Powers of Attorney: Protections, Pitfalls and Practical Applications[1]

Presentation to The Chicago Estate Planning Council

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[1] This presentation is dedicated to my cousin, Eric Biggs, who died on October 5, 2011 after life support was terminated in a last loving act by his wife. Eric was a good man who died too young at age 37.

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I. INTRODUCTION

A confession – like many estate planning attorneys, I often focus the attention of the client on the importance of drafting a good will and trust. I emphasize that if the person dies intestate, the state law has an estate plan ready to go called intestacy. I also outline the estate taxes likely due with no or limited planning. By the end of the meeting, the client is exhausted from all the numbers and complexities, and only then, too often, do I point out the need for disability planning, usually through powers of attorney for property and health care. In fact, this discussion often goes like this:

Attorney: One last thing we need to discuss – it is important for you to have powers of attorney for property and health care in case you become disabled and cannot make decisions for yourself.

Client: OK, let's do that.

Attorney: Great! I assume you would want the person you named as executor and successor trustee to be the property agent, so that if you are disabled, that person can handle your retirement accounts, file your taxes, pay your bills and sue the guy who hit your car and put you in a coma in the first place.

Client: Yeah, that makes sense.

Attorney: Then last question – for health care, who do you want making those decisions, including who might have to pull the plug on you, assuming that is what you want, if you are hooked on a machine and unlikely to walk away from that?

Client: Let me think about that. Just put a blank in the draft right now.

Attorney: OK, we are good to go.

I am wrong to have done this, but I suspect I am not alone. Estate planning has become more commoditized in recent years, and clients expect this work done for a flat fee, or at the very least a fee range. Thus, we always are balancing the need to offer comprehensive legal advice with the need time constraints inherent in the fee pressure. Because we in Illinois have a statutory short form power of attorney for property and health care, powers of attorney appear to be one area where we can offer value for minimum time commitment. We often take for granted the language of these forms and assume this is standard operating procedure, so let's just get it done. In truth, this is actually often fine, as the needs of many of our clients are somewhat uniform, despite our assertion that every client is unique and different.

Even if this remains the case in most client matters, we as estate planning professionals, whether as drafting attorneys or as the accountants, financial advisors, bank officers and medical professionals who must recognize and interpret these documents, owe it to ourselves and our clients to have a thorough understanding of the protections, pitfalls and planning opportunities offered by powers of attorney.

II. POWERS OF ATTORNEY – IN GENERAL

A power of attorney is a document in which one person (the "principal") grants another person (the "agent") certain authority to act in the stead of the principal. This is the essence of the law of agency. Under agency law, the principal is bound to the acts of the agent as if the principal had done the thing personally. Furthermore, third parties generally are allowed to rely on the authority of the agent – if this were not the case, then a power of attorney would in practice have no effect, as financial institutions and other contracting parties would exercise extreme prudence and most likely disregard the agent altogether.

Under common law, an agency relationship terminated on the death or incapacity of the principal. See RESTATEMENT (THIRD) OF AGENCY, § 3.08 (2005). Thus, it was only with the creation of statutes that allowed for "durable" powers of attorney that powers of attorney could now be used in lieu of court-supervised guardianship. In Illinois, this law came into effect with the enactment of the Illinois Power of Attorney Act on September 22, 1987. 755 ILCS 45/1 et al. (the "Act").

An agent has a fiduciary relationship with the principal. A fiduciary relationship incorporates the highest duties one person can owe to another, duties so great that often the fiduciary with the duty must act in the best interest of the other person, even over his own interest. Duties of an agent to the principal under common law include the duty of loyalty, the duty not to acquire a material benefit by virtue of being the agent, the duty not to dealing adversely with the principal, the duty to provide information to the principal and the duty to act with care, competence and diligence. See RESTATEMENT (THIRD) OF AGENCY, § 8.01-8.12 (2005).

In general, an agent can undertake any legal action the principal could do. As just a sample of the powers generally bestowed, an agent can open and close accounts, invest assets, buy and sell property, file required legal documents, like taxes. Thus, it is vital to ensure that the agent chosen is willing and capable of fulfilling all these important tasks and more and has the integrity to engage in such matters for the benefit of the principal.

A. Protections

In a word, the protections come from power conferred upon the agent. No one knows if he or she will become incapacitated, but individuals can determine who will step into their shoes and act if the person cannot do so. Thus, far from relinquishing control, powers of attorney give a person a level of control – control over who will be in charge. An agent who properly fulfills the agent's duties can protect the principal by controlling and investing the principal's property, sell property that should be sold, maintain and care for property that should be maintained. An agent also can pay bills, file tax returns and even sue a third party that has injured the principal in some manner.

B. Pitfalls

Conversely, power in the hands of the wrong agent is the major pitfall of a power of attorney. An agent may be neglectful and incompetent in fulfilling the agent's duties at the best and unscrupulous and self-serving at the worst. Even if the agent acts against the interest of the

principal, say by withdrawing funds from an account for the agent's own use, the bank must honor the agent's withdrawal request. With a disabled principal, only the intervention of a third party or the state can stop a bad agent from further harming the principal, and since much of the agent's actions are private and hard to detect, it is a given that there are many agents out there who see appointment as an agent under a power of attorney as a license to steal. For this reason, the single most critical decision of the principal must be in his or her selection of the agent, even above the powers to be conferred on that agent in the event of the principal's incapacity.

C. A Cautionary Word on Failure to Have a Power of Attorney – Guardianship!

With no power of attorney, in the event an individual becomes disabled, that person's financial affairs and health care become the responsibility of a court-appointed guardian under Article XIa. of the Illinois Probate Act. 755 ILCS 11a-1 - 11a-23. Guardianship requires a formal court proceeding with notice to the alleged disabled person and an opportunity for all interested parties to present evidence, first to prove or refute that a person is incapacitated, and second as to who should be the named guardian of the disable person. Even then, the proceeding does not end. A guardian is required to report to the court and provide accountings and also to seek court permission for various actions the guardian wishes to undertake. As can be imagined, guardianships are expensive, time-consuming, public and often contentious proceedings that can go on for decades. A valid power of attorney can cut through all this and keep the management of a disabled person's financial and health affairs a more simple and private matter. It is for this reason that we often advocate to clients to have their children sign powers of attorney as soon as they reach age 18 (a good time for this is before a child goes off to college).

Even if there is a power of attorney, sometimes guardianship is still necessary. Why? Because most people do not quickly become incapacitated, they become disabled over time, with periods of capacity and periods of incapacity. It is during this time that the person is most vulnerable. If a named agent believes the principal is incapacitated, but the principal feels otherwise, how then does an agent assume control pursuant to the power of attorney. An agent seeks a medical determination from the principal's physician, only to be told that the physician is reluctant to give such determination in writing for fear of violating the principal's rights and/or being sued. For a hostile principal unwilling to give up control, guardianship might be the only recourse for loved ones, even though there is a power of attorney. An alleged disabled person disputing the need for guardianship might be compelled to be examined by one or more physicians.

If the court determines there is incapacity, then the power of attorney will be used to decide who is named as guardian; but, if the principal, though diminishing in capacity, is found to still be legally capable of managing his or her own affairs, even unwisely, rest assured that the individual's first action will be to remove those who sought guardianship from any future fiduciary role, and quite probably as beneficiaries at the death of the individual. In the twilight between capacity and incapacity, we as advisors must be the most sensitive to the dignity of our clients, family relationships and, above all else, to the legal protection of the client. There are no easy answers here, and neither the guardianship provisions in the Probate Code nor the Power of Attorney Act can address all the problems of this critical period in the life of an individual.

III. STATUTORY V. NON-STATUTORY POWERS OF ATTORNEY

Illinois has a very detailed statute pertaining to powers of attorney, so detailed that the statute contains a form for both a short form power of attorney for property and a short form power of attorney for health care. Most states do not have statutory forms, relying instead on other sources for power of attorney forms, including local bar associations. This is ironic given that a common criticism of attorneys in other states, especially attorneys in states that have adopted the Uniform Trust Code in some form or another, is that our trust statutes are somewhat limited and vague; yet, it is Illinois with the comprehensive power of attorney statutes.

Illinois law allows individuals to create powers of attorney that do not follow the form laid out in the statute. Such powers of attorney are non-statutory powers. We see them all the time. When a person opens an investment account, he or she can confer powers on another over the account, often using the institution's form. If a person is admitted to a hospital, often the hospital will demand a health care power of attorney and, if one does not exist, the patient signs one on admission (this latter scenario happened to my wife when she was admitted to deliver our first child). Such powers of attorney are valid under Illinois law, but they are not statutory.

Why does it matter? The Illinois Power of Attorney Act provides protections to agents and, most importantly, third parties (banks, hospitals, etc.) if a power of attorney is presented that is validly executed and follows the statutory form. Under the Act, a person who relies in good faith on a copy of the power of attorney (a copy alone is sufficient under Section 2-8) is fully protected and released to the same extent as if the reliant had dealt directly with the principal. Conversely, a third party who fails to comply with direction of the agent risks civil penalties for such noncompliance. 755 ILCS 45/2-8(d). A nonstatutory power does not carry the same weight; thus, most attorneys counsel on the use of statutory powers of attorney, and these can be customized by the addition or limitation of powers as directed in the statutory short forms.

