(b), does not apply to transfers made in a manner prescribed in the Alaska Gifts to Minors Act or to the powers, duties, and immunities confereed by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the Alaska Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities.

HB
473

REPRESENTATIVE
C.E. "SWACK" SWACKHAMMER

Alaska State Legislature

House of Representatives

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MEMORANDUM

TO: All Interested Parties

FROM: Rep. C.E. Swackhammer

DATE: February 12, 1988

TOPIC: House Bill 473

Last session, the 15th Legislature passed a bill keeping Correctional Industries. House Bill 473 has been introduced by me to assure the industries program in corrections remains viable, productive and noncompetitive with private industry and labor in Alaska.

Alaska's economic downswing has made it necessary to address potential problems of the correctional industry negatively impacting free enterprise. To assist in this effort, HB473 changes the composition of the Corrections Industry Commission by adding another member from labor. Currently, the commission calls for one member of organized labor, at this time the member is from the building trades. It is felt that, although corrections industry may impact the construction trades, it is more likely to affect service oriented laborers. For this reason, HB 473 specifically designates that a member from the building trades be supplemented by a representative of the service trades in Alaska.

Corrections and I have had extensive interaction with labor representatives over the past few months. We have come to a concensus that the additional labor member will greatly enhance the industries program, while protecting the "free-world" enterprise.

It is for this reason, I respectfully solicit your support for this piece of legislation.

CORRECTIONAL INDUSTRIES IN ALASKA

The Corrections Industry program started in the Palmer Correctional Center. It is composed of a potato farm which produces potatoes for state institutions. It employs 2 or 3 inmates during the winter and as many as 15 during the summer, through harvest time in October. Palmer also has a body and fender shop which does repairs to state vehicles only; it employs 4 to 6 offenders.

The Palmer area is also the locale of a slaughter house operated by offenders. The facility was reclaimed from private enterprise which had been funded through state loans. The initial reaction to the operation was negative, with the greatest amount of negative input coming from meat processors and cold storage operations in Anchorage. The intent of the slaughterhouse is to primarily provide a service for Alaskan ranchers and dairy cull stock in the Matanuska Valley. The operation has been struggling, the processor "hurdle" has been overcome; they are now purchasing wholesale meats from the corrections operated plants.

Lemon Creek Correctional Center, in Juneau, houses a laundry facility which provides laundry services to the Alaska Marine Transportation System. Prior to its opening, laundry services were provided through a facility in Prince Rupert, British Colombia. It is a state of the art facility which has been operating at a profit. It employs XX offenders.

Two years ago it was suggested that the laundry wholesale laundry in Southeast. Because of negative reaction on the part of organized labor, the idea was scrapped.

Lemon Creek was also the site of a bakery which provided bake goods to the Marine Transportation System. Previous to its opening, the bake goods were provided by a Seattle firm. The bakery no longer exists and has returned to Seattle. A report of the closing of the bakery follows.

Wildwood Correctional Center has a metal fabrication industry which employs as many as 60 offenders. Its primary products are furniture and bear-proof trash containers used by the park service.

Uniquely, the industry received the contract to provide the secure furniture for the new facility soon to open in Seward, Spring Creek Correctional Center.

Wildwood CC Industries also makes top of the line office furniture. At one time it manufactured more than 200 models. There had been no

complaints from the private sector until the major decline in Alaska's economy. Because of slowing sales, statewide retailers asked corrections to reconsider the scope and magnitude of their operations. Through cooperative agreement, corrections reduced its furniture line to less than twenty models.

The Department of Corrections is currently seeking industries for Fairbanks Correctional Center and Spring Creek.

The Department recently received negative press regarding the prospects of doing data processing in the Fairbanks facility. This is not to be an industry program, but the comments were directed at it. The data processing issue has been tabled, with assurances by corrections that nothing would be done without complete support of the Fairbanks delegation.

LEMON CREEK CORRECTIONS BAKERY REPORT: In the Summer of 1987, a steward on the Alaska Marine Transportation System informed the Dept. of Transportation and Public Facilities that he had received information from an undisclosed source that the bakery products were contaminated. This contamination was allegedly human excretions. A large staple was also allegedly been implanted at the facility.

DOT/PF immediately stopped receiving products from Lemon Creek and conducted an investigation. The Alaska State Troopers were called into the investigation. The supervisors and inmates in the bakery industry volunteered to take polygraph tests regarding their activities in the bakery.

There was absolutely no evidence of foul play by staff or inmates; they were exonerated of any charges. The steward never disclosed his source of information.

Because of the negative press and potential spin-off of the accusations, the Department of Corrections has cancelled the bakery industry. The Department is speculating on moving the equipment to Southcentral Alaska to provide bakery goods to correctional facilities in the Anchorage Bowl Area.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: H.B. 473
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: "An Act amending the composition and membership."
Sponsor: Rep Swackhammer
Requestor: Gruenberg and Boyer

Agency Affected: Department of Corrections
BRU:

Components: Correctional Industries - Production Cost

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS : (Attach a separate page if necessary)

The travel and per diem costs associated with adding a member to the Correctional Industries Commission will be funded through the Correctional Industries Revolving Fund.

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 2-26-88

Approved by Commissioner: Susan Humphrey-Barnett
Date: 2-26-88
Agency: Department of Corrections

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page 1 of 1

STATE OF ALASKA
THE LEGISLATURE

POUCH Y · STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD. 3-14-88 1:30 p.m.

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/4/88 FURTHER REFERRALS: Finance

DATE: March 14, 1988

The Judiciary Committee has considered HB 473

"An Act amending the composition and membership of the Correctional Industries Commission; and providing for an effective date."

RECOMMENDS:

[ ] replace with ____________ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ____________ Committee

ADOPTS: [ ] ________letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ____________

[ ] same as previous zero fiscal note published ____________

SIGNING DO PASS:

[signatures]

SIGNING OTHER RECOMMENDATIONS:

Adrian I. Taylor (NO Rec)

Chairman's signature

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 473
PUBLISH DATE: HOUSE 3/4/88

FISCAL NOTE

No. 1

REQUEST:

Revision Date:
Title: "An Act amending the composition and membership."
Sponsor: Rep Swackhammer
Requestor: Gruenberg and Boyer

Agency Affected: Department of Corrections
BRU:
Components: Correctional Industries - Production Cost

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: (Attach a separate page if necessary)

The travel and per diem costs associated with adding a member to the Correctional Industries Commission will be funded through the Correctional Industries Revolving Fund.

Prepared by: Susan E. Knighton, Director
Phone: 465-3376
Division: Administrative Services
Date: 2-26-88

Approved by Commissioner: Susan Humphrey-Barnett
Date: 2-26-88
Agency: Department of Corrections

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

(7)

HOUSE COMMITTEE REPORT

3/4-

Date referred: 2/15/88

FURTHER REFERRALS: Judiciary
Finance

DATE: 3-3-88

The Health, Education and Social Services Committee has considered HB 473

"An Act amending the composition and membership of the Correctional Industries Commission; and providing for an effective date."

RECOMMENDS:

[ ] replace with ______________ [ ] the same title

[ ] attached amendment(s) [ ] a new title

[X] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ______________ Committee

ADOPTS: [ ] __________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[X] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ______________

[ ] same as previous zero fiscal note published ______________

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

No Rec

No Rec.

Co Chairman's signature

HB
491

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

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JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H.JUD 4-25-88 1:30p.m.

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ANCHORAGE, ALASKA 99503
(907) 561-7628

WHILE IN SESSION
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JUNEAU, ALASKA 99811
(907) 465-3704

ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP

CO-CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

LABOR & COMMERCE
SUBCOMMITTEE ON FOREIGN TRADE

REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: The Honorable John Sund
Chair, House Judiciary Committee

FROM: Rep. Ellis JE

RE: CSHB 491

DATE: April 19, 1988

Today the HESS Committee passed out CSHB 491; establishing a statutory form power of attorney.

The bill represents the work of Alaska Legal Services, the probate section of the Alaska Bar Association, and the staff of the Older Alaskans Commission.

This statutory form has several benefits for Alaskans, especially elderly Alaskans and those on fixed incomes. It shortens the amount of time one must spend with an attorney or other drafter, and thus the cost involved. It contains a provision for sustaining the power throughout or starting the power upon disability and outlines the procedure for a third party to determine disability has set in. It contains a detailed health care decisions provision which, if taken advantage of, will give the agent clear authority to make the necessary care decisions should the principal become incapacitated.

I would greatly appreciate your committee holding a hearing on CSHB 491 as soon as possible.

CSHB 491

CHANGES FROM THE ORIGINAL BILL

CHANGES TO THE FORM:

1) Page 1, line 22: "IF YOU HAVE ANY QUESTIONS ABOUT THIS DOCUMENT, YOU SHOULD SEEK COMPETENT ADVICE."

- self-explanatory

2) minor language changes throughout the form to make it more easily understood (i.e. the word "document" is substituted for the word "instrument")

3) Page 2, line 10: (B) "tangible personal property" is added to clarify this section (also added in the corresponding statutory interpretation)

4) Page 2, line 20: (K) "government programs and" is added to the benefits section (also added in the corresponding statutory interpretation)

- at the request of the Older Alaskans Commission to assure that benefits such as Longevity Bonus and Permanent Fund will be collectable for the principal

5) Page 3, entire page has been converted to "check-off" from "fill-in" format

- optional time limitation added
- "NOTICE TO THIRD PARTIES" added to enforce the power and limit liability

6) Page 4, line 17: notarization requirement added

7) Page 4 and 5: Optional provisions specifically designed for Senior citizens have been added

- notification of existence of a "Living Will"
- specification of alternate attorney-in-fact
- nomination of a guardian or conservator

STATUTORY CHANGES:

8) Page 5, line 19: explanation of how to fill out the form

9) Page 5, line 26 - Page 6, line 15: default provisions

10) Pages 24 and 25: changes within the gifting section to clarify the agent's authority to gift to himself or herself only if the principal has specifically allowed it under (O) of the form. (This language is particularly important if the agent is a family member or friend whom the principal would wish to benefit from his or her estate.)

