

# House Bill 2280

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## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Revises laws on powers of attorney.

## A BILL FOR AN ACT

Relating to powers of attorney; creating new provisions; amending ORS 93.670 and 125.710; and repealing ORS 127.005, 127.015, 127.025, 127.035 and 127.045.

**Be It Enacted by the People of the State of Oregon:**

### **SECTION 1. Definitions.** As used in sections 1 to 42 of this 2003 Act:

(1) "Attorney-in-fact" means the person designated by a principal in a power of attorney, including any person designated as the principal's agent.

(2) "Incapacitated" has the meaning given that term in ORS 125.005.

(3) "Power of attorney" means a written document by which a principal designates an attorney-in-fact.

(4) "Principal" means a person who executes a power of attorney. "Principal" includes a fiduciary, as defined in ORS 125.005, appointed for the principal after the principal executes a power of attorney.

**SECTION 2. Execution of power of attorney.** (1) A principal who is an adult and not incapacitated may designate another adult who is not incapacitated as the person's attorney-in-fact by a power of attorney. The power of attorney must be dated and signed by the principal. The signature of the principal must be acknowledged before a notary public if the power of attorney is signed by another person on behalf of the principal or is signed by the principal's mark.

(2) Sections 1 to 42 of this 2003 Act do not apply to powers of attorney for health care executed under ORS 127.505 to 127.660 or powers of attorney for mental health care executed under ORS 127.700 to 127.737.

**SECTION 3. Preexisting and foreign powers of attorney.** Nothing in sections 1 to 42 of this 2003 Act affects the validity of a power of attorney executed in this state before the effective date of this 2003 Act. Any power of attorney that is executed in another state or country is valid in this state if it is validly executed under the law of the other state or country.

**SECTION 4. Power of attorney presumed to be validly executed.** A power of attorney that is dated and purports to be signed by the person named as principal is presumed to be valid. A person may rely on the presumption created by this section unless the person has actual knowledge that the power of attorney was not validly executed.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

**SECTION 5. Recording of power of attorney.** If a power of attorney requires that an attorney-in-fact execute any instrument that must or may be recorded in the County Clerk Lien Record or in any other record, the power of attorney and any affidavit authorized under sections 1 to 42 of this 2003 Act may also be recorded. A power of attorney and any affidavit may be recorded under this section only if the signature of the principal on the power of attorney or affidavit is acknowledged before a notary public.

**SECTION 6. Certification of power of attorney.** A certified copy of a power of attorney has the same force and effect as a power of attorney bearing the signature of the principal. A copy of a power of attorney may be certified by a notary public, by the county clerk for the county in which the power of attorney is recorded or by an official of a public body, as defined by ORS 174.109, who is authorized to certify copies. The certification must state that the official certifying the copy has examined the original power of attorney and that the copy is a true and correct copy of the original power of attorney.

**SECTION 7. Durable power of attorney; when power of attorney in effect.** (1) If a power of attorney does not contain words that otherwise limit the period of time during which the power of attorney is effective:

(a) The power of attorney is effective immediately and remains in effect until the power is revoked by the principal;

(b) The attorney-in-fact may act under the power of attorney notwithstanding the lapse of time since the execution of the power of attorney; and

(c) The attorney-in-fact may act under the power of attorney even though the principal becomes incapacitated after executing the power of attorney.

(2) If a power of attorney contains words providing that the power of attorney becomes effective on a specific date or upon the occurrence of a specific event:

(a) The power of attorney becomes effective on the date specified or upon the occurrence of the specified event and remains in effect until the power is revoked by the principal;

(b) After the power of attorney becomes effective, the attorney-in-fact may act under the power of attorney notwithstanding the lapse of time since the execution of the power of attorney or the date it became effective; and

(c) After the power of attorney becomes effective, the attorney-in-fact may act under the power of attorney even though the principal becomes incapacitated after executing the power of attorney.

(3) All acts of an attorney-in-fact under a power of attorney while a principal is incapacitated have the same effect, and inure to the benefit of and bind the principal, as though the principal were not incapacitated.

**SECTION 8. Expiration date in power of attorney.** Any expiration date in a power of attorney must be stated in terms of a specific month, day and year. An expiration date stated in any other way in a power of attorney has no effect.

**SECTION 9. Termination of power of attorney.** A power of attorney terminates on the earliest of:

(1) The death of the principal;

(2) The expiration date specified in the power of attorney; or

(3) If the principal appointed the spouse of the principal as attorney-in-fact, the commencement of proceedings for separation or for dissolution or annulment of the principal's marriage.

1       **SECTION 10. Missing persons presumed living.** For purposes of sections 1 to 42 of this  
 2       2003 Act, a missing person is presumed to be living until there is proof of the person's death  
 3       or a judicial determination that the person has died.

4       **SECTION 11. Revocation of power of attorney.** (1) A power of attorney may be revoked  
 5       only by a written instrument of revocation signed by the principal. The signature of the  
 6       principal must be acknowledged before a notary public if the power of attorney is signed by  
 7       another person on behalf of the principal or is signed by the principal's mark. A fiduciary  
 8       as defined in ORS 125.005, appointed for the principal after the principal executes a power  
 9       of attorney, has the same power the principal would have if the principal were not incapaci-  
 10      tated to revoke, suspend or terminate all or any part of the power of attorney.

11      (2) Revocation of a power of attorney is not effective as to any person unless that person  
 12      has actual notice of the revocation. Except as provided in subsection (3) of this section, a  
 13      person has actual notice of revocation only if the person has received a written instrument  
 14      of revocation.