The new Act expressly recognizes nonstatutory powers of attorney for property if (1) it is signed by the principal, (2) designates the agent and lists the agent's powers, (3) it is attested by at least one witness to the principal's signature, and (4) the principal has acknowledged his or her signature before a notary public. The last two requirements are new to the Act. 755 ILCS 45/3-3(b).

A nonstatutory health care power of attorney only requires the first two requirements (i.e. a nonstatutory health care power of attorney need not be witnessed or notarized to still be valid under Illinois law). A statutory health care power of attorney still requires one witness but no notary.

IV. RECENT CHANGES TO THE ILLINOIS POWER OF ATTORNEY LAW

Illinois had not amended its power of attorney laws in over a decade; but, during that period there were efforts to make changes in line with practical issues that were not addressed, the concern about abuse of disabled persons, recent case law and federal laws, such as HIPAA. The Act, which passed both houses of the Illinois Legislature, was drafted with input by various organizations, including the ISBA, AARP, the Illinois State Medical Society, the Illinois Hospital Association, the Illinois Credit Union League, and the Uniform Law Conference.

A. P.A. Act 96-1195 (Overhaul of the Illinois Power of Attorney Act)

On July 22, 2010, Public Act 96-1195 was enacted with an effective date of July 1, 2011. This act overhauled the Illinois Power of Attorney Act for the first time since 2000. The changes to the Act (which include changes to the short form powers of attorney for property and health care) include the following:

1. An increase in the standard of care of the agent, which requires more oversight of the agent's actions and remedies against an agent who violates the standard of care, including standing for other persons in an action against an agent who breaches the agent's duties.

2. A new notice to the principal of the legal significance of the power of attorney, as well as a notice to the agent of the agent's responsibilities in the case of a property power of attorney.

3. New sections on successor agents and a statutory certification and acceptance of authority by the successor agent (although co-agents are still not allowed under the statutory forms).

4. Default provisions for co-agents in non-statutory power of attorney forms, and a new statutory certification and acceptance of authority by the co-agent (although co-agents are still not allowed under the statutory forms).

5. Limitations on who may act as a witness under a statutory form.

6. HIPAA issues addressed in the health care power of attorney form.

7. Additional language on disposition of remains in the health care power of attorney form.

8. New broader terminology in the statutory health care power of attorney form (replacement of "irreversible coma" with "permanent unconsciousness", "incurable or irreversible condition" or "terminal condition").

The stated goal of all these changes was to offer greater protections to incapacitated principals and make these forms more user-friendly.

B. Significant Changes to the Statutory Short Form Powers of Attorney

One of the biggest changes is the introduction of statutory new documents, including the notice to the principal which precedes the power of attorney form itself. This notice is in lieu of the all caps notice on the prior forms themselves, and it is more comprehensive in explaining to the principal that legal significance signing a power of attorney.

Express Prohibitions on Who Can Witness

In the past, we might have counseled against certain persons acting as witnesses, such as a person named as agent. Under the new forms, certain persons are prohibited from witnessing the powers of attorney for them to qualify as statutory forms, including the following:

1. The attending physician (this term is defined in 755 ILCS 45/4-4(a)) or mental health service-provider or a relative of the physician or provider;

2. An owner, operator, or relative of an owner or operator of a healthcare facility in which the principal is a patient or resident;

3. A parent, sibling, descendant, or any spouse of the parent, sibling or descendant of either the principal or any agent or successor agent under the POA, whether such relationship is by blood, marriage, or adoption; or

4. An agent or successor agent under the POA.

In fact, the witness section calls upon the witness to certify that he or she is not a member of one of these prohibited groups.

Notice to the Principal

Each new statutory short form is preceded by a notice of the significance of signing a power of attorney. See 755 ILCS 45/3-3(c); 755 ILCS 45/4-10(b); see also Exhibit A and Exhibit G attached. The notice is a separate document from the power of attorney form itself. The principal is supposed to initial the bottom of the notice to signify that he or she has read the notice (though in my experience, most principals are still just initialing without reading, unless they are reading the notice before meeting with me to sign the powers of attorney). The notice to the principal is required for the power of attorney to be a statutory power of attorney, though the initials of the principal are not required for the power of attorney to be statutory. 755 ILCS 45/3-3(a)-(b); 755 ILCS 4-10(a).

Notice to the Agent Under Power of Attorney for Property

Likewise, there is now a statutory notice to the agent under the power of attorney or property (but not for health care) explaining the agent's duties and responsibilities. See 755 ILCS 45/3-3(e); see also Exhibit C attached. The notice explains agency law in general and lists five things that the agent must do and five things the agent must refrain from doing. It also clarifies how an agent signs legal documents on behalf of the principal. Finally, the notice explains that an agent can be liable for damages, including attorney's fees and expenses, for breach of the agent's duties and encourages the agent to seek legal advice if need be to understand these duties. Interestingly enough, unlike the notices to principals, there is no provision for the agent to initial the notice to agent acknowledging having read the notice. The notice to the agent is required for the power of attorney to be a statutory power of attorney. 755 ILCS 45/3-3(a).

HIPAA Provisions and Provisions Regarding Remains in Power of Attorney for Health Care

The power of attorney for health care form has expanded to include language regarding the Health Insurance Portability and Accountability Act (HIPAA). Remember that earlier in the last decade there were many practitioners and commentators fretting about the impact of HIPAA on powers of attorney, specifically the old "chicken and the egg" problem. Medical professionals and institutions were under severe penalty for disclosing confidential medical information and were afraid to do so; yet, a named agent whose authority to act only started upon

a determination of incapacity of the principal needed this information to know that he or she could act.

The recent changes to the law have cleared this up. The agent now can serve as the principal's "personal representative" to access the principal's confidential health records as soon as the principal signs the power of attorney for health care, even though the agency itself has not started because the principal is not incapacitated. The agent thus can obtain information from the principal's physician that the principal is incapacitated and the effective event for the agency to begin has occurred. In addition, there is now the provision that a power of attorney for health care trumps prior agreements of the principal with health care providers and institutions regarding HIPAA disclosure.

In addition to HIPAA provisions, the new health care power of attorney form also outlines the other powers of an agent, powers that survive the death of the principal. In addition to making anatomical gifts if the principal so authorized (a more recent addition to the health care power of attorney that preceded the recent act), an agent under a new statutory form has the power to order an autopsy and dispose of the principal's remains (in lieu of a separate agency under Section 10 of the Disposition of Remains Act, 755 ILCS 65/10). Thus the agent under the new power of attorney has complete authority to make all legal decisions regarding the principal's remains over the objection of all other persons.

Miscellaneous Changes to the Statutory Forms

There are other subtle but important changes as well to the property power of attorney. First, the explanation of powers in Section 3-4 is incorporated by reference into the statutory short form but does not require physical attachment of a copy of this section as it did before. Second, Section 3-4(j) clarifies that an agent does not have legal authority to represent the principal as an attorney-at-law, and this is also expressly stated in the form itself. Finally, Section 3-4(o) clarifies that the catch-all power described as "All other property transactions" does not trump specific limitations of powers in the preceding subsections, and the words ""powers and" have been deleted for this reason.

In both the power of attorney for property and for health care forms, the notes have language for the springing power of "a written determination by your physician that you are incapacitated," which does not require a legal determination of disability. Many attorneys had been placing similar language in the forms, but this now clarifies it further.

Finally, even though the Act calls for 14-point type for the notes explaining provisions of the power of attorney, but he Act states that it is still statutory a power of attorney " if the explanatory language throughout the form (the language following the designation "NOTE:") is distinguished in some way from the legal paragraphs in the form, such as the use of boldface or other difference in typeface and font or point size, even if the "Notice" paragraphs at the beginning are not on a separate sheet of paper or are not in 14-point type, or if the principal's initials do not appear in the acknowledgement at the end of the Notice paragraphs." 755 ILCS 45/3-3(b). I like to use boldface type for the note provisions, and that is shown in the sample powers of attorney attached (see Exhibit B and Exhibit H for samples of the powers of attorney for property and health care incorporating my preferred additional language and style).

C. Changes in the Act Not in the Statutory Forms

There are also a few changes to the Act itself separate from the changes to the statutory short forms.

Provisions for Co-Agents

A constant fight we have with our clients is over co-agents. Co-agency is not prohibited by Illinois law, but co-agents are not allowed for the power of attorney to be a statutory power of attorney. That being said, often a principal will still want to name co-agents, often children. Before the changes to the Act, there was no statutory authority dealing with co-agents and their rights and duties vis-à-vis each other. New Section 2-10.5 addresses co-agents. 755 ILCS 45/2-10.5. Specifically, a co-agent is not responsible for the unilateral acts of the other agent unless the co-agent helped to conceal that agent's actions. Furthermore, if the co-agent obtains knowledge of a breach of duty by another co-agent, the non-breaching co-agent has a duty to notify the principal, if the principal has capacity, and if not the co-agent must take whatever action is necessary to protect the principal's best interest. 755 ILCS 45/2-10.5(c).