11) Page 36, line 12: affidavit of disability must be signed by two physicians instead of one

12) Page 37, line 25 - Page 38, line 12: EFFECT ON PREVIOUSLY CREATED POWERS OF ATTORNEY

- in essence, substantiates pre-existing powers and applies the enforcement and default provisions of this new statute to any pre-existing power

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- APRIL 22, 1988

CSHB 491 (HESS)
"An Act Establishing a Statutory Form Power of Attorney"

The Older Alaskans Commission strongly supports passage of this bill. Senior citizens can best keep their own financial and personal affairs in order through the use of "advance directives" or Life Planning, by use of a Durable Power of Attorney. A previously signed Durable Power of Attorney would often eliminate the need for family or caregivers of an incapacitated senior to seek a guardianship. Petitioning the court for a guardianship takes up to four months, and is quite cumbersome and costly to both the petitioner's and the public's pocketbook.

At an OAC sponsored Workshop for Professionals on the Guardianship System in Alaska, March 31 and April 1, nearly 100 representatives from nursing homes, hospitals, social service agencies, the court system, the Offices of the Attorney General and the Public Guardian discussed the many problems surrounding the need for guardianship for people no longer competent to make decisions.

The workshop group reached a strong consensus on the need to avoid court guardianship proceedings whenever possible. They agreed that Alaska needs a statutory form Durable Power of Attorney which is easy and inexpensive to use. Once this exists, seniors should be strongly encouraged to use the forms; through a series of clinics at senior centers, hospitals, and certainly upon admission to a nursing home.

Although durable powers of attorney are currently authorized under AS 13.26.325, each person must pay a lawyer to draft the power, a job which can easily cost over $ 500, because the lawyer must try to specify and define all sorts of contingencies about numerous types of financial and personal transactions.

The primary benefits of CSHB 491 (HESS) are that it provides a statutorily approved form Power of Attorney, and defines in detail the specific powers which an agent may exercise under the power of attorney. This will enable many individuals to enact a Durable Power of Attorney without any expense for consultation with a lawyer.

In addition, CSHB 491 requires that third parties presented with a properly executed statutory Power of Attorney must honor it. The opposite frequently happens now, to even the best drafted Power of Attorney: when the agent presents it to a stock brokerage firm, bank or insurance company, the third party refuses to honor it and asks for a differently formatted Power--but if the principal is in the hospital in a coma, it is too late to get the principal's signature on a new form.

CSHB 491 might at first glance appear to be rather long, but the lengthy definitions are needed to ensure that third parties know what their obligations are to carry out the agent's instructions.

CSHB 491 makes several other improvements upon current law because it provides for a simple method to determine "disability," without requiring a judicial determination, provides a hold harmless guarantee to third parties, and ties in with the Living Will statute so that a person may appoint an agent for all health care decision-making.

In summary, the Commission strongly supports this bill in its present form. CSHB 491 (HESS) makes Alaska's current statute on powers of attorney much more beneficial and accessible for seniors and their families, friends, and caregivers who wish to plan for the senior's future.

APPROVED BY:
Connie J. Sipe, Exec. Director
for Dove Kull, Chair
Legislative Committee
Older Alaskans Commission

DATE: April 22, 1988

REVIEWED BY:
[signature]
John M. Andrews, Commissioner
Department of Administration

DATE: 4/25/88

HOUSE COMMITTEE REPORT

(7) 4/28

Date referred: 4/20/88

FURTHER REFERRALS: Rules

DATE: April 25, 1988

The Judiciary Committee has considered HB 491

"An Act establishing a statutory form power of attorney."

RECOMMENDS:

[✓] replace with CS HB 491 (Jud)

[ ] the same title

[✓] a new title

[ ] attached amendment(s)

[✓] do pass

[ ] do not pass

[ ] no recommendation

[ ] individual recommendations

[ ] additional referral to the ________ Committee

ADOPTS: [ ] ________ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact

[ ] zero fiscal note

[ ] zero with analysis

[ ] same as previous fiscal note published ________

[✓] same as previous zero fiscal note published 4/20/88

SIGNING DO PASS:

[signature]

[signature]

[signature]

[signature]

Ramona L. Barnes

Mike Navarre

[signature]

SIGNING OTHER RECOMMENDATIONS:

[signature]

Chairman's signature

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ALASKA STATE HOUSE

OFFICE OF MAJORITY WHIP

CO-CHAIR
HEALTH, EDUCATION & SOCIAL SERVICES

LABOR & COMMERCE
SUBCOMMITTEE ON FOREIGN TRADE

REPRESENTATIVE JOHNNY ELLIS

file / to Committee

MEMORANDUM

TO: House Judiciary Committee Member

FROM: Rep. Ellis

RE: CSHB 491; "Establishing a Statutory Form Power of Attorney"

DATE: April 21, 1988

CSHB 491 passed out of the HESS Committee on Monday, April 19 and will be heard by the Judiciary Committee on Monday, April 25th.

I am distributing a copy of the bill as well as some back-up information a few days before the hearing because CSHB 491 is fairly lengthy and I think members should have an opportunity to go over it before the hearing. After reviewing the legislation it will no doubt be clear to you why, in order to have a short and simple form, there must be a long and detailed statute.

A statutory form can provide several benefits for Alaskans. It shortens the amount of time one must spend with an attorney or other drafter, and thus reduces the cost involved. It contains a provision for sustaining the power throughout disability or starting the power upon disability and outlines the procedure for a third party to determine disability has set in. It contains a detailed health care decisions provision which, if chosen as an option, will give the agent clear authority to make the necessary care decisions should the principal become incapacitated.

My staff has been working closely with Connie Sipe, Executive Director of the Older Alaskans Commission, and members of the probate section of the Alaska Bar to craft this legislation. Please do not hesitate to contact Deborah Bonito in my office, (X3704), if you have any questions about the bill.

Thank you for taking the time to consider this piece of legislation.

To: Rep J Ellis
From: Prant Gazaway

You and...

THE LAW: When to draft a durable power of attorney

By Ron Landsman

Couples who have always done everything together and trusted each other throughout their married life are often shocked to find that if one partner becomes incapacitated the other doesn't have authority to handle some of the property or benefits they own together. In a time of extreme stress the situation is made worse because the healthy partner is denied access to much-needed assets.

This limitation applies to most forms of joint property apart from joint bank accounts. For example:

Real property. Most couples own their homes as "tenants by the entirety" or "joint tenants with right of survivorship." These clumsy phrases mean that if either partner dies the survivor becomes the sole owner. With this kind of ownership, *both* current owners must sign any deed transferring ownership or placing the property under a mortgage or deed of trust. If one spouse is unable to sign, only someone with legal authority to act for that person can sign for him or her.

Intangible personal property. This includes money, credit, investments, bank accounts, stocks, corporate and government bonds, etc. Other than bank accounts, most jointly owned investments cannot be sold, transferred, or borrowed against unless both husband and wife or their legally appointed representative authorize the transaction.

Retirement benefits. Most decisions covering retirement benefits can be made only by the individual whose account it is. Again, only someone with legal authority can exercise those options on that person's behalf. (Spouses do, however, have certain rights to each other's pension benefits in the event of death or divorce.)

The one exception to this litany of legal restrictions is government-funded benefits (Social Security, Veterans Administration, Railroad Retirement, etc). Despite its reputation for stodginess, the government provides a quick and easy method for spouses to handle each other's benefits: It's known as "representative payeeship." One spouse can be named representative for the other who can no longer act for him- or herself, regardless of whether the acting spouse has obtained any other legal authority.

What rights do you have if your spouse can't cope?

There are two ways in which couples can get legal authority to act on each other's behalf. One is by being appointed guardian or conservator of the other's property by proving the other unable to manage his or her affairs. Relatively simple as legal proceedings go, this is more expensive, time consuming and less flexible than the alternative: establishing a durable power of attorney while both partners are still competent.

In a power of attorney the principal names another person, or two, or even an institution such as a bank, to serve as his or her attorney-in-fact. In most states, a power of attorney is durable *only* if it stipulates it will continue in effect even when the principal is incompetent. Other restrictions vary from state to state.

Married couples or individuals thinking of setting up individual durable powers of attorney should indicate very specifically what property they want the other person to manage. It may also be prudent to include power to make gifts, forgive debts, fund trusts, and make elections and disclaimers. For individuals with large estates (in excess of $600,000), however, this can have significant federal estate tax consequences and the power to make a gift should be executed only with expert legal advice.

In many states, important health-care decisions can be included in a power of attorney; other states have a separate medical power statute with different requirements.

Many institutions will not honor a power of attorney unless the type of property is specifically defined. For example, a title-insurance company may not issue a policy to the buyer of real property one spouse wants to sell unless the property is clearly identified in the power. Sometimes the power of attorney must be recorded with the deed. State law may also require that the power be executed with the same formality as a deed.

A lawyer who prepares a power of attorney should collect the special forms most banks, insurance firms and government institutions provide. This will avoid delays if their legal counsels insist on reviewing the power of attorney or decline to comply because it is not specific. ■

Ron Landsman is an attorney with a Washington, D.C., law firm.

(AARP)

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SUBCOMMITTEE ON FOREIGN TRADE

REPRESENTATIVE JOHNNY ELLIS

M E M O R A N D U M

TO: HESS Committee Members

FROM: Representative Johnny Ellis JE

RE: HB 491

DATE: March 17, 1988

I introduced HB 491; "An Act establishing a statutory form power of attorney" in order to address the concerns of several active Anchorage Seniors relating to Alaska's existing durable power of attorney statute, (AS 13.26.325).