15      (3) For the purposes of any real property transaction, a person has actual notice of re-  
 16      vocation of a power of attorney if the person has received a written instrument of revocation  
 17      or if a written instrument of revocation containing the legal description of the real property  
 18      that is the subject of the transaction has been recorded in the County Clerk Lien Record. A  
 19      written instrument of revocation is actual notice of revocation only as to an interest in real  
 20      property that is described in the revocation and that is located in the county where the in-  
 21      strument of revocation is recorded.

22      (4) A written instrument of revocation that purports to be signed by the person named  
 23      as principal in the power of attorney is presumed to be valid. A person receiving the written  
 24      instrument of revocation may rely on the presumption created by this subsection and is not  
 25      liable for refusing to accept the authority of the former attorney-in-fact.

26      (5) For the purposes of conveying an interest in property, an affidavit signed by the  
 27      person that received the interest stating that the person had not received a written instru-  
 28      ment of revocation of the power of attorney before the conveyance was made constitutes  
 29      conclusive proof for all subsequent transferees of the property that a written instrument of  
 30      revocation had not been received by the person, unless a subsequent transferee has actual  
 31      knowledge that the person had received a written instrument of revocation.

32      **SECTION 12. Power of attorney-in-fact to bind principal.** Any action taken by the  
 33      attorney-in-fact pursuant to the power of attorney binds the principal, the principal's heirs  
 34      and devisees and the personal representative of the principal, in the same manner as though  
 35      the action was taken by the principal. During any period of time in which a fiduciary, as  
 36      defined in ORS 125.005, is appointed for the principal after the principal executes a power of  
 37      attorney, any action taken by the attorney-in-fact pursuant to the power of attorney binds  
 38      the principal, the principal's heirs and devisees and the personal representative of the prin-  
 39      cipal, in the same manner as though the action was taken by the fiduciary.

40      **SECTION 13. Multiple attorneys-in-fact.** Unless otherwise provided in a power of attorney  
 41      that authorizes two or more attorneys-in-fact to act on behalf of a principal, any action  
 42      taken by any of the attorneys-in-fact is binding as provided in section 12 of this 2003 Act,  
 43      without regard to whether the other attorneys-in-fact consent or object to the action.

44      **SECTION 14. Qualification of successor attorney-in-fact.** If two or more attorneys-in-fact  
 45      are appointed in a power of attorney and one attorney-in-fact dies, resigns, becomes inca-

**SECTION 16. Attorney-in-fact not liable for acts of other attorneys-in-fact.** When two or more attorneys-in-fact are authorized to act on behalf of a principal, an attorney-in-fact who does not join in or consent to the action of one or more of the other attorneys-in-fact is not liable for that action. For the purposes of this section, failure to object to an action is not consent.

**SECTION 18. Affidavit of attorney-in-fact as conclusive proof of nontermination and nonrevocation in real property transactions.** (1) An affidavit of nontermination or nonrevocation in support of a real property transaction may be substantially in the following form:

[illegible]

**\_\_\_\_\_, being first duly sworn on oath says that:**

1. Affiant is the Attorney-in-Fact named in that certain Power of Attorney dated \_\_\_\_\_, \_\_\_\_\_ and filed for record \_\_\_\_\_, \_\_\_\_\_ as Document No. \_\_\_\_\_ (or in Book \_\_\_\_\_ of \_\_\_\_\_ Page \_\_\_\_\_) in the Office of the County Recorder of \_\_\_\_\_ County, Oregon, executed by \_\_\_\_\_ as Principal, relating to real property in \_\_\_\_\_ County, Oregon, legally described as follows:

(If more space is needed, continue on back or on an attachment.)

2. Affiant declares that the Power of Attorney is currently in effect.

3. Affiant does not have actual knowledge and has not received actual notice of the revocation or termination of the Power of Attorney by Principal's death, incapacity or otherwise, or notice of any facts indicating the same.

4. Affiant has examined the legal description(s), if any, attached to said Power of Attorney and certifies that the description(s) has (have) not been changed, replaced or amended subsequent to the signing of said Power of Attorney by the Principal.

Affiant

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Seal

Notary Public for \_\_\_\_\_

My Commission expires: \_\_\_\_\_

(2) An affidavit by the attorney-in-fact under subsection (1) of this section is conclusive proof that the power of attorney is in effect, has not terminated or been revoked, and that the powers granted extended to the real estate described in the power of attorney or any attachment to it, as of the time of the exercise of the power, as to any party relying on the affidavit, except any party dealing directly with the attorney-in-fact who has actual knowledge that the power of attorney has terminated prior to the exercise of the power, actual notice of the revocation of the power of attorney or actual knowledge that the powers do not extend to the real property legally described in the power of attorney, including any attachment.

**SECTION 19. Signature of attorney-in-fact as conclusive proof of nontermination.** (1) In the exercise of a power granted by a power of attorney other than a power relating to a real property transaction subject to section 18 of this 2003 Act, a signature by a person as "attorney-in-fact for (Name of the principal)" or "(Name of the principal) by (Name of the attorney-in-fact), the principal's attorney-in-fact" or any similar written disclosure of the principal and attorney-in-fact relationship constitutes a certification by the attorney-in-fact that:

(a) The power of attorney is in effect;

(b) The attorney-in-fact does not have, at the time of signing, actual knowledge of the termination of the power of attorney under section 9 of this 2003 Act;

(c) The attorney-in-fact does not have, at the time of signing, actual knowledge of the principal's incapacity, if the power of attorney terminates upon the principal becoming incapacitated; and

(d) The attorney-in-fact does not have actual notice of the revocation of the power of attorney.