Co-agents may act only with majority consent unless otherwise stated in the power of attorney itself; however, majority consent is not required if prompt action is necessary to accomplish the purposes of the agency or to avoid irreparable injury to the principal's interests, and a co-agent is unavailable because of absence, illness, or other temporary incapacity. The statute contains a statutory form for the co-agent's certification and acceptance of authority in the event that he or she needs to act alone without the co-agent, and a third party is allowed to rely on this certificate unless the third party has knowledge

A form is provided for a co-agent to certify such unavailability upon request by a third party; but, interestingly enough, the statute is clear that the certificate is not necessary for the third party dealing with only one of the co-agents to be protected from future claims if it in good faith relied on the co-agent's representations and also a copy of the power of attorney. 755 ILCS 45/2-10.5(d). A copy of the statutory form for a co-agent's certification and acceptance of authority is attached as Exhibit F.

Successor Agents

The Act has always allowed a principal to designate one or more successor agents to act in succession; but, the Act never before went into further detail on this matter. New Section 10.3 makes this explicit in the Act. It also goes on to state that upon the request of a third party, the successor agent must furnish an affidavit or certification and acceptance of authority, and the statute contains a new form reproduced and attached as Exhibit E. The new Act protects any person who acts in good-faith reliance on the successor agent's representations to that person regarding the predecessor agent's unavailability. 755 ILCS 45/2-10.3(c).

Increase in the Agent's Standard of Care and Duties

Under Section 2-7, an agent is under no obligation to exercise any of the powers granted under the power of attorney. However, to the extent that the agent does so act, he or she must do so under an express standard of care. Under the old law, that was "due care". Under the new law, it is "due care, competence and diligence." 755 ILCS 45/2-7(a). Furthermore, the agent

must also act in accordance with the principal's expectations to the extent actually known to the agent and otherwise in the principal's best interests. 755 ILCS 45/2-7(b).

The new Act also requires the agent to maintain an accounting of receipts and disbursements and significant actions at all times, not just when the principal is incapacitated. Of course, if the agency has not started because the principal is not incapacitated, this is a moot point. Such an accounting must be provided on request to the principal, or if the principal is incapacitated, to a guardian or another person acting as a fiduciary to the principal and if the principal is deceased, to the personal representative or the successors in interest of the principal's estate. 755 ILCS 45/2-7(c). In addition, certain agencies as listed in the statute can also demand the agent's accounting.

Failure by the agent to provide the record of receipts, disbursements and significant actions within 21 days without good cause can result in the agent having to pay the attorney's fees and costs of the party that had to bring an action to compel the agent's compliance. 755 ILCS 45/2-7(d).

Standing to Protect the Principal

Under the old law, it was not expressly stated who had the right to bring an action against the agent. After all, if the principal was incapacitated and represented by the agent, who had standing? The law stated that an action could be brought by an "interested person" but did not clarify who constituted an interested person. Often, an agent who disregarded or willfully breached his or her fiduciary duties would only be brought to account after the death of the principal by the principal's heirs-at-law or legatees. The changes to the Act, however now grant standing to various interested persons and defines the same to include (1) the principal or the agent, (2) a guardian or other fiduciary of the principal, (3) the principal's spouse, parent, or descendant, (4) a person who would be a presumptive heir-at-law of the principal, (5) a person named as a beneficiary to receive any property, benefit, or contractual right upon the principal's death, or as a beneficiary created by or for the principal, (6) the provider agency as defined in Section 2 of the Elder Abuse and Neglect Act, a representative of the Office of the State Long Term Care ombudsman, or a governmental agency having regulatory authority to protect the welfare of the principal, and (7) the principal's caregiver or another person who demonstrates sufficient interest in the principal's welfare. 755 ILCS 45/2-10(f). It is unclear who would qualify in the catch-all seventh category, but I suspect that might include a longtime companion not married to the principal, although with the recognition of civil unions it will be interesting to see how the courts interpret who might be a person who has demonstrated sufficient interest in the principal's welfare.

If a court finds that the agent has acted for the principal's benefit of has acted contrary to the agent's fiduciary duties, the court may assess reasonable costs and attorney's fees against the agent that cannot be reimbursed from the principal's estate. 755 ILCS 45/2-10(d). If the agent's actions have caused substantial harm to the principal's person or property, the court may also award damages in an amount necessary to restore the value of the property to what it would have been if no breach had occurred. 755 ILCS 45/2-10(e).

Finally, the new law states clearly that venue for bringing actions against the agent is in the county (1) in which the guardian was appointed or, (2) if no Illinois guardian is appointed,

then in the county in which the agent or principal resides or where the principal owns real property. 755 ILCS 45/2-10(h).

Powers of Attorney Executed in Another State or Country and Pre-Existing Powers of Attorney

The new Act expressly allows for powers of attorney executed in another state or country provided that those documents complied at the time of execution with (1) the law of the other state or country where executed, (2) the law of Illinois, (3) the law of the state or country where the principal is domiciled, has a place of abode or business, or where the principal is a national or (4) the law of the state or country where the agent is domiciled or has a place of business. 755 ILCS 45/2-10.6(a). Furthermore, any power of attorney executed under the old law while it was in effect is still valid. 755 ILCS 45/2-10.6(b).

D. P.A. Act 97-0148 (More Changes)

On July 14, 2011 (only two weeks after the amended law went into effect), the Illinois Legislature amended the Illinois Power of Attorney Act again, with a retroactive effective date of July 1, 2011 (P.A. 97-0148). Amendments were made to the short form health care power of attorney and removed some language that troubled health care providers. Here are those changes:

Change to the fifth paragraph notice to the individual:

The Powers you give your agent, your right to revoke those powers, and the penalties for violating the law are explained more fully in Sections 4-5, 4-6, and 4-10(c) ~~4-10(b)~~ of the Illinois Power of Attorney Act. This form is part of that law. The "NOTE" paragraphs throughout this form are instructions.

Deletion of text in Paragraph 1.D(iii):

(iii) The authority given to the person named as my agent shall supersede any prior agreement that I may have with my health care providers to restrict access to, or disclosure of, my individually identifiable health information. The authority given to the person named as my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider. ~~The authority given to the person named as my agent to serve as my "personal representative" as defined under HIPAA and regulations thereunder and to access my individually identifiable health information or authorize the release of the same to third parties shall take effect immediately, even if I designate in Paragraph 3 of this document that this agency shall otherwise take effect at some future date.~~ (NOTE: The above grant of power is intended to be as broad as possible so that your agent will have the authority to make any decision you could make to obtain or terminate any type of health care, including withdrawal of food and water and other life-sustaining measures, if your agent believes such action would be consistent with your intent and desires. If you wish to limit the scope of your agent's powers or prescribe special rules or limit the power to make an anatomical gift, authorize autopsy or dispose of remains, you may do so in the following paragraphs.)

Deletion of text to the final NOTE in Paragraph 2:

(NOTE: THIS POWER OF ATTORNEY MAY BE AMENDED OR REVOKED BY YOU IN THE MANNER PROVIDED IN SECTION 4-6 OF THE ILLINOIS "POWERS OF ATTORNEY FOR HEALTH CARE LAW"). ~~YOUR AGENT CAN ACT IMMEDIATELY, UNLESS YOU SPECIFY OTHERWISE; BUT YOU CANNOT SPECIFY OTHERWISE WITH RESPECT TO YOUR 'PERSONAL REPRESENTATIVE" UNDER SUBPARAGRAPH D(iii).~~

E. Are There More Changes in Store?

Given some issues raised with the changes to the Illinois Power of Attorney Act, back in April and May the Illinois Legislature proposed additional changes to the overhaul, that would limit the legal effect of the language at the beginning of the short form that states "I . . . hereby revoke all powers of attorney for property executed by me." The concern was that a person executing a power of attorney for property with this language would in effect revoke specific powers not intended to be revoked, like internal powers of attorney over bank or investment accounts, IRS Form 2848 and other powers of attorney with a specific limited purpose and not designed to be a durable power of attorney for disability purposes. The new legislation would have created a defined "excluded power of attorney" to cover these types of powers of attorney and stated that excluded powers of attorney are not subject to the standards of care, record keeping and other matters designed to protect the principal and also that an excluded power of attorney is not revoked by a subsequent power of attorney except as provided in the terms of the excluded power of attorney itself or by a written instrument specifically revoking the excluded power of attorney.

This is a good point, but the Governor did not sign the legislation, which means a pocket veto. The legislation now goes to the House's Calendar Amendatory Veto dated for October 19, 2011. Stay tuned for further details.

V. DRAFTING CONSIDERATIONS

Even though we have forms in the statute, and even though I urge attorneys to use those forms, there are still issues that need to be addressed in the drafting beyond filling the client's name in the blanks.

A. Naming the Agent

As previously discussed, the power of attorney is a powerful document that gives broad authority to the agent. Thus, the most important consideration in any power of attorney is to whom should be named the agent. As with naming any fiduciary, this is not something to be taken lightly. Sometime the decision is simple – name the spouse first, then the adult children in a specific order. Even then, be sure the named agents are at the very least competent, trustworthy and prepared to the do the right thing. I have offended more than one client questioning why the client would see fit to severely restrict the inheritance of the child yet still give that child broad authority in a power of attorney.