The first concern is the vagueness of the existing statute and the problems this has caused drafters of durable power authorizations. Because the existing statute does not explicitly describe the powers which the principal may delegate to an agent, many institutions do not honor powers of attorney drafted under the statute.

HB 491 sets into statute the actual form an individual may use to assign specific powers to an agent in the event of disability. It sets out a list of powers which are authorized and gives the principal the option of deleting those powers he or she does not wish to delegate. Each power is described in detail in statute to avoid any question of the agent's authority.

A second major concern is the durability of the existing power of attorney in the event that the principal becomes disabled or otherwise incapacitated. Alaskan Seniors are finding that it is in their best interest and that of their loved ones to appoint a person whom they trust to make important decisions regarding their property and health care before the onset of a disabling illness or in the event of an accident.

The form created in HB 491 has a section which specifically addresses the durability of the power of attorney established by the form. [illegible]ndividual has the option of stating in this section [illegible](t)his instrument shall continue in effect during [illegible]e subs[illegible]nt disability of the principal.

The third and final concern addressed in this legislation has to do with the definition of "disabled" or "incapacitated." The existing statue merely allows for the inclusion of a statement to the effect that the power of attorney remains effective or becomes effective upon the disability of the principal but does not define disability. This has lead to challenges of the agent's authority in some circumstances.

HB 491 adds a section to the statutes which calls for a physician or similarly qualified medical professional's affidavit stating that the principal's ability to receive and evaluate information or to communicate decisions is impaired.

In addition to these major issues, the bill also has the potential to greatly reduce the time and fees involved in drafting a durable power from scratch. With the statutory form in place, time spent in legal consultation may be substantially decreased. This will be very beneficial to those Seniors who are on a fixed income.

STATE OF ALASKA 1988 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST:		Bill Version:	HB 491
		Publish Date:	2/15/88
Revision Date:		Agency Affected:	Alaska Court System
Title:	An act establishing a statutory form of power of attorney	BRU:	Trial Courts
Sponsor:	Ellis & Gruenberg	Components:	
Requestor:	HESS		

EXPENDITURES/REVENUES: (Thousands of Dollars)						
OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
Personal Services	....	....	....	....	....	....
Travel	....	....	....	....	....	....
Contractual	....	....	....	....	....	....
Supplies	....	....	....	....	....	....
Equipment	....	....	....	....	....	....
Land & Structures	....	....	....	....	....	....
Grants & Claims	....	....	....	....	....	....
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL	....	....	....	....	....	....
REVENUE	....	....	....	....	....	....
FUNDING: (Thousands of Dollars)						
General Funds	0.0	0.0	0.0	0.0	0.0	0.0
Federal Funds	....	....	....	....	....	....
Other	....	....	....	....	....	....
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0
POSITIONS:						
Full-time	....	....	....	....	....	....
Part-time	....	....	....	....	....	....
Temporary	....	....	....	....	....	....

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact.

Prepared by: Jan Strandberg, General Counsel — Phone: 264-8228
Division: Alaska Court System — Date: 03/14/88

Approved by: Arthur H. Snowden, II, Administrative Director (signed: Stephanie Cole, for) — Date: 03/14/88
Agency: Alaska Court System

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION : HB 491
PUBLISH DATE :

FISCAL NOTE

REQUEST:

Revision Date:
Title : "An Act establishing a statutory form power of attorney."
Sponsor : Representative Ellis
Requestor : House HESS

Agency Affected : Department of Law
BRU : Legal Services
Components : Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard I. Pegues

Prepared by : Richard I. Pegues, Director
Phone : 465-3672
Division : Administrative Services
Date : March 14, 1988

Richard I. Pegues /FOR/

Approved by Commissioner : Grace Berg Schaible, Atty. Gen.
Date : March 14, 1988
Agency : Department of Law

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 491

This bill amends AS 13.26 by adding new sections that set out a comprehensive statutory form power of attorney covering most situations where an individual may wish to appoint an agent or agents to personally represent an individual as an attorney-in-fact. Because the bill's provisions would govern matters between private parties they will not have a fiscal impact on the Department of Law.

HB 491 Statutory Form for Power of Attorney
Sponsored by Ellis

Connie Sipe of the Older Alaskans Commission will not be in town to testify on this bill in Judiciary on Monday and wanted to pass on the following:

The bill sets up a "durable" power of attorney. Under present law a power of attorney is good only as long as the person giving it is mentally capable. If the person goes into a coma the power of attorney is no longer valid.

It is possible to get a durable power of attorney now but it costs as much as a will and there are no standards for attorneys to follow.

HB 491 provides for a standard form which would be available in stationary stores. The rest of the bill gives definitions for items on the form.

The Older Alaskans are very supportive of this bill as they are often in the position of being responsible for an incapacitated spouse.

Older Alaskans Commission

Box C
Juneau, Alaska 99811-0209
907/465-3250

POSITION PAPER -- HB 491
"An Act Establishing a Statutory Form Power of Attorney"

This bill deals with what is commonly known as "Durable Powers of Attorney." Such durable powers are currently authorized in AS 13.26.325. This bill strengthens the efficacy of that statute and would provide in the statute a form power of attorney which individuals may use.

A general, non-durable power of attorney is effective only so long as the person who gave the power of attorney remains mentally competent, because the law views a power of attorney as being renewed each and every moment of its existence, and it must be renewed on the basis of the giver's legal ability, including mental competency, to continue to give the power. What this means is that the power of attorney becomes ineffective just at the time when one might most need it-- because one has become incompetent and needs someone else to act in one's behalf.

A Durable Power of Attorney cures this defect, because it either becomes effective upon the giver's reaching a state of disability, or it starts before and remains effective after the disability status is reached. However, Durable Powers of Attorney drafted in accordance with current AS 13.26.325 are sometimes not honored by third parties because there has been no simple way to determine when the disability or incompetency has occurred, or because the third party felt unsure of their legal ability to rely on the power of attorney for certain high-risk actions such as health care decision-making.

HB 491 makes Alaska's current statute on powers of attorney much more beneficial for seniors and their families, friends, and caregivers who wish to plan for the senior's future.
HB 491 improves upon current law because it:

(1) spells out in detail the specific powers which an agent may exercise under a power of attorney;
(2) provides for a simple method to determine "disability," without requiring a judicial determination; and
(3) provides an approved form for use, thereby saving time and expense in the drawing up of a power of attorney.

The Older Alaskans Commission strongly supports passage of this bill. In many instances the existence of a Durable Power of Attorney could avoid the need for family or caregivers of a person to seek a judicial guardianship, a cumbersome and possibly costly procedure.

The Commission does suggest two amendments to HB 491:

At page 2, line 17, insert:
"(M) benefits from local, state, or federal government ( )
[(M)] (N) ..."
The bill would also need a detail section on the powers specific to applying for government benefits, to be inserted at page 30, just before the present line 29.

At page 2, line 24, insert a new portion of the form:

IF YOU HAVE GIVEN THE AGENT AUTHORITY REGARDING HEALTH CARE SERVICES, CHECK ONE OF THE FOLLOWING:

( ) I have executed a separate "Living Will" regarding the use of life-sustaining procedures. I hereby authorize my agent to enforce that Will in keeping with my wishes expressed in it.

( ) If I choose in the future to execute a "Living Will," I authorize my agent to enforce that Will.

( ) I do not authorize my agent to deal with any "Living Will" which I might choose to execute, now or in the future.

This second amendment would tie together a Power of Attorney with the "Living Will" authorized in AS 18.12.010. This is needed because the powers proposed in the new AS 13.26.340(1) regarding health care do not allow the agent to authorize the termination of life-sustaining procedures. If a person executes a separate Living Will, the person should be able to empower their legal agent to see that the Will is carried out. The Living Will Act does not now provide for any method to ensure that the intent of the will's maker is promptly carried out.

In summary, the Commission strongly supports this bill in its present form, but also urges the two amendments noted above.

APPROVED BY:

Dove M. Kull
Dove M. Kull, Chair
Legislative Committee
Older Alaskans Commission

DATE: 3-14-88

REVIEWED BY:

John M. Andrews, Commissioner
Department of Administration

DATE: 3/15/88

ATTACHMENT D
Family Circle Article: Durable Power
of Attorney

FREE! THE LEGAL FORM THAT PROTECTS YOUR LOVED ONES

It's a durable general power of attorney form. And although you may never have heard of it, it's even more important than a will. Use the form on page 9 to protect your family and yourself. It may be the wisest legal step you take. BY BARBARA GILDER QUINT

Two years ago, Clare Richards's husband, Jim, was badly hurt in an automobile crash. Although Jim spent 10 days in the emergency care unit, he's fine now and has returned to work. Looking back, Clare remembers the terror, grief and worry she felt. She also recalls the problems that arose while Jim, heavily sedated, was lying in the hospital, and the family's finances were at a standstill.

"There was a deposit due at college to reserve a place for our daughter for the next term," Clare recalls. "The money was in Jim's savings account, but there was no way I could get at it. I couldn't file our tax return, even though we were counting on a fast refund to pay bills. I couldn't even cash his paycheck."

Fortunately, Jim recovered quickly and was soon able to sign the necessary papers to take care of these and other important matters.

Harriet Danvers's 74-year-old mother suffered a stroke several months ago and became unable to manage her own affairs. The social service department at the hospital suggested a nursing home, but because her mother could not sign the required papers, Harriet could not sell her mother's stocks to raise the necessary money for nursing home care. As a last resort, with the written consent of the rest of the family, Harriet went to court, had her mother declared unable to manage her own affairs and had herself appointed conservator of her mother's assets. Not only was this painful, but it also wasted money. The family lost two months' rent on the mother's apartment because they were unable to sublet sooner and spent $5,000 on lawyers' and court fees. Moreover, there will be annual fees for accounting reports, which Harriet must file with the court.