B. What to ask?

When asking about agent selection, in my opinion the most important qualities are integrity and fortitude (an agent can hire others to provide the necessary expertise and skills needed to fulfill the agent's duties). Integrity – the agent must recognize the fiduciary responsibility he or she is undertaking and take seriously such responsibility as a matter of personal honor. Fortitude – doing the right thing is not always the same as doing the popular thing. Agents must always consider first and foremost the needs of the principal and be willing to resist interference or desires of others, even close family to the principal (and often the agent).

Thus it is not uncommon for a person contemplating agent selection to initially decide on the son as the property agent, because he is the oldest, even though he is also the one who has been through bankruptcy several times; or, the daughter is selected as the health care agent, because she is closer in proximity, but by the own admission of her parents, she lacks the ability to make decisions, including a decision as momentous as turning off life support, when that would clearly be desired. Though we do not want to offend, we need to ask the tough questions and be willing to challenge our clients as to who should be named as agent.

Often a principal will choose different agent successions for health care powers of attorney than for property powers of attorney; yet, the qualities that make a good health care power agent are generally same as a good property power agent. An agent under a power of attorney for health care, even more than an agent under a power of attorney for property, must be emotionally mature and capable of making life and death decisions, including when to withhold life-sustaining treatment. This is never easy, and most principals can only guess as to whether or not a named agent can act as the principal would want if the principal could make these decisions.

The only other factor is location. With an agent under a power of attorney for property, many decisions can be made remotely, as the agent can access records and financial information online. With a health care power of attorney, however, the agent is most effective if he or she can visit and monitor the condition of the incapacitated principal and the medical care he or she is receiving. Most individuals understand this, so it is often that the child who lives closest is selected; again, a person who is not capable of making informed decisions in the best interests of the principal and as the principal would have wanted is not the right person for the job, irrespective of their proximity and ability to visit the incapacitated principal.

C. Corporate Agents

There is no prohibition in the Act on a corporation acting as an agent. That being said, the vast majority of corporate entities that otherwise act as trustees or executors do not, as a matter of business policy, act as an agent under a power of attorney. Often we look at estate plans that name a corporate entity as an executor and successor trustee, and likewise name the corporate entity as agent, at least under the power of attorney for property. If a principal wants to name a corporate entity, a representative with both knowledge and authority should be consulted prior to naming the corporation. More likely than not, the principal will need to reconsider and find an individual willing to serve if need be (although this is usually a problem for a principal who thinks to name a corporation in the first place).

D. Additional Powers

Paragraph 3 of the Illinois Short Form Power of Attorney for Property form allows a principal to confer additional powers on the agent than those listed in the statutory short form. We should always at least consider additional powers each time. Most of these powers deal with estate planning, specifically the situation is which an incapacitated principal failed to complete his or her planning (including trust funding and changing beneficiary designations and joint tenancies), and it is up to the agent to act. Section 2-9 of the Act is clear that the agent shall take the principal's estate plan into account when the agent acts, but he or she does not have the power to amend the estate plan without express authority. 755 ILCS 45/2-9. While the powers we traditionally add do not amend or revoke an estate plan, some of them are quite powerful and should be carefully considered before being added, and even then, should be carefully considered by the agent before so acting on them.

Gifting Powers

Illinois case law is clear that, absent the document saying to the contrary, a power of attorney does not give the agent the right to make gifts from the principal's property to the agent or anyone else for that matter. This can create a severe limitation on planning in the case of an incapacitated principal with an estate tax problem who is more likely than not to outlive his or her resources. Gifting can be broken down into three categories for consideration: (a) annual exclusion gifts, (b) additional lifetime gifting, and (c) charitable gifting.

Annual Exclusion Gifts

A common estate tax planning technique is to make annual exclusion gifts to loved ones. For example, a matriarch of a family with three children and seven grandchildren can give up to $130,000 in 2011 without having any of those gifts be taxable and utilize lifetime gift tax exemption. In 2012, she can do it all over again. When this pattern of gifting goes on for years, and the principal then becomes incapacitated, a gifting power will allow the agent to continue this pattern uninterrupted.

This power might also be coupled with the power of the agent to make contributions to a trust established by the principal, particularly a life insurance trust, where annual exclusion gifts (coupled with Crummey withdrawal rights) are used to pay premiums on a policy on the life of the principal (or the principal and the principal's spouse).

One question that frequently comes up with clients in the context of annual exclusion gifting is limitations on the class of persons eligible to receive such gifts. Often, the class is limited to the descendants of the principal. Consider, however, who are the intended beneficiaries of the principal's estate plan? Often the intended beneficiaries include persons other than legal descendants, for example the children or grandchildren of a second spouse not legally adopted by the principal but loved just the same. It might also include siblings and friends. The key here is that, if a planner regularly uses gifting provisions in powers of attorney, it is vital to make sure such powers are in unity with the dispositive scheme at death.

Another issue that arises is whether to include spouses in the class. Making annual exclusion gifts to spouses of descendants can allow the agent to double the gifting but making a $13,000 gift to the child of the incapacitated principal and a $13,000 gift to his spouse. I will

frequently discuss the merit of this, but the client's wishes matter the most, and many times, even when the tax benefit is explained as well as that this gifting power is at the discretion of the agent, the answer is no, and spouses of descendants are not included.

Finally, there is the issue of the disinherited child. Again, the gifting powers should be in sync with the intended disposition at death. If a child is disinherited, the gifting powers should carve out this person and specifically exclude the agent from making gifts to that person.

Additional Lifetime Gifting

Additional gifting can also be classified into two categories: (a) nontaxable gifting (other than annual exclusion gifts) and (b) taxable gifting that utilizes the principal's lifetime gift tax exemption. If a principal is so inclined, in addition to annual exclusion gifts, the principal might also consider giving the agent the right to make qualified tuition and medical gifts under Section 2503(b) of the Code or gifts to a minor in trust under Section 2503(c).

Charitable Gifting

Finally, even in the case of a nontaxable estate, many of our clients are charitably inclined. For example, a person might make and fulfill an annual pledge to a local church or school. The principal might want this gifting to continue, even if he or she is incapacitated. Thus, a common provision might be to allow the agent to continue to make charitable gifts in line with the principal's established pattern of charitable giving. The power of attorney can be specific in this regard – i.e. the gifts can only be made to a specific charity or charities, or it can limit the amount in question. If the principal will agree to it, though, it seems better to give broad discretion to the agent to make charitable gifts.

Sample language is as follows:

Gifts. ***I grant my agent the power to make gifts, grants or other transfers without consideration either outright or in trust (including the forgiveness of indebtedness and transfers to trusts not created by me) to or for the benefit of any one or more of my descendants and their spouses, including my agent, or organizations described in Code section 2522, as my agent shall determine; provided, however, that my agent shall not make gifts in any calendar year to or for the benefit of any individual in excess of the maximum allowed to be excluded from my taxable gifts based upon values determined by my agent at the time of the gift. My agent may make additional gifts consistent with my established pattern of gifts, if any. "Code" means the Internal Revenue Code of 1986, as amended.***

Caution About Gifting by the Agent

Agents who have been given gifting powers need to take caution. Even if the language of the document gives the agent broad powers to make gifts and also protects the agent from making those decisions, the agent should always consider the effect gifts will have on the likely beneficiaries of the principal's estate. For example, if the principal plans on leaving her estate to all three of her children but not her grandchildren, making annual exclusion gifts to all the children and grandchildren might or might not be so welcomed by one or more of the child beneficiaries. If one child has six children and the other two only have two children each, they could think one branch of the family (the one with six children) is getting favorable treatment.

Maximizing annual exclusion gifts might be great tax planning, and the principal might have wanted to do just that, but an agent should never truly believe he or she stands in the same stead as the principal. Children have no right to sue Mom over who she gives money to, but they definitely might feel differently, and might have standing, to go after an agent, especially if the agent is the named executor or trustee.

In the case of exercising gifting powers conferred on an agent in a power of attorney, we often advise the agent to advise the intended recipients as well as the probable beneficiaries of the principal's estate at death and, at the very least, get an acknowledgement back that this is fine with such persons. An agent who gets push back is well advised to reconsider gifting, despite the language of the power of attorney form.

Changing Beneficiary Designations

Because changing a beneficiary designation can have more economic impact to an estate plan than any other action taken by the agent, or frankly by the principal for that matter, it is vital that the agent's power in this regard be tempered with specific restrictions. For example, the agent may be restricted to only changing a beneficiary designation is such a manner than the beneficiaries are identical to those stated in the estate plan, in the proportions and percentages as such persons will receive under the will or trust.