Clare and Harriet are among hundreds of thousands of Americans who each year face the problem of handling the financial affairs of a family member who has been temporarily or permanently disabled. One out of every two Americans will undergo a lengthy period of disability during his or her lifetime: A 62-year-old is four times more likely to suffer a disability than to die. If the disability is such that the person is no longer physically or mentally able to make financial decisions, family members may be unable to act for him or her without taking costly and cumbersome legal measures.

But there is a sensible and economical alternative to the court action families are often forced to take in such circumstances. If the disabled person has, in the past, signed a simple legal document called a *durable general power of attorney,* then there will be someone who is legally able to act at once, without any expense or delay. Lawyers suggest that this is a step many families should consider. Read the following questions and answers and then talk with your family about using a durable general power of attorney.

What is a durable general power of attorney? It's a legal form that authorizes someone you designate to act in your behalf. It gives this person a wide variety of powers that you spell out in advance. For example, in the sample form on pages 9 and 10, the powers include the right to draw checks on bank accounts, to have access to a safe-deposit box and to buy and sell stocks and bonds. The idea is that the person to whom you give these powers will use them in your best interest.

To whom should you give a power of attorney? In legal language, the person you choose to act for you when you sign a power of attorney is "attorney-in-fact." Don't be confused by this jargon; *this person does not have to be a lawyer,* and actually, in many cases, you will want to choose someone other than an attorney, such as your spouse, a grown child, a close relative or good friend. You should choose someone in whom you have full confidence, because that person could be stepping into your shoes someday to make decisions about you and your property.

Can anyone sign a power of attorney? A person can sign a power of attorney only if he is "competent" or, as some state laws phrase it, as long as he is not "under a disability." Being "under a disability" is usually defined as being unable to manage one's property effectively for reasons

(Please turn to page 42)

Barbara Gilder Quint is a contributing editor to FAMILY CIRCLE. *Her last article was "Last-Chance Tax Deductions: Use*

For instructions on how to use the durable general power of attorney form, see page 43.

Feminine itching

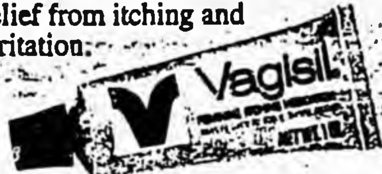
simple to relieve

...as easy as a headache

This instantly-soothing medication relieves external feminine itching as easily as aspirin relieves a headache.

That's good news because minor feminine itching is about as common as a headache—caused by everyday things like jogging, pantyhose, even normal perspiration.

VAGISIL® Feminine Itching Creme has been formulated with medication recognized effective by expert gynecologists. In fact, it's been used by over 4 million women who need fast relief from itching and irritation.



Of course, should irritation persist, see your doctor. But if you're like millions of other women, VAGISIL® will relieve the problem. As simply as aspirin relieves a headache.

Feminine moisture

end it now and stay fresher all day

Now stay drier, feel fresher all day with VAGISIL™, the first Feminine Powder with a totally unique formula to solve wetness problems. Its special moisture absorber is 25 times more effective than talc—with a natural skin-protecting emollient. Created with a leading gynecologist—100% talc-free, so safe, even its light, clean scent is hypoallergenic.

Vagisil

FEMININE POWDER & ITCHING MEDICATION

ON THE COUCH (From page 40)

then write it in the space below the dream word.

[Enid's paper looked like this: *Husband (partner), dinner (feeds), fighting (opposed), Dinah Shore (perfect woman), Burt Reynolds (perfect man), watch (time), working (good), garden (grow), see (realize), flower (growth), step (go), hole (nothingness)]*

DR. K.: O.K. Now tell me a story, linking the new words.

ENID: My partner feeds (takes care of) me, but he is opposed to my becoming the perfect woman and is trying to stop us from being the perfect couple. He wants more time. But good comes from growing and realizing my growth (my potential).... But what about the fact that I end up in a hole? I don't like that.

DR. K.: Parts of dreams, like the hole, tell you what your fears are, not what's really going to happen. Many women are afraid of becoming more independent because to them, losing dependence on a man means losing the man. What they don't realize is that most men today appreciate independent women.

ENID: Having a paid job *is* a little threatening to me. My daughter told me the other day that she didn't want a man to buy her a car when she grows up; she wants to pay for it herself. I didn't think I felt that way, but my dreams say I do.

DR. K.: I think you do. But remember, you don't have to be perfect at everything, as you think Dinah Shore is; and you can involve your husband in helping you work out your new schedule so you still have the time together that you want.

ENID: But how do I know that my interpretation of the dream is right?

DR. K.: Trust your own "reading." If it comes to you instinctively, it's "right." Just for fun you might ask your friends to do these exercises with your dream. In psychology classes where dreams are discussed, about 70% of the students come up with identical "free association" words, and an even higher percentage agree on the overall meaning of a given dream. To gain even more control over your dreams, try changing them so they work out better. The Senoi Indians are famous for doing that, and university research proves that it works. When you wake, stay in the dreamy state and "rewrite" the ending to make it more positive. How would you rewrite your dream?

ENID: I'd climb out of the hole and then I'd plant seeds to make more beautiful flowers.

DR. K.: Good. You can also use a technique called "dream incubation." Before going to sleep, think about what you *want* to dream about, then quietly say: "Help me understand..." When you wake, write down your dream and translate it. You'll gain new insights that can help you with your personal growth.

BOOKS FOR FURTHER READING

• *Dream Workbook,* by Jill Morris (Little, Brown, 1985). • *Living Your Dreams,* by Gayle Delaney (Harper & Row, 1981).

To be considered for a therapy session, write to: Dr. J.K., P.O. Box 1379, Grand Central Station, New York, NY 10163. Describe your problem; include address and phone number.

THE LEGAL FORM THAT PROTECTS (From page 6)

such as mental or physical illness or advanced age. In practical terms, this means that in order for a power of attorney to be legal, it must be signed while a person is still considered competent. Thus, once Harriet Danvers's mother was mentally disabled by a stroke, legally she could no longer sign a paper giving Harriet a power of attorney to act for her.

This power of attorney sounds as if it gives someone else considerable power over your affairs. Is it safe? Most people who sign powers of attorney do so to make sure that there will be someone around to act for them in case they are physically or mentally disabled. However, you may worry that the person to whom you give such a power could take actions while you are still competent to run your own affairs. One way of protecting yourself is to keep control over the signed legal form as long as you can manage your finances. You might consider giving the signed form to a third party, such as your lawyer or a close friend, with instructions that it should not be turned over to the attorney-in-fact unless the need arises.

If I sign a durable general power of attorney, how long does it stay in force? With many durable general powers of attorney (including the form printed on pages 9 and 10), the right to exercise the power begins as soon as you sign. It continues in effect until you either revoke it or notify third parties (such as a bank) that you have terminated it. Such a durable general power of attorney includes a special clause saying that it remains in force even if you become disabled or incompetent. This is especially important because the ordinary power of attorney form does not have this special clause. If you become disabled, the ordinary power of attorney you signed automatically terminates, even though this is precisely when and why you might need it most. □

For More Information

If you're interested in do-it-yourself law and in cutting legal fees, consult the following books:

- *How to Avoid Lawyers: A Step-by-Step Guide to Being Your Own Lawyer in Almost Every Situation*, by Don Biggs (Garland Publishing, Inc.).
- *How to Avoid Probate: Updated!*, by Norman F. Dacey (Crown).

HOW TO USE THE DURABLE GENERAL POWER OF ATTORNEY FORM

1. Read the form carefully. If there are parts you don't understand fully or with which you do not feel comfortable, consult your lawyer before proceeding. The form covers those transactions in which it would be most useful. It does not cover real estate matters because recording requirements for real estate documents vary greatly from state to state.

2. Each state establishes its own rules governing the [illegible] of a durable power of attorney. The form reproduced here is *not* suitable for use in North Carolina, Oklahoma, South Carolina, Wyoming, Florida or Missouri. (If you live in any one of these states, you can consult with your lawyer; preprinted forms similar to the one here are available in stationery stores in your state for about $1.)

California requires that the attorney-in-fact named in the power of attorney be a resident of the state. Because laws change, it is always good procedure to check with your lawyer on the use and execution of any legal form.

3. In the past, some banks and insurance companies have traditionally been unwilling to accept or act on any preprinted power of attorney form, recognizing only forms that they have prepared themselves. In an attempt to deal with this problem, we have included in the form reproduced on pages 9 and 10, in capital letters, special language that will protect such third parties and thus encourage them to accept this particular form; however, there can be no assurance that they will do so. You might prefer to contact your bank and discuss its own forms.

4. After reading the form, fill in the name and address of the person giving the power—the principal—on the first and second lines. (Use a pen, not a pencil.) On the next set of lines, fill in the name(s) and address(es) of those to whom the power of attorney is given—the agent(s) or attorney(s)-in-fact. The person giving the power must then sign the form and the person accepting the power must sign his or her name.

The last signature on the form is that of the notary public, indicating that he or she witnessed the signing of the form. In Connecticut, as indicated on the form, two witnesses in addition to the notary public must sign, although the witnesses' signatures need not be notarized. (A notary is authorized by the state or Federal government to administer oaths and attest to the authenticity of signatures.) ■

If you're allergy sensitive, your world is uncomfortable... irritating...ever-threatening.

For relief, ask your doctor or pharmacist about the histamine blocker, Benadryl® — the most prescribed allergy medication ever — available without prescription in full 25 mg. strength. Use Benadryl or Benadryl Decongestant as directed for upper respiratory allergy and cold symptoms. At last, *good* news for allergy sensitive people.