For example, Husband and Wife are divorced, and Husband never takes any action to change his estate plan, including changing beneficiary designations on life insurance and retirement plans. By statute, Wife is no longer a fiduciary under Husband's will, trust or powers of attorney and also is no longer a beneficiary of his estate and trust, but those laws do not extend to beneficiary designations for items such as life insurance or retirement plans. See 755 ILCS 5/4-7(b) (as to wills); 760 ILCS 35/1 (as to revocable trusts); 755 ILCS 45/2-6(b) (as to powers of attorney). Husband becomes incapacitated. Brother, as agent (not Wife anymore due to the divorce) if he had the additional power, could change the beneficiary from Wife to the new beneficiaries of the estate, namely the children of Husband, but he could not name himself or any member of his immediate family, even if he is entitled to a specific gift at death of Husband, because that would contradict the intended estate plan of Husband.

Possible language with limitations is as follows:

Beneficiary Designations. ***I grant my agent the power to designate or change the designation of beneficiaries to receive any property, benefit or contract right upon my death, provided that any such change made by my agent shall follow the testamentary provisions set forth in my last will and testament or my beneficiary designations set forth in any revocable trust in existence at the time my agent seeks to effectuate any such change in beneficiary designations in my property. This power shall extend to all forms of property owned by me, including both real and personal property. Nothing contained herein shall prohibit my agent from changing beneficiary designations in any of my property to include an interest for my agent as long as my agent follows the testamentary provisions of my last will and testament and/or my beneficiary designations in any revocable trust in existence at the time my agent acts to make such change. Notwithstanding the preceding provisions of this subsection (f), my Attorney in Fact (including my spouse) may designate my spouse as the beneficiary, outright and free from trust, of any qualified retirement plan (including a pension, profit sharing, stock bonus***

or other retirement plan) under Code sections 401(a) or 403(b) or an individual retirement account or annuity under Code section 408 (including 408A). "Code" means the Internal Revenue Code of 1986, as amended.

Trust Funding

A common goal of estate planning is probate avoidance; yet, all too often a person dies having a beautifully written trust with no assets in it. Most of us do not die suddenly – we die over time, and if in our dying we lose capacity, it is vital that an agent have the ability to fund a trust. In cases in which a living revocable trust is drafted, always consider, in addition to a complementary pour-over will, having an updated power of attorney for property that grants the agent the right to add assets in the name of the principal to the principal's revocable living trust in the event of incapacity. That way, if it is discovered, usually by loved ones, that Dad did not retitle the vacation condo in Florida ino his trust (thus there would be Florida probate at his death), the agent can deed the property into trust, thus saving the estate thousands in probate fees and costs. Absent language allowing such funding, the agent stands helpless even while knowing a probate proceeding is eventual.

Trust funding does not carry with it the same caution as gifting, because all that the agent is doing is moving assets out of the estate and into the trust. Since if a trust and a pour-over will exists there is a good argument that the principal meant for his assets to avoid probate, and all the agent is doing is completing that task, without effecting the final disposition of the principal's assets at death. Even then, however, before trust funding the agent should confirm that trust funding will not change who gets what at the principal's death, and if a change does occur from funding, the agent is wise to consider disclosure and consent from the affected person.

Draft language in this regard could say:

Fund Revocable Trust. I grant my agent the power to transfer any part or all of my assets to the trustee of any revocable trust of which I am the grantor, including but not limited to the [NAME OF PRINCIPAL] REVOCABLE TRUST as may be amended from time to time.

Disclaiming Interests

Disclaimers are among the most powerful estate planning devices in our arsenals. The ability to divert a property interest away from a person has profound tax planning and asset protection implications. In the case of a disabled principal, often the principal does not need the property, or, in the case of person on some form of aid, does not want the property to disqualify the aid or be used to reimburse government. However, a disclaimer of property rarely benefits the disclaimant (other than the disclaimant knowing that such disclaimer benefitted loved ones), so in the case of an agent for a disabled principal, normally the agent would not have the power to disclaim property on behalf of the principal absent express authority to do so, and even then, the agent must still consider the needs of the principal before exercising this power.

A disclaimer provision might look like this:

Disclaim. I grant my agent the power to renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in

property or powers which I may now or hereafter own, including any interests in or rights over trusts (including the right to alter, amend, revoke or terminate) and to exercise any right to claim an elective share in any estate or under any will, and in exercising such discretion, my agent may take into account such matters as shall include but shall not be limited to any reduction in estate or inheritance taxes on my estate, and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property.

Creating Survivorship Interests

Like changing beneficiary designations, establishing or changing survivorship interests can be useful in avoiding probate and end-of-life planning. The key again is to make sure that the agent is limited in this power to only create those survivorship interests that follow the testamentary plan of the principal as set for in her will or trust prior to becoming incapacitated.

Such language might state as follows:

Survivorship Interests. I grant my agent the power to create or change survivorship interests in my property or in property in which I may have an interest, provided that any such change made by my agent shall follow the testamentary provisions set forth in my last will and testament or my beneficiary designations set forth in any revocable trust in existence at the time my agent seeks to effectuate any such change in survivorship interests in my property. This power shall extend to all forms of property owned by me, including both real and personal property. Nothing contained herein shall prohibit my agent from changing survivorship interests in any of my property to include an interest for my agent as long as my agent follows the testamentary provisions of my last will and testament and/or my beneficiary designations in any revocable trust in existence at the time my agent acts to make such change.

Employing Attorneys/Accountants

An agent should always have the express power to employ professionals, including attorneys and accountants, to assist the agent in fulfilling his or her duties, and have such persons paid out of the assets subject to the agent's control.

Other Compensation. I grant my agent the power to compensate separately any brokers, attorneys, appraisers, auditors, depositories, real estate, managers, investment advisors and other persons.

E. Limitation of Powers

Paragraph 2 of the statutory short form power of attorney for property also allows the principal to limit the powers of the agent as listed in the power of attorney. Because we are talking in this regard about powers of attorney for estate planning in the event of disability, I strongly urge that the powers conferred on the agent never be limited. If a client wants to limit an agent even more than the short form specifies, question whether that person should be named agent in the first place.

The one exception that can come up deals with the right of the agent to make anatomical gifts at the death of the principal in the health care power of attorney. The text of the statutory form, first page, first choice, indicates that, if selected by the principal, the agent may make anatomical gifts of "any organs, tissues, or eyes suitable for transplantation **or used for research or education**." (emphasis added). I have had several clients object to the phrase "or used for research or education" even after explaining this is not a gift of the entire body. Still, sometimes, principals, who would be willing to donate organs for transplantation, are so unwilling to have their organs used for other purposes that they would prefer not to initial that choice at all. I have never had it tested, but one compromise we have done is to cross out by hand the objectionable language, have the principal initial that change, then initial the choice. While later in the form a principal can put limitations on the powers of the agent, principals prefer to make the change in the anatomical gift provision itself so there is no misinterpretation. Furthermore, by crossing out the language by hand, as opposed to deleting it before signature, we are preserving the text of the statutory short form and showing that this was a conscious choice of the principal, as opposed to a drafting error on the part of the attorney.

F. Effective Date

A final issue deals with the effective date of the agency, which both the property and health care powers of attorney leave open for decision by the principal. As stated in the short form itself, a failure to insert a date or event for the effective date means the power of attorney is effective immediately. Since we are discussing powers of attorney in an estate planning context, however, immediate powers to the agent are probably not what the principal has in mind. Instead, in all cases some event or contingency should be put into place.

For a property power of attorney, the conventional wisdom is to link the effective date to an event, specifically the date that a physician determines that the principal is incapacitated, preferably in writing. Often, a physician's certificate of incapacity can be attached to a power of attorney and delivered to a third party as proof that the agency has in fact begun. Likewise, a certificate by the doctor that the principal is no longer incapacitated can constitute grounds to end the agency (though this is likely only to happen in the case of trauma, as in most cases we are facing diminished capacity due to age or a degenerative brain disorder).

What about powers of attorney for health care? While the same event (the determination of incapacity by a physician) can still work for health care powers of attorney, another option is for the health care power of attorney to be effective immediately. The reason is timing – if a principal needs emergency treatment, no one will want to go through any formal process declaring incapacity. Unlike financial matters, an agent under a health care power of attorney is not going to be able to take any action that a principal objects to, if the principal is competent and can express his or her own decisions about health care for the principal. Therefore, the same dangers of an agent run amok are not present, so having a health care power of attorney be effective immediately is a possibility to discuss with the client.

EXHIBIT A

Illinois Statutory Notice to the Principal Signing a Statutory Short Form Power of Attorney for Property

NOTICE TO THE INDIVIDUAL SIGNING THE ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR PROPERTY

PLEASE READ THIS NOTICE CAREFULLY. The form that you will be signing is a legal document. It is governed by the Illinois Power of Attorney Act. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

The purpose of this Power of Attorney is to give your designated "agent" broad powers to handle your financial affairs, which may include the power to pledge, sell, or dispose of any of your real or personal property, even without your consent or any advance notice to you. When using the Statutory Short Form, you may name successor agents, but you may not name co-agents.

This form does not impose a duty upon your agent to handle your financial affairs, so it is important that you select an agent who will agree to do this for you. It is also important to select an agent whom you trust, since you are giving that agent control over your financial assets and property. Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the directions in this form. Your agent must keep a record of all receipts, disbursements, and significant actions taken as your agent.

Unless you specifically limit the period of time that this Power of Attorney will be in effect, your agent may exercise the powers given to him or her throughout your lifetime, both before and after you become incapacitated. A court, however, can take away the powers of your agent if it finds that the agent is not acting properly. You may also revoke this Power of Attorney if you wish.

This Power of Attorney does not authorize your agent to appear in court for you as an attorney-at-law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.

The powers you give your agent are explained more fully in Section 3-4 of the Illinois Power of Attorney Act. This form is a part of that law. The "NOTE" paragraphs in caps throughout this form are instructions.

You are not required to sign this Power of Attorney, but it will not take effect without your signature. You should not sign this Power of Attorney if you do not understand everything in it, and what your agent will be able to do if you do sign it.

Please place your initials on the following line indicating that you have read this Notice:

_____

Principal's Initials

EXHIBIT B

Illinois Statutory Short Form Power of Attorney for Property
(incorporating changes made by P.A. 96-1195 and
Author's preference for additional powers and effective dates) (755 ILCS 45/3-3(d))

"ILLINOIS STATUTORY SHORT FORM
POWER OF ATTORNEY FOR PROPERTY"

1. I, _____, residing in _____, Illinois, hereby revoke all prior powers of attorney for property executed by me and appoint _____ of _____, Illinois, **(NOTE: You may not name co-agents using this form)** as my attorney–in–fact (my "agent") to act for me and in my name (in any way I could act in person) with respect to the following powers, as defined in Section 3–4 of the "Statutory Short Form Power of Attorney for Property Law" (including all amendments), but subject to any limitations on or additions to the specified powers inserted in paragraph 2 or 3 below:

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Failure to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category, you must draw a line through the title of that category.)

(a) Real estate transactions.

(b) Financial institution transactions.

(c) Stock and bond transactions.

(d) Tangible personal property transactions.

(e) Safe deposit box transactions.

(f) Insurance and annuity transactions.

(g) Retirement plan transactions.

(h) Social Security, employment and military service benefits.

(i) Tax matters.

(j) Claims and litigation.

(k) Commodity and option transactions.

(l) Business operations.

(m) Borrowing transactions.

(n) Estate transactions.

(o) All other property transactions.

(NOTE: Limitations on and additions to the agent's powers may be included in this power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars (here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent):

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or conditions on the sale of particular stock or real estate or special rules on borrowing by the agent.)

None.

3. In addition to the powers granted above, I grant my agent the following powers (here you may add any other delegable powers including, without limitation, power to make gifts, exercise powers of appointment, name or change beneficiaries or joint tenants or revoke or amend any trust specifically referred to below):

(NOTE: Here you may add any other delegable powers including, without limitation, power to make gifts, exercise powers of appointment, name or change beneficiaries or joint tenants or revoke or amend any trust specifically referred to below.)

(a) Fund Revocable Trust. To transfer any part or all of my assets to the trustee of any revocable trust of which I am the grantor, including but not limited to the _____ REVOCABLE TRUST as may be amended from time to time.

(b) Gifts. To make gifts, grants or other transfers without consideration either outright or in trust (including the forgiveness of indebtedness and transfers to trusts not created by me) to or for the benefit of any one or more of my descendants and their spouses, including my agent, or organizations described in Code section 2522, as my agent shall determine; provided, however, that my agent shall not make gifts in any calendar year to or for the benefit of any individual in excess of the maximum allowed to be excluded from my taxable gifts based upon values determined by my agent at the time of the gift. My agent may make additional gifts consistent with my established pattern of gifts, if any. "Code" means the Internal Revenue Code of 1986, as amended.

(c) 529 Accounts. If I am the account owner or responsible person (the "account owner") for a 529 Account, or if my agent is the account owner of a 529 Account to which I or my agent on my behalf has made gifts, to exercise all rights granted to an account owner of a 529 Account, including but not limited to any right to refund the account to me; to approve or disapprove a distribution to the beneficiary; to change the beneficiary provided the new beneficiary of the account or plan is one of my descendants, the spouse of one of my descendants, or a sibling or cousin of the old beneficiary; to change the account owner provided the new account owner is my spouse,

one of my descendants, the spouse of one of my descendants, the beneficiary, a sibling, parent, or guardian of the beneficiary, or the trustee of a trust of which the beneficiary is a beneficiary; to change investment options; and to roll over the account to another account under the same program or a program in another state.

(d) Disclaim. To renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in property or powers which I may now or hereafter own, including any interests in or rights over trusts (including the right to alter, amend, revoke or terminate) and to exercise any right to claim an elective share in any estate or under any will, and in exercising such discretion, my agent may take into account such matters as shall include but shall not be limited to any reduction in estate or inheritance taxes on my estate, and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property.

(e) Survivorship Interests. To create or change survivorship interests in my property or in property in which I may have an interest, provided that any such change made by my agent shall follow the testamentary provisions set forth in my last will and testament or my beneficiary designations set forth in any revocable trust in existence at the time my agent seeks to effectuate any such change in survivorship interests in my property. This power shall extend to all forms of property owned by me, including both real and personal property. Nothing contained herein shall prohibit my agent from changing survivorship interests in any of my property to include an interest for my agent as long as my agent follows the testamentary provisions of my last will and testament and/or my beneficiary designations in any revocable trust in existence at the time my agent acts to make such change.

(f) Beneficiary Designations. To designate or change the designation of beneficiaries to receive any property, benefit or contract right upon my death, provided that any such change made by my agent shall follow the testamentary provisions set forth in my last will and testament or my beneficiary designations set forth in any revocable trust in existence at the time my agent seeks to effectuate any such change in beneficiary designations in my property. This power shall extend to all forms of property owned by me, including both real and personal property. Nothing contained herein shall prohibit my agent from changing beneficiary designations in any of my property to include an interest for my agent as long as my agent follows the testamentary provisions of my last will and testament and/or my beneficiary designations in any revocable trust in existence at the time my agent acts to make such change. Notwithstanding the preceding provisions of this subsection (f), my Attorney in Fact (including my spouse) may designate my spouse as the beneficiary, outright and free from trust, of any qualified retirement plan (including a pension, profit sharing, stock bonus or other retirement plan) under Code sections 401(a) or 403(b) or an individual retirement account or annuity under Code section 408 (including 408A). "Code" means the Internal Revenue Code of 1986, as amended.

(g) Guardian. To nominate and/or petition for the appointment of my agent or any person my agent deems appropriate as primary, successor or alternate guardian of the

person or estate or guardian ad litem or to any fiduciary office (all of such offices of guardian, et al. being hereinafter referred to as "Personal Representative") representing me or any interest of mine or any person for whom I may have a right or duty to nominate or petition for such appointment; to grant to any such Personal Representative all of the powers under applicable law that I am permitted to grant; to waive any bond requirement for such Personal Representative that I am permitted by law to waive.

(h) Other Compensation. To compensate separately any brokers, attorneys, appraisers, auditors, depositories, real estate, managers, investment advisors and other persons.

(NOTE: Your agent will have authority to employ other persons as necessary to enable the agent to properly exercise the powers granted in this form, but your agent will have to make all discretionary decisions. If you want to give your agent the right to delegate decision-making powers to others, you should keep paragraph 4, otherwise it should be struck out.)

4. My agent shall have the right by written instrument to delegate any or all of the foregoing powers involving discretionary decision–making to any person or persons whom my agent may select, but such delegation may be amended or revoked by any agent (including any successor) named by me who is acting under this power of attorney at the time of reference.

(NOTE: Your agent will be entitled to reimbursement for all reasonable expenses incurred in acting under this power of attorney. Strike out paragraph 5 if you do not want your agent to also be entitled to reasonable compensation for services as an agent.)

5. My agent shall be entitled to reasonable compensation for services rendered as agent under this power of attorney.

(NOTE: This power of attorney may be amended or revoked by you at any time and in any manner. Absent amendment or revocation, the authority granted in this power of attorney will become effective at the time the power is signed and will continue until your death, unless a limitation on the beginning date is made by initialing and completing one or both of paragraph 6 and 7:)

6. _____ This power of attorney shall become effective upon my incapacity.

(NOTE: Insert a future date or event during your lifetime, such as a court determination of your disability or a written determination by your physician that you are incapacitated when you want this power to first take effect.)

7. _____ This power of attorney shall terminate on the date I am no longer incapacitated.

(NOTE: Insert a future date or event, such as a court determination that you are not under a legal disability or a written determination by your physician that you are not incapacitated, if you want this power to terminate prior to your death.)

(NOTE: If you wish to name one or more successor agents, insert the name and address of each successor agent in paragraph 8.)

8. If any agent named by me shall die, become incompetent, resign or refuse to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to such agent: (a) _____, then (b) _____.

For purposes of this paragraph 8, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated or disabled person or the person is unable to give prompt and intelligent consideration to business matters, as certified by a licensed physician.

(NOTE: If you wish to, you may name your agent as guardian of your estate if a court decides that one should be appointed. To do this, retain paragraph 9, and the court will appoint your agent if the court finds that this appointment will serve your best interests and welfare. Strike out paragraph 9 if you do not want your agent to serve as guardian.)