Prescription Strength Allergy Relief from PARKE-DAVIS

DURABLE GENERAL POWER OF ATTORNEY

STATE OF

COUNTY OF

Know all Men by These Presents, which are intended to constitute a DURABLE GENERAL POWER OF ATTORNEY

That I ______________________________
(Insert name of principal)

____
(Insert address of principal)

do hereby appoint ______________________________
(Insert name of agent)

____
(Insert address of agent)

and

____
(Insert name of agent if more than one agent is designated)

____
(Insert address of agent if more than one agent is designated)

My Attorney(s)-in-Fact TO ACT (jointly), as my true and lawful Attorney(s)-in-Fact, for me and in my name, place and stead:

(A) Power with Respect to Bank Accounts. To establish accounts of all kinds for me with financial institutions of any kind; to modify, terminate, make deposits to and write checks on and endorse checks for or make withdrawals from all accounts in my name or with respect to which I am an authorized signatory; to negotiate, endorse or transfer any checks or other instruments with respect to any such accounts; and to contract for any services rendered by any financial institution.

(B) Power with Respect to Safe-Deposit Boxes. To contract with any institution for the maintenance of a safe-deposit box in my name; to have access to all safe-deposit boxes in my name or with respect to which I am an authorized signatory; to add to and remove from the contents of any such safe-deposit box and to terminate any and all contracts for such boxes.

(C) Power to Sell and Buy. To sell and buy personal, intangible or mixed property, upon such terms and conditions as may seem appropriate; to use any credit card held in my name to make such purchases and to sign such charge slips as may be necessary to use such credit cards; and to repay from any funds belonging to me any money borrowed and to pay for any purchases made or cash advanced using credit cards issued to me.

(D) Power to Exercise Rights in Securities. To exercise all rights with respect to securities that I now own, or may hereafter acquire; and to establish, utilize and terminate brokerage accounts.

(E) Power to Borrow Money (including any Insurance Policy Loans). To borrow money for my account upon such terms and conditions as may seem appropriate and to secure such borrowing by the granting of security interests in any property or interest in property which I may now or hereafter own; to borrow money upon any life insurance policies owned by me upon my life for any purpose and to grant a security interest in such policy to secure any such loans; and no insurance company shall be under any obligation whatsoever to determine the need for such loan or the application of the proceeds therefrom.

(CLIP OUT AND SAVE)

(F) Power with Respect to Taxes. To prepare, sign and file Federal, state and/or local income, gift, property or other tax returns, claims, etc.

(G) Power to Demand and Receive. To demand, arbitrate, settle, sue for, collect, receive, deposit, expand for my benefit, reinvest or make such other appropriate dispositions of, as my Agent deems appropriate, all cash rights to payments of cash, property (personal, intangible and/or mixed), rights and/or benefits to which I am now or may in the future become entitled, regardless of the identity of the individual or public or private entity involved (and for purposes of receiving Social Security benefits, my Agent is herewith appointed my "Representative Payee"); to utilize all lawful means and methods for such purposes.

I further give and grant to my said Attorney(s)-in-Fact full power and authority to do and perform every act necessary to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present, with full power of substitution and revocation, hereby ratifying and confirming all that my said Attorney(s)-in-Fact shall lawfully do, or cause to be done by virtue hereof.

This instrument may not be changed orally.

This power of attorney is durable and shall not be affected by the subsequent disability or incompetence of the principal.

TO INDUCE ANY THIRD PARTY TO ACT HEREUNDER, I HEREBY AGREE THAT ANY THIRD PARTY RECEIVING A DULY EXECUTED COPY OR FACSIMILE OF THIS INSTRUMENT MAY ACT HEREUNDER, AND THAT REVOCATION OR TERMINATION HEREOF SHALL BE INEFFECTIVE AS TO SUCH THIRD PARTY UNLESS AND UNTIL ACTUAL NOTICE OR KNOWLEDGE OF SUCH REVOCATION OR TERMINATION SHALL HAVE BEEN RECEIVED BY SUCH THIRD PARTY AND I FOR MYSELF AND FOR MY HEIRS, EXECUTORS, LEGAL REPRESENTATIVES AND ASSIGNS, HEREBY AGREE TO INDEMNIFY AND HOLD HARMLESS ANY SUCH THIRD PARTY FROM AND AGAINST ANY AND ALL CLAIMS THAT MAY ARISE AGAINST SUCH THIRD PARTY BY REASON OF SUCH THIRD PARTY HAVING RELIED ON THE PROVISIONS OF THIS INSTRUMENT.

In witness whereof, I have hereunto signed my name this _____ day of _________, 19___.

____
(Signature of Principal)
Specimen Signature of Attorney(s)-in-Fact

____
Witness

____
Witness
[In Connecticut power of attorney must be signed by two witnesses.]

****

CERTIFICATE OF NOTARY

STATE OF)
) ss.:
COUNTY OF)

On the __________ day of ______________, 19_____, before me personally came ______________________________ whose identity is well known to me and known to me to be the individual described in and who executed the foregoing instrument, and (he) (she) acknowledged to me that (he) (she) executed the same.

____
Notary Public

NEW YORK COMMENTS

Henry A. Lowet
Kramer, Levin, Nessen, Kamin & Frankel
919 Third Avenue
New York, NY 10022

The special impetus for enacting the legislation which authorized use of the Durable Power of Attorney in New York may have been the Internal Revenue Service. The IRS had been questioning whether "flower bonds" actually were owned by a decedent at the time of death where such bonds were purchased shortly before death by an attorney-in-fact and the competence of the principal was uncertain at the time of purchase. It also was contemplated that enactment would improve, simplify and reduce the cost of planning for persons advanced in age, and of managing their affairs in the event of their later disability or incompetence. The legislation was enacted as Section 5-1601 of the New York General Obligations Law (McKinney 1978) and became effective immediately on June 10, 1975, pursuant to L. 1975, c. 195, § 1.

The legislation was derived from Section 5-501 of the Uniform Probate Code (1969) ("UPC") and requires the express inclusion in the power of the words "this power of attorney shall not be affected by the subsequent disability or incompetence of the principal," or words of similar import.

The New York statute omits the UPC language declaring that a power may be framed to become effective on the future disability of the principal, the so-called "springing power." The statute is silent on the possible effectiveness of a "springing power," should the language of such a power be added to the usual form of durable power. Although not formally a part of the "legislative history," it is well known that the draftsmen of the New York legislation considered a provision authorizing the use of a "springing power," but decided not to offer such a bill because of concern regarding appropriate evidence of disability or incompetence, short of an adjudication of incompetency. This would tend to lead to the conclusion that the modification of a standard durable power form to make it a "springing power" would not be enforceable in New York.

The New York statute also omits the UPC language authorizing the exercise of a Durable Power of Attorney when the attorney-in-fact is either uncertain or does not know whether the principal is dead or alive. A bill to gain this result, S. 4962, was introduced in the state senate in early 1975 but was not enacted. Hence, it is doubtful that acts by an attorney-in-fact are valid after the principal's death, even if the attorney-in-fact had no knowledge of such death, or, indeed, that the power may be exercised if the attorney-in-fact is uncertain whether the principal is dead or alive. It is unclear, if the attorney-in-fact did not know of the principal's death, whether such invalidity may be raised by the attorney or third party who dealt with the attorney-in-fact. The attorney-in-fact nonetheless would bear the risk of liability for loss to the estate due to the attorney-in-fact's actions whether or not the attorney-in-fact knew of the principal's death.

The statutory framework in New York is unusual in that even prior to the enactment of the durable power legislation in 1975, there has existed since 1948 a statutory short form of general power of attorney, derived from the New York General Business Law, L. 1948, c. 422. General Obligations Law § 5-1501 (McKinney 1978 and Supp. 1983). This permits a principal to adopt by reference detailed statutory powers relating to the principal's property (any of which may be omitted by the principal drawing a line through the text of that subdivision and writing in his or her initials in the box opposite).

Attorneys in New York generally use a printed form of durable power which satisfies the requirements of the statute. Nonetheless, the statute expressly permits any "additional provision [to be added] which is not inconsistent with the other provisions of the statutory short form power of attorney." General Obligations Law § 5-1503(3) (McKinney 1978). As a matter of practice, this has encouraged practitioners to add provisions to the usual printed form of power, such as the power to represent the principal in all tax matters (typically using language from the Internal Revenue Service's own form of power of attorney, Form 2848); the power to make charitable donations which the principal had been in the habit of making or which the attorney-in-fact thinks the principal would make if able; and the power to make gifts to the principal's descendants and spouses (including the attorney-in-fact, if a descendant or spouse), but usually not to exceed the largest amount which then qualifies for the annual per donee exclusion allowed for federal gift tax purposes. These additional powers each relate to property rights and appear to be consistent with General Obligations Law § 5-1502(I) (McKinney 1978), which power deals with personal relationships and affairs, and other provisions of the statutory short form power.

New York practice, in the absence of decisional law, seems to indicate, however, that subjects relating to "substitution of judgment," including personal care or health care decisions, are not consistent with the other provisions of the statutory short form power. No case or rule has been found which would authorize the addition of a provision permitting the attorney-in-fact to create a trust for the principal's benefit, to make an election against the will of the principal's deceased spouse, to disclaim an interest in an estate, or to "pull the plug" should the principal be in a vegetative coma or similar state short of literal or absolute death, with no substantial prospect of recovery. Such provisions seemingly would have to await legislative action.

There is no general procedure or requirement for filing a power of attorney. If, however, a power of attorney relates to an interest in a decedent's estate, such as an authorization from an individual residing abroad who seeks to appoint an agent in New York to qualify as the administrator of an estate or to receive the principal's share in an estate, New York Estates, Powers and Trusts Law § 13-2.3 (McKinney 1967 and Supp. 1983) ("EPTL") raises such a requirement. In addition to requiring such power to be in writing and acknowledged in the manner prescribed by the laws of New York for the recording of a conveyance of real property, the statute provides for recording in the office of the surrogate granting letters on such decedent's estate, or, if no such letters have been granted, in the office of the surrogate having jurisdiction to grant them. Such recording confers on the surrogate jurisdiction over the grantor of such power, the attorney-in-fact therein named and any other person acting thereunder. EPTL § 13-2.3(a).

A durable power must be created by a written and acknowledged instrument and may be made by anyone competent to make a contract. There is no limit on those to whom powers may be given. There is no statute or rule which restricts the creation of such a power to, or the conferring of a power upon, residents of New York. If a non-resident executes the usual printed form of statutory power, he or she presumably would be making a "choice of law" decision, since the statutory form expressly must invoke the provisions of the governing New York law relating to such powers. There is no known decision in New York dealing with the validity of a durable power executed by a resident or non-resident of New York in another jurisdiction and then used in New York.

There is no requirement for court approval of a power, nor is there any statute which establishes a specific procedure for enforcing or testing the validity of a power.

While Section 2 of the durable power statute provides that the attorney-in-fact can be made to account to a committee or conservator if one is appointed rather than to the principal, the statute is silent as to accountings when the donor of the power is disabled or incompetent and no committee or conservator has been appointed. Adequate protection for a disabled or incompetent principal does exist under New York law, however, since an attorney-in-fact owes a fiduciary duty to the principal and can be compelled to account to the principal or to the court, on its own initiative, or on the petition of a person interested. It is the same fiduciary duty owed by a trustee under an express deed of trust. *Estate of Raphael Hudis* (NYLJ 2/3/77, p. 25, col. 2; *motion to reargue denied,* NYLJ 4/6/77, p. 15, col. 4).

There is nothing in the statute which expressly authorizes the inclusion in a power of the authority on the part of the attorney-in-fact to nominate the committee or conservator of the principal.

The statutory form of power expressly gives full and unqualified authority to the attorney-in-fact to delegate any or all of his powers to any person or persons whom the attorney-in-fact shall select.

There is scant authority regarding the compensation of an attorney-in-fact. With respect to a power in relation to an interest in a decedent's estate, one court has held that compensation only can be awarded to an attorney-in-fact for services rendered under a valid power of attorney. *In re Braunstein's Estate,* 202 Misc. 244, 144 N.Y.S. 2d 280 (Sur. Ct., N.Y. Cty. 1952). There is also statutory authorization in such a context for the surrogate in any appropriate proceeding to "fix and determine the validity and reasonableness" of the attorney-in-fact's compensation and expenses, "whether or not the same have been previously fixed by agreement . . ." EPTL § 13-2.3(b)(3). This would seem to recognize the right of an attorney-in-fact to receive compensation using the rule of reasonableness which is the standard for the compensation of any agent. Attorneys in this jurisdiction have discussed the possibility of including a "fee clause" in a durable power, under which they are to act as attorneys-in-fact, but such provisions apparently have not come into use.

Sec. 5-1501. Statutory short form of general power of attorney; formal requirements; joint agents.

1. The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this title:

"Notice: The powers granted by this document are broad and sweeping. They are defined in New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503, which expressly permits the use of any other or different form of power of attorney desired by the parties concerned."

Know All Men by These Presents, which are intended to constitute a GENERAL POWER OF ATTORNEY pursuant to Article 5, Title 15 of the New York General Obligations Law:

That I .... do hereby

(insert name and address of the principal)

appoint ....

(insert name and address of the agent, or each agent, if more than one is designated)

my attorney(s)-in-fact TO ACT ....

...

(a) If more than one agent is designated and the principal wishes each agent alone to be able to exercise the power conferred, insert in this blank the word "severally." Failure to make any insertion or the insertion of the word "jointly" will require the agents to act jointly.

In my name, place and stead in any way which I myself could do, if I were personally present, with respect to the following matters as each of them is defined in Title 15 of Article 5 of the New York General Obligations Law to the extent that I am permitted by law to act through an agent:

[Strike out and initial in the opposite box any one or more of the subdivisions as to which the principal does NOT desire to give the agent authority. Such elimination of any one or more of subdivisions (A) to (L), inclusive, shall automatically constitute an elimination also of subdivision (M).]

To strike out any subdivision the principal must draw a line through the text of that subdivision AND write his initials in the box opposite.

(A) real estate transactions; [ ]
(B) chattel and goods transactions; [ ]
(C) bond, share and commodity transactions; [ ]
(D) banking transactions; [ ]
(E) business operating transactions; [ ]
(F) insurance transactions; [ ]
(G) estate transactions; [ ]
(H) claims and litigation; [ ]
(I) personal relationships and affairs; [ ]
(J) benefits from military service; [ ]
(K) records, reports and statements; [ ]
(L) full and unqualified authority to my attorney(s)-in-fact to delegate any or all of the foregoing powers to any person or persons whom my attorney(s)-in-fact should select; [ ]
(M) all other matters; [ ]

....
....
....
....

[Special provisions and limitations may be included in the statutory short form power of attorney only if they conform to the requirements of section 5-1503 of the New York General Obligations Law.]

In Witness Whereof I have hereunto signed my name and affixed my seal this .... day of ...., 19...

.... (Seal)
(Signature of Principal)

[ACKNOWLEDGEMENT]

The execution of this statutory short form power of attorney shall be duly acknowledged by the principal in the manner prescribed for the acknowledgement of a conveyance of real property.

No provision of this article shall be construed to bar the use of any other or different form of power of attorney desired by the parties concerned.

Every statutory short form power of attorney, to be valid, must contain, in bold face type or a reasonable equivalent thereof the "Notice" which is printed in bold face type at the beginning of this section.

2. A power of attorney is a "statutory short form power of attorney," as this phrase is used in the following sections of this title, when, but only when, it is in writing and has been duly acknowledged by the principal and it contains the exact wording of clause First set forth in subdivision one of this section, except that any one or more of subdivisions (A) to (M) may be stricken out and initialed by the principal, in which case the subdivisions so stricken out and initialed and also subdivision (M) shall be deemed eliminated. A "statutory short form power of attorney" may contain modifications or additions of the types described in section 5-1503 of this chapter.

3. If more than one agent is designated by the principal, such agents, in the exercise of the powers conferred, must act jointly unless the principal specifically provides in such statutory short form power of attorney that they are to act severally.

4. Notwithstanding subdivisions one and two of this section, a power of attorney executed either before or after September twenty-seventh, nineteen hundred sixty-four is a "statutory short form power of attorney" as this phrase is used in the following sections of this title when it uses the words "New York General Business Law, Article 13, sections 222-234" and the words "Article 13 of the New York General Business Law" in lieu of the words "New York General Obligations Law, Article 5, Title 15, sections 5-1502A through 5-1503" and "Article 5, Title 15 of the New York General Obligations Law" and in other respects complies with subdivision two of this section.

[L.1963, c. 576, § 1; amended L.1967, c. 197, § 1; L. 1980, c. 140, §§ 1, 2; L. 1981, c. 458, § 1.]

Sec. 5-1502A. Construction — real estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "real estate transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to lease, to receive, or otherwise to acquire either ownership or possession of any estate or interest in land;

2. To sell, to exchange, to convey either with or without covenants, to quit-claim, to release, to surrender, to mortgage, to incumber, to partition or to consent to the partitioning, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet, or otherwise to dispose of, any estate or interest in land;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim to land which exists, or is claimed to exist, in favor of the principal;

4. To do any act of management or of conservation with respect to any estate or interest in land owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect such estate or interest by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to purchase supplies, to hire assistance or labor and to make repairs or alterations in the structures or lands;

5. To utilize in any way, to develop, to modify, to alter, to replace, to remove, to erect or to install structures or other improvements upon any land in which the principal has, or claims to have, any estate or interest;

6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of an interest in land or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

7. To participate in any reorganization with respect to real property and to receive and to hold any shares of stock or instrument of similar character received in accordance with such plan of reorganization, and to act with respect thereto, including by way of illustration, but not of restriction, power to sell or otherwise to dispose of such shares, or any of them, to exercise or to sell any option, conversion or similar right with respect thereto, and to vote thereon in person or by the granting of a proxy;

8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

9. To execute, to acknowledge, to seal and to deliver any deed, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any real estate transaction or to intervene in any action or proceeding relating thereto;

11. To hire, to discharge, and to compensate any attorney, accountant, exp[illegible], witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

12. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any estate or interest in land.

All powers described in this section 5-1502A of the general obligations law shall be exercisable equally with respect to any estate or interest in land owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502B. Construction — chattel and goods transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "chattel and goods transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any chattel or goods or any interest in any chattel or goods;

2. To sell, to exchange, to convey either with or without covenants, to release, to surrender, to mortgage, to incumber, to pledge, to hypothecate, to pawn, to revoke, create or modify a trust, to grant options concerning, to lease or to sublet to others, or otherwise to dispose of any chattel or goods or any interest in any chattel or goods;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any mortgage, incumbrance, lien or other claim, which exists, or is claimed to exist, in favor of the principal, with respect to any chattel or goods or any interest in any chattel or goods;

4. To do any act of management or of conservation, with respect to any chattel or goods or to any interest in any chattel or goods owned, or claimed to be owned, by the principal, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession, or to protect such chattel or goods or interest in any chattel or goods, by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to move from place to place, to store for hire or on a gratuitous bailment, to use, to alter, and to make repairs or alterations of any such chattel or goods, or interest in any chattel or goods;

5. To demand, to receive, to obtain by action, proceeding or otherwise, any money or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of a chattel or goods or of any interest in any chattel or goods, or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

6. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

7. To execute, to acknowledge, to seal and to deliver any conveyance, revocation, declaration or modification of trust, mortgage, lease, notice, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any chattel or goods transaction or to intervene in any action or proceeding relating thereto;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any chattel or goods or interest in any chattel or goods.