9. If a guardian of my estate (my property) is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without bond or security.

10. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

(NOTE: This form does not authorize your agent to appear in court for you as an attorney at law or otherwise to engage in the practice of law unless he or she is a licensed attorney who is authorized to practice law in Illinois.)

11. The Notice to Agent is incorporated by reference and included as part of this form.

Dated: _____, 2011

_____

_____, Principal

(NOTE: This power of attorney will not be effective unless and signed by at least one witness and your signature is notarized, using the form below. The notary may not also sign as a witness.)

The undersigned witness certifies that _____, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant or any spouse of such parent, sibling or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

Dated: _____, 2011

_____
Witness

(NOTE: Illinois only requires one witness, but other jurisdictions may require more than one witness. If you wish to have a second witness, have him or her certify and sign here:)

(Second witness) The undersigned witness certifies that _____, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the notary public and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth. I believe him or her to be of sound mind and memory. The undersigned witness also certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant or any spouse of such parent, sibling or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

Dated: _____, 2011

_____
Witness

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

The undersigned, a notary public in and for the above county and state, certifies that _____, known to me to be the same person whose name is subscribed as principal to the foregoing power of attorney, appeared before me and the witness(es) _____ (and _____) in person and acknowledged signing and delivering the instrument as the free and voluntary act of the principal, for the uses and purposes therein set forth, (and certified to the correctness of the signature(s) of the agent(s)).

Dated: _____, 2011

_____
Notary Public

My commission expires:

(NOTE: You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)

Specimen signatures of agent
(and successors):

_____
_____

_____
_____

_____
_____

I certify that the signatures
of my agent (and successors) are genuine.

_____
_____

_____
_____

_____
_____

(NOTE: The name, address and phone number of the person preparing this form or assisted the principal in completing this form should be inserted below.)

This document was prepared by:

_____
_____
_____, Illinois _____
(____) ____-_____

EXHIBIT C

Statutory Notice to the Agent (755 ILCS 45/3-3(e))

"NOTICE TO AGENT"

When you accept the authority granted under this power of attorney a special legal relationship, known as agency, is created between you and the principal. Agency imposes upon you duties that continue until you resign or the power of attorney is terminated or revoked.

As agent you must:

(1) do what you know the principal reasonably expects you to do with the principal's property;
(2) act in good faith for the best interest of the principal, using due care, competence, and diligence;
(3) keep a complete and detailed record of all receipts, disbursements, and significant actions conducted for the principal;
(4) attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest; and
(5) cooperate with a person who has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually in the principal's best interest.

As agent you must not do any of the following:

(1) act so as to create a conflict of interest that is inconsistent with the other principles in this Notice to Agent;
(2) do any act beyond the authority granted in this power of attorney;
(3) commingle the principal's funds with your funds;
(4) borrow funds or other property from the principal, unless otherwise authorized;
(5) continue acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney, such as the death of the principal, your legal separation from the principal, or the dissolution of your marriage to the principal.

If you have special skills or expertise, you must use those special skills and expertise when acting for the principal. You must disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name "as Agent" in the following manner:

"_____ by [insert name of agent] as Agent"

The meaning of the powers granted to you is contained in Section 3-4 of the Illinois Power of Attorney Act, which is incorporated by reference into the body of the power of attorney for property document.

If you violate your duties as agent or act outside the authority granted to you, you may be liable for any damages, including attorney's fees and costs, caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice from an attorney.

(Source: P.A. 96-1195, eff. 7-1-11.)

EXHIBIT D

Statutory Agent's Certification/Acceptance of Authority (755 ILCS 45/2-8(b))

AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I, _____, (insert name of agent), certify that the attached is a true copy of a power of attorney naming the undersigned as agent or successor agent for _____ (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.*

Dated: _____, _____

_____
(Agent's Signature)

_____
(Print Agent's Name)

_____

_____
(Agent's Address)

*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 1961, and is a Class 3 felony.)

EXHIBIT E

Statutory Successor Agent's Certification/Acceptance of Authority (755 ILCS 45/2-10.3(c))

SUCCESSOR AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I certify that the attached is a true copy of a power of attorney naming the undersigned as agent or successor agent for _____ (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I certify that to the best of my knowledge _____ is unavailable due to _____ (specify death, resignation, absence, illness, or other temporary incapacity).

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.*

Dated: _____ , 2011

_____
(Agent's Signature)

_____
(Print Agent's Name)

_____

_____
(Agent's Address)

*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 1961, and is a Class 3 felony.)
(Source: P.A. 96-1195, eff. 7-1-11.)

EXHIBIT F

Statutory Co-Agent's Certification/Acceptance of Authority (755 ILCS 45/2-10.5(d))

CO-AGENT'S
CERTIFICATION AND ACCEPTANCE OF AUTHORITY

I certify that the attached is a true copy of a power of attorney naming the undersigned as agent or co-agent for _____ (insert name of principal).

I certify that to the best of my knowledge the principal had the capacity to execute the power of attorney, is alive, and has not revoked the power of attorney; that my powers as agent have not been altered or terminated; and that the power of attorney remains in full force and effect.

I certify that to the best of my knowledge _____ (insert name of unavailable agent) is unavailable due to _____ (specify death, resignation, absence, illness, or other temporary incapacity).

I certify that prompt action is required to accomplish the purposes of the power of attorney or to avoid irreparable injury to the principal's interests.

I accept appointment as agent under this power of attorney.

This certification and acceptance is made under penalty of perjury.*

Dated: _____, 2011

_____
(Agent's Signature)

_____
(Print Agent's Name)

_____

_____
(Agent's Address)

*(NOTE: Perjury is defined in Section 32-2 of the Criminal Code of 1961, and is a Class 3 felony.)
(Source: P.A. 96-1195, eff. 7-1-11.)

EXHIBIT G

Illinois Statutory Notice to the Principal Signing a Statutory Short Form Power of Attorney for Property (755 ILCS 45/4-10(a))

"NOTICE TO THE INDIVIDUAL SIGNING THE ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR HEALTH CARE

PLEASE READ THIS NOTICE CAREFULLY. The form that you will be signing is a legal document. It is governed by the Illinois Power of Attorney Act. If there is anything about this form that you do not understand, you should ask a lawyer to explain it to you.

The purpose of this Power of Attorney is to give your designated "agent" broad powers to make health care decisions for you, including the power to require, consent to, or withdraw treatment for any physical or mental condition, and to admit you or discharge you from any hospital, home, or other institution. You may name successor agents under this form, but you may not name co-agents.

This form does not impose a duty upon your agent to make such health care decisions, so it is important that you select an agent who will agree to do this for you and who will make those decisions as you would wish. It is also important to select an agent whom you trust, since you are giving that agent control over your medical decision-making, including end-of-life decisions. Any agent who does act for you has a duty to act in good faith for your benefit and to use due care, competence, and diligence. He or she must also act in accordance with the law and with the statements in this form. Your agent must keep a record of all significant actions taken as your agent.

Unless you specifically limit the period of time that this Power of Attorney will be in effect, your agent may exercise the powers given to him or her throughout your lifetime, even after you become disabled. A court, however, can take away the powers of your agent if it finds that the agent is not acting properly. You may also revoke this Power of Attorney if you wish.

The Powers you give your agent, your right to revoke those powers, and the penalties for violating the law are explained more fully in Sections 4-5, 4-6, and 4-10(c) of the Illinois Power of Attorney Act. This form is a part of that law. The "NOTE" paragraphs in caps throughout this form are instructions.

You are not required to sign this Power of Attorney, but it will not take effect without your signature. You should not sign it if you do not understand everything in it, and what your agent will be able to do if you do sign it.

Please put your initials on the following line indicating that you have read this Notice:

_____

(Principal's Initials)"

EXHIBIT H

Illinois Statutory Short Form Power of Attorney for Health Care (incorporating changes made by P.A. 96-1195 and P.A. 97-0148 and Author's preference for effective dates) (755 ILCS 45/4-10(b))

"ILLINOIS STATUTORY SHORT FORM POWER OF ATTORNEY FOR HEALTH CARE"

1. I, _____, of _____ Illinois, hereby revoke all prior powers of attorney for health care executed by me and appoint _____, of _____ Illinois, **(NOTE: You may not name co-agents using this form)** as my attorney-in-fact (my "agent") to act for me and in my name (in any way I could act in person) to make any and all decisions for me concerning my personal care, medical treatment, hospitalization and health care and to require, withhold or withdraw any type of medical treatment or procedure, even though my death may ensue.

A. My agent shall have the same access to my medical records that I have, including the right to disclose the contents to others.

B. Effective upon my death, my agent has the full power to make an anatomical gift of the following:

(NOTE: Initial one. In the event none of the options are initialed, then it shall be concluded that you do not wish to grant your agent any such authority.)

_____ Any organs, tissues, or eyes suitable for transplantation or used for research or education.

_____ Specific Organs:_____.

_____ I do not grant my agent authority to make anatomical gifts.

C. My agent shall also have full power to authorize an autopsy and direct the disposition of my remains. I intend for this power of attorney to be in substantial compliance with Section 10 of the Disposition of Remains Act. All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding. I hereby direct any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document to act under it.