All powers described in this section 5-1502B of the general obligations law shall be exercisable equally with respect to any chattel or goods or interest in any chattel or goods owned by the principal at the giving of the power of attorney or thereafter acquired, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502C. Construction — bond, share and commodity transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "bond, share and commodity transactions," must be construed to mean that the principal authorizes the agent:

1. To accept as a gift, or as security for a loan, to reject, to demand, to buy, to receive, or otherwise to acquire either ownership or possession of, any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto, together with the interest, dividends, proceeds or other distributions connected therewith;

2. To sell (including short sales), to exchange, to transfer either with or without a guaranty, to release, to surrender, to hypothecate, to pledge, to revoke, create or modify a trust, to grant options concerning, to loan, to trade in, or otherwise to dispose of any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto;

3. To release in whole or in part, to assign the whole or a part of, to satisfy in whole or in part, and to enforce by action, proceeding or otherwise, any pledge, incumbrance, lien or other claim as to any bond, share, instrument of similar character, commodity interest or any interest with respect thereto, when such pledge, incumbrance, lien or other claim is owned, or claimed to be owned, by the principal;

4. To do any act of management or of conservation with respect to any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto, owned or claimed to be owned by the principal or in which the principal has or claims to have an interest, including by way of illustration, but not of restriction, power to insure against any casualty, liability or loss, to obtain or to regain possession or to protect the principal's interest therein by action, proceeding or otherwise, to pay, to compromise or to contest taxes or assessments, to apply for refunds in connection therewith, to consent to and to participate in any reorganization, recapitalization, liquidation, merger, consolidation, sale or lease, or other change in or revival of a corporation or other association, or in the financial structure of any corporation or other association, or in the priorities, voting rights or other special rights with respect thereto, to become a depositor with any protective, reorganization or similar committee of the bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, belonging to the principal, to make any payments reasonably incident to the foregoing, to exercise or to sell any option, conversion or similar right, to vote in person or by the granting of a proxy (with or without the power of substitution), either discretionary, general or otherwise, for the accomplishment of any of the purposes enumerated in this section;

5. To carry in the name of a nominee selected by the agent any evidence of the ownership of any bond, share, other instrument of similar character, commodity interest or instrument with respect thereto, belonging to the principal;

6. To employ, in any way believed to be desirable by the agent, any bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, in which the principal has or claims to have any interest, for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal;

7. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any interest in a bond, share, other instrument of similar character, commodity interest or any instrument with respect thereto, or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

8. To agree and to contract, in any manner, and with any broker or other person, and on any terms, which the agent may select, for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement made by or on behalf of the principal;

9. To execute, to acknowledge, to seal and to deliver any consent, agreement, authorization, assignment, revocation, declaration or modification of trust, notice, waiver of notice, check, or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To execute, to acknowledge and to file any report or certificate required by law or governmental regulation;

11. To prosecute, to defend, to submit to arbitration, to settle and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any bond, share or commodity transaction or to intervene in any action or proceeding relating thereto;

12. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

13. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to any interest in any bond, share or other instrument of similar character, commodity, or instrument with respect to a commodity.

All powers described in this section 5-1502C of the general obligations law shall be exercisable equally with respect to any interest in any bond, share or other instrument of similar character, commodity, or instrument with respect to a commodity owned by the principal at the giving of the power of attorney or thereafter acquired, whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502D. Construction — banking transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "banking transactions," must be construed to mean that the principal authorizes the agent:

1. To continue, to modify and to terminate any deposit account, or other banking arrangement made by or on behalf of the principal prior to the creation of the agency;

2. To open either in the name of the agent alone, or in the name of the principal alone, or in both their names jointly or otherwise, a deposit account of any type with any banker or in any banking institution selected by the agent, to hire such safe deposit box or vault space and to make such other contracts for the procuring of other services made available by any such banker or banking institution as the agent shall think to be desirable;

3. To make, to sign and to deliver checks or drafts for any purpose, to withdraw by check, order or otherwise any funds or property of the principal deposited with, or left in the custody of, any banker or banking institution, wherever located, either before or after the creation of the agency;

4. To prepare from time to time financial statements concerning the assets and liabilities or income and expenses of the principal, and to deliver statements so prepared to any banker, banking institution or other person, whom the agent believes to be reasonably entitled thereto;

5. To receive statements, vouchers, notices or other documents from any banker or banking institution and to act with respect thereto;

6. To have free access at any time or times to any safe deposit box or vault to which the principal might have access, if personally present;

7. To borrow money by bank overdraft, or by promissory note of the principal given for such period and at such interest rate as the agent shall select, to give such security out of the assets of the principal as the agent shall think to be desirable or necessary for any such borrowing, to pay, to renew or to extend the time of payment of any note so given or given by or on behalf of the principal, and to procure for the principal a loan from any banker or banking institution by any other procedure made available by such banker or institution;

8. To make, to assign, to indorse, to discount, to guarantee, and to negotiate, for any and all purposes, all promissory notes, bills of exchange, checks, drafts or other negotiable or nonnegotiable paper of the principal, or payable to the principal or to his order, to receive the cash or other proceeds of any such transactions, to accept any bill of exchange or draft drawn by any person upon the principal, and to pay it when due;

9. To receive for the principal and to deal in and to deal with any trust receipt, warehouse receipt or other negotiable or nonnegotiable instrument, in which the principal has or claims to have an interest;

10. To apply for and to receive letters of credit or travelers checks from any banker or banking institution selected by the agent, giving such indemnity or other agreements in connection therewith as the agent shall think to be desirable or necessary;

11. To consent to an extension in the time of payment with respect to any commercial paper or any banking transaction in which the principal has an interest or by which the principal is, or might be, affected in any way;

12. To pay, to compromise or to contest taxes or assessments and to apply for refunds in connection therewith;

13. To demand, to receive, to obtain by action, proceeding, or otherwise any money or 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 himself, or by the agent in the execution of any of the powers described in this section, or partly by the principal and partly by the agent so acting, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred upon him by the statutory short form power of attorney;

14. To execute, to acknowledge, to seal and to deliver any instrument of any kind, in the name of the principal or otherwise, which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

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

16. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

17. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any banking transaction which does or might in any way affect the financial or other interests of the principal.

All powers described in this section 5-1502D of the general obligations law shall be exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or thereafter engaged in, and whether conducted in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502E. Construction — business operating transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "business operating transactions," must be construed to mean that the principal authorizes the agent:

1. To the extent that an agent is permitted by law thus to act for a principal, to discharge and to perform any duty or liability and also to exercise any right, power, privilege or option which the principal has, or claims to have, under any contract of partnership whether the principal is a general or special partner thereunder, to enforce the terms of any such partnership agreement for the protection of the principal, by action, proceeding or otherwise, as the agent shall think to be desirable or necessary, and to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which the principal is a party because of his membership in said partnership;

2. To exercise in person or by proxy or to enforce by action, proceeding or otherwise, any right, power, privilege or option which the principal has as the holder of any bond, share, or other instrument of similar character and to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which the principal is a party beca[illegible] [illegible]f any such bond, share, or other instrument of similar character;

3. With respect to any busine[illegible]prise which is owned solely by the principal

a. to continue, to modify, t[illegible]egotiate, to extend and to terminate any contractual arrangements made with any person, firm, ass[illegible] or corporation whatsoever by or on behalf of the principal with respect thereto prior to the creation of the agency;

b. to determine the policy of such enterprise as to the location of the site or sites to be utilized for its operation, as to the nature and extent of the business to be undertaken by it, as to methods of manufacturing, selling, merchandising, financing, accounting and advertising to be employed in its operation, as to the amount and types of insurance to be carried, as to the mode of securing, compensating and dealing with accountants, attorneys, servants and other agents and employees required for its operation, to agree and to contract, in any manner, and with any person and on any terms, which the agent thinks to be desirable or necessary for effectuating any or all of such decisions of the agent as to policy, and to perform, to rescind, to reform, to release or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

c. to change the name or form of organization under which such business is operated and to enter into such partnership agreement with other persons or to organize such corporation to take over the operation of such business, or any part thereof, as the agent shall think to be desirable or necessary;

d. to demand and to receive all moneys which are, or may become, due to the principal, or which may be claimed by the principal or on his behalf, in the operation of such enterprise, and to control and to disburse such funds in the operation of such enterprise in any way which the agent shall think to be desirable or necessary, to engage in any banking transactions which the agent shall think to be desirable or necessary for effectuating the execution of any of the powers of the agent described in this subdivision;

4. To prepare, to sign, to file and to deliver all reports, compilations of information, returns or other papers with respect to any business operating transaction of the principal, which are required by any governmental agency, department or instrumentality or which the agent shall think to be desirable or necessary for any purpose, and to make any payments with respect thereto;

5. To pay, to compromise or to contest taxes or assessments and to do any act or acts which the agent shall think to be desirable or necessary to protect the principal from illegal or unnecessary taxation, fines, penalties or assessments in connection with his business operations, including power to attempt to recover, in any manner permitted by law, sums paid before or after the creation of the agency as taxes, fines, penalties or assessments;

6. To demand, to receive, to obtain by action, proceeding or otherwise, any money, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any business operation of such principal, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred upon him by the statutory short form power of attorney;

7. To execute, to acknowledge, to seal and to deliver any deed, assignment, mortgage, lease, notice, consent, agreement, authorization, check or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of, or against, the principal based on or involving any business operating transaction or to intervene in any action or proceeding relating thereto;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any business operated by the principal, which the agent shall think to be desirable or necessary for the furtherance or protection of the interests of the principal.

All powers described in this section 5-1502E of the general obligations law shall be exercisable equally with respect to any business in which the principal is interested at the creation of the agency or in which the principal shall thereafter become interested, and whether operated in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502F. Construction — insurance transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "insurance transactions," must be construed to mean that the principal authorizes the agent:

1. To continue, to pay the premium or assessment on, to modify, to rescind, to release or to terminate any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to the creation of the agency which insures either the principal or any other person, without regard to whether the principal is or is not a beneficiary thereunder;

2. To procure new, different or additional contracts of insurance on the life of the principal or protecting the principal with respect to ill-health, disability, accident or liability of any sort, to select the amount, the type of insurance contract and the mode of payment under each such policy, to pay the premium or assessment on, to modify, to rescind, to release or to terminate, any contract so procured by the agent and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;

3. To apply for and to receive any available loan on the security of the contract of insurance, whether for the payment of a premium or for the procuring of cash, to surrender and thereupon to receive the cash surrender value, to exercise any election as to beneficiary or mode of payment, to change the manner of paying premiums, to change or to convert the type of insurance contract, with respect to any contract of life, accident, health, disability or liability insurance as to which the principal has, or claims to have, any one or more of the powers described in this section and to change the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot be such new beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal;

4. To demand, to receive, to obtain by action, proceeding or otherwise, any money, dividend, or other thing of value to which the principal is, or may become, or may claim to be entitled as the proceeds of any contract of insurance or of one or more of the transactions enumerated in this section, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To apply for and to procure any available governmental aid in the guaranteeing or paying of premiums of any contract of insurance on the life of the principal;

6. To sell, to assign, to hypothecate, to borrow upon, or to pledge the interest of the principal in any contract of insurance;

7. To pay, from such proceeds or otherwise, to compromise or to contest, and to apply for refunds in connection with, any tax or assessment levied by a taxing authority with respect to any contract of insurance or the proceeds thereof or liability accruing by reason of such tax or assessment;

8. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select for the accomplishment of any of the purposes enumerated in this section, and to perform, to rescind, to reform, to release or to modify any such agreement or contract;

9. To execute, to acknowledge, to seal and to deliver any consent, demand, request, application, agreement, indemnity, authorization, assignment, pledge, notice, check, receipt, waiver or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

10. To continue, to procure, to pay the premium or assessment on, to modify, to rescind, to release, to terminate or otherwise to deal with any contract of insurance, other than those enumerated in subdivisions one or two of this section, whether fire, marine, burglary, compensation, disability, liability, hurricane, casualty, or *other* type, or any combination of insurance, to do any act or acts with respect to any such contract or with respect to its proceeds or enforcement which the agent thinks to be desirable or necessary for the promotion or protection of the interests of the principal;

11. To prosecute, to defend, to submit to arbitration, to settle, and to propose or to accept a compromise with respect to any claim existing in favor of, or against, the principal based on or involving any insurance transaction or to intervene in any action or proceeding relating thereto;

12. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section and for the keeping of needed records thereof; and

13. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with procuring, supervising, managing, modifying, enforcing and terminating contracts of insurance in which the principal is the insured or is otherwise in any way interested.

All powers described in this section 5-1502F of the general obligations law shall be exercisable with respect to any contract of insurance in which the principal is in any way interested, whether made in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502G. Construction — estate transactions

In a statutory short form power of attorney, the language conferring general authority with respect to "estate transactions," must be construed to mean that the principal authorizes the agent:

1. To the extent that an agent is permitted by law thus to act for a principal, to apply for and to procure, in the name of the principal, letters of administration, letters testamentary, letters of trusteeship, or any other type of authority, either judicial or administrative, to act as a fiduciary of any sort;

2. To the extent that an agent is permitted by law thus to act for a principal, to represent and to act for the principal in all ways and in all matters affecting any estate of a decedent, absentee, infant or incompetent, or any trust or other fund, out of which the principal is entitled, or claims to be entitled, to some share or payment, or with respect to which the principal is a fiduciary;

3. To accept, to reject, to receive, to receipt for, to sell, to assign, to release, to pledge, to exchange, or to consent to a reduction in or modification of, any share in or payment from any estate, trust or other fund;

4. To demand, to obtain by action, proceeding or otherwise any money, or other thing of value to which the principal is, or may become, or may claim to be entitled by reason of the death testate or intestate of any person or of any testamentary disposition or of any trust or by reason of the administration of the estate of a decedent or absentee or of the guardianship of an infant or incompetent or the administration of any trust or other fund, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity or effect of any deed, will, declaration of trust, or other transaction affecting in any way the interest of the principal, to initiate, to participate in and to oppose any proceeding, judicial or otherwise, for the removal, substitution or surcharge of a fiduciary, to conserve, to invest, to disburse or to utilize anything so received for purposes enumerated in this section, and to reimburse the agent for any expenditures properly made by him in the execution of the powers conferred on him by the statutory short form power of attorney;

5. To prepare, to sign, to file and to deliver all reports, compilations of information, returns or papers with respect to any interest had or claimed by or on behalf of the principal in any estate, trust, or other fund, to pay, to compromise or to contest, and to apply for refunds in connection with, any tax or assessment, with respect to any interest had or claimed by or on behalf of the principal in any estate, trust or other fund or by reason of the death of any person, or with respect to any property in which such interest is had or claimed;

6. To agree and to contract, in any manner, and with any person and on any terms, which the agent may select, for the accomplishment of the purposes enumerated in this section, and to perform, to rescind, to reform, to release, or to modify any such agreement or contract or any other similar agreement or contract made by or on behalf of the principal;

7. To execute, to acknowledge, to verify, to seal, to file and to deliver any consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance or other instrument which the agent may think useful for the accomplishment of any of the purposes enumerated in this section;

8. To submit to arbitration or to settle, and to propose or to accept a compromise with respect to any controversy or claim which affects the estate of a decedent, absentee, infant or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, and to do any and all acts which the agent shall think to be desirable or necessary in effectuating such compromise;

9. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants, when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section, and for the keeping of needed records thereof; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, with respect to the estate of a decedent, absentee, infant or incompetent, or the administration of a trust or other fund, in any one of which the principal has, or claims to have, an interest, or with respect to which the principal is a fiduciary.

All powers described in this section 5-1502G of the general obligations law shall be exercisable equally with respect to any estate of a decedent, absentee, infant or incompetent, or the administration of any trust or other fund, in which the principal is interested at the giving of the power of attorney or may thereafter become interested, and whether located in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502H. Construction — claims and litigation

In a statutory short form power of attorney, the language conferring general authority with respect to "claims and litigation," must be construed to mean that the principal authorizes the agent:

1. To assert and to prosecute before any court, administrative board, department, commissioner or other tribunal, any cause of action, claim, counterclaim, offset or defense, which the principal has, or claims to have, against any individual, partnership, association, corporation, government, or other person or instrumentality, including, by way of illustration and not of restriction, power to sue for the recovery of land or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance, or for any other relief;

2. To bring an action of interpleader or other action to determine adverse claims, to intervene or to interplead in any action or proceeding, and to act in any litigation as amicus curiae;

3. In connection with any action or proceeding or controversy, at law or otherwise, to apply for and, if possible, to procure a libel, an attachment, a garnishment, an order of arrest or other preliminary, provisional or intermediate relief and to resort to and to utilize in all ways permitted by law any available procedure for the effectuation or satisfaction of the judgment, order or decree obtained;

4. In connection with any action or proceeding, at law or otherwise, to perform any act which the principal might perform, including by way of illustration and not of restriction, acceptance of tender, offer of judgment, admission of any facts, submission of any controversy on an agreed statement of facts, consent to examination before trial, and generally to bind the principal in the conduct of any litigation or controversy as seems desirable to the agent;

5. To submit to arbitration, to settle, and to propose or to accept a compromise with respect to, any claim existing in favor of or against the principal, or any litigation to which the principal is, or may become or be designated a party;

6. To waive the issuance and service of a summons, citation or other process upon the principal, to accept service of process, to appear for the principal, to designate persons upon whom process directed to the principal may be served, to execute and to file or deliver stipulations on the principal's behalf, to verify pleadings, to appeal to appellate tribunals, to procure and to give surety and indemnity bonds at such times and to such extent as the agent shall think to be desirable or necessary, to contract and pay for the preparation and printing of records and briefs, to receive and to execute and to file or deliver any consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument which the agent shall think to be desirable or necessary in connection with the prosecution, settlement or defense of any claim by or against the principal or of any litigation to which the principal is or may become or be designated a party;

7. To appear for, to represent and to act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, with respect to any reorganization proceeding, or with respect to any receivership or application for the appointment of a receiver or trustee which, in any way, affects any interest of the principal in any land, chattel, bond, share, commodity interest, chose in action or other thing of value;

8. To hire, to discharge, and to compensate any attorney, accountant, expert witness or other assistant or assistants when the agent shall think such action to be desirable for the proper execution by him of any of the powers described in this section;

9. To pay, from funds in his control or for the account of the principal, any judgment against the principal or any settlement which may be made in connection with any transaction enumerated in this section, and to receive and conserve any moneys or other things of value paid in settlement of or as proceeds of one or more of the transactions enumerated in this section, and to receive and endorse checks and to deposit the same; and

10. In general, and in addition to all the specific acts in this section enumerated, to do any other act or acts, which the principal can do through an agent, in connection with any claim by or against the principal or with litigation to which the principal is or may become or be designated a party.

All powers described in this section 5-1502H of the general obligations law shall be exercisable equally with respect to any claim or litigation existing at the giving of the power of attorney or thereafter arising, and whether arising in the state of New York or elsewhere.

[L.1963, c. 576, § 1.]

Sec. 5-1502I. Construction — personal relationships and affairs

In a statutory short form power of attorney, the language conferring general authority with respect to "personal relationships," must be construed to mean that the principal authorizes the agent:

1. To do all acts necessary for maintaining the customary standard of living of the spouse and children, and other dependents of the principal, including by way of illustration and not by way of restriction, power to provide living quarters by purchase, lease or by other contract, or by payment of the operating costs, including interest, amortization payments, repairs and taxes, of premises owned by the principal and occupied by his 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 such spouse, children and other dependents, including, among other things, shelter, clothing, food and incidentals;