D. I intend for the person named as my agent to be treated as I would be with respect to my rights regarding the use and disclosure of my individually identifiable health information or other medical records, including records or communications governed by the Mental health and Developmental Disabilities Confidentiality Act. This release authority applies to any information governed by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations

thereunder. I intend for the person named as my agent to serve as my personal representative as the term is defined under HIPAA and regulations thereunder.

i. The person named as my agent shall have the power to authorize the release of information governed by HIPAA to third parties.

ii. I authorize any physician, health care professional, dentist, health plan, hospital, clinic, laboratory, pharmacy or other covered health care provider, any insurance company and the Medical Informational Bureau, Inc., or any other health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment for me for such services to give, disclose, and release to the person named as my agent, without restriction, all of my individually identifiable health information and medical records, regarding any past, present, or future medical or mental health condition, including all information relating to the diagnosis and treatment of HIV/AIDS, sexually transmitted diseases, drug or alcohol abuse, and mental illness (including records or communications governed by the Mental Health and Developmental Disabilities Confidentiality Act).

iii. The authority given to the person named as my agent shall supersede any prior agreement that I may have with my health care providers to restrict access to, or disclosure of, my individually identifiable health information. The authority given to the person named as my agent has no expiration date and shall expire only in the event that I revoke the authority in writing and deliver it to my health care provider.

(NOTE: The above grant of power is intended to be as broad as possible so that your agent will have the authority to make any decision you could make to obtain or terminate any type of health care, including withdrawal of food and water and other life-sustaining measures, if your agent believes such action would be consistent with your intent and desires. If you wish to limit the scope of your agent's powers or prescribe special rules or limit the power to make an anatomical gift, authorize autopsy or dispose of remains, you may do so in the following paragraphs.)

2. The powers granted above shall not include the following powers or shall be subject to the following rules or limitations:

(NOTE: Here you may include any specific limitations you deem appropriate, such as: your own definition of when life sustaining measures should be withheld; a direction to continue food and water in all events; or instructions to refuse any specific types of treatment that are inconsistent with your religious beliefs or unacceptable to you for any other reason, such as blood transfusion, electro-convulsive therapy, amputation, psychosurgery, voluntary admission to a mental institution, etc.):

None.

(NOTE: The subject of life-sustaining treatment is of particular importance. For your convenience in dealing with that subject, some general statements concerning the

withholding or removal of life-sustaining treatment are set forth below. If you agree with one of these statements, you may initial that statement; but do not initial more than one. These statements serve as guidance for your agent who shall give careful consideration to the statement you initial when engaging in health care decision-making on your behalf.)

_____ I do not want my life to be prolonged nor do I want life sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.

_____ I want my life to be prolonged and I want life-sustaining treatment to be provided or continued unless I am, in the opinion of my attending physician, in accordance with reasonable medical standards at the time of reference in a state of "permanent unconsciousness" or suffer from an "incurable or irreversible condition" or "terminal condition," as those terms are defined in Section 4-4 of the Illinois Power of Attorney Act. If and when I am in any one of these states or conditions, I want life sustaining treatment to be withheld or discontinued.

_____ I want my life to be prolonged to the greatest extent possible in accordance with reasonable medical standards without regard to my condition, the chances I have for recovery or the cost of the procedures.

(NOTE: This power of attorney may be amended or revoked by you in the manner provided in Section 4-6 of the Illinois Power of Attorney Act.)

3. This power of attorney shall become effective upon my incapacity as determined by my physician in writing.

(NOTE: Insert a future date or event during your lifetime such as a court determination of your disability or a written determination but your physician that you are incapacitated, when you want this power to first take effect.)

(NOTE: If you do not amend or revoke this power, or if you do not specify s specific ending date in paragraph 4, it will remain in effect until your death, except that your agent will still have the authority to donate your organs, authorize an autopsy, and dispose of your remains after death, if you grant that authority to your agent.)

4. This power of attorney shall terminate when I am not longer incapacitated as determined by my physician in writing.

(NOTE: Insert a future date or event, such as a court determination that you are not under a legal disability or a written determination by your physician that you are not incapacitated, if you want this power of attorney to terminate prior to your death.)

(NOTE: You cannot use this form to name co-agents. If you wish to name successor agents, insert the names and addresses of the successors in paragraph 5.)

5. If any agent named by me shall die, become incompetent, resign, refuse to accept the office of agent or be unavailable, I name the following (each to act alone and successively, in the order named) as successors to such agent (a) _____, then (b) _____.

For purposes of this paragraph 5, a person shall be considered to be incompetent if and while the person is a minor or an adjudicated or disabled person or the person is unable to give prompt and intelligent consideration to business matters, as certified by a licensed physician.

(NOTE: If you wish to, you may name your agent as guardian of your estate if a court decides that one should be appointed. To do this, retain paragraph 6, and the court will appoint your agent if the court finds that this appointment will serve your best interests and welfare. Strike out paragraph 6 if you do not want your agent to serve as guardian.)

6. If a guardian of my person is to be appointed, I nominate the agent acting under this power of attorney as such guardian, to serve without security.

7. I am fully informed as to all the contents of this form and understand the full import of this grant of powers to my agent.

Dated: _____, 2011

Signed_____
_____, Principal

The principal has had an opportunity to read the above form and has signed the form or acknowledged his or her signature or mark on the form in my presence. The undersigned witness certifies that the witness is not: (a) the attending physician or mental health service provider or a relative of the physician or provider; (b) an owner, operator or relative of an owner or operator of a health care facility in which the principal is a patient or resident; (c) a parent, sibling, descendant or any spouse of such parent, sibling or descendant of either the principal or any agent or successor agent under the foregoing power of attorney, whether such relationship is by blood, marriage or adoption; or (d) an agent or successor agent under the foregoing power of attorney.

_____ Residing at _____

WITNESS

_____

_____

PRINT NAME

(NOTE: You may, but are not required to, request your agent and successor agents to provide specimen signatures below. If you include specimen signatures in this power of attorney, you must complete the certification opposite the signatures of the agents.)

Specimen signatures of agent
(and successor):

_____
_____

_____
_____

I certify that the signatures of my agent (and successor) are correct.

_____
_____

_____
_____

(NOTE: The name, address, and phone number of the person preparing this form or who assisted the principal in completing this form is optional.)

This document was prepared by:

_____
_____
_____, Illinois _____
(___) ___-_____

(c) The statutory short form power of attorney for health care (the "statutory health care power") authorizes the agent to make any and all health care decisions on behalf of the principal which the principal could make if present and under no disability, subject to any limitations on the granted powers that appear on the face of the form, to be exercised in such manner as the agent deems consistent with the intent and desires of the principal. The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's health care; but when granted powers are exercised, the agent will be required to use due care to act for the benefit of the principal in accordance with the terms of the statutory health care power and will be liable for negligent exercise. The agent may act person or through others reasonably employed by the agent for that purpose but may not delegate authority to make health care decisions. The agent may sign and deliver all instruments, negotiate and enter into all agreements and do all other acts reasonably necessary to implement the exercise of the powers granted to the agent. Without limiting the generality of the foregoing, the statutory health care power shall include the following powers, subject to any limitations appearing on the face of the form:

(1) The agent is authorized to give consent to and authorize or refuse, or to withhold or withdraw consent to, any and all types of medical care, treatment or procedures relating to the physical or mental health of the principal, including any medication program, surgical procedures, life-sustaining treatment or provision of food and fluids for the principal.

(2) The agent is authorized to admit the principal to or discharge the principal from any and all types of hospitals, institutions, homes, residential or nursing facilities, treatment centers and other health care institutions providing personal care or treatment for any type of physical or mental condition. The agent shall have the same right to visit the principal in the hospital or other institution as is granted to a spouse or adult child of the principal, any rule of the institution to the contrary notwithstanding.

(3) The agent is authorized to contract for any and all types of health care services and facilities in the name of and on behalf of the principal and to bind the principal to pay for all such services and facilities, and to have and exercise those powers over the principal's property as are authorized under the statutory property power, to the extent the agent deems necessary to pay health care costs; and the agent shall not be personally liable for any services or care contracted for on behalf of the principal.

(4) At the principal's expense and subject to reasonable rules of the health care provider to prevent disruption of the principal's health care, the agent shall have the same right the principal has to examine and copy and consent to disclosure of all the principal's medical records that the agent deems relevant to the exercise of the agent's powers, whether the records relate to mental health or any other medical condition and whether they are in the possession of or maintained by any physician, psychiatrist, psychologist, therapist, hospital, nursing home or other health care provider.

(5) The agent is authorized: to direct that an autopsy be made pursuant to Section 2 of "An Act in relation to autopsy of dead bodies", approved August 13, 1965,

including all amendments; to make a disposition of any part or all of the principal's body pursuant to the Illinois Anatomical Gift Act, as now or hereafter amended; and to direct the disposition of the principal's remains. (Source: P.A. 96-1195, eff. 7-1-11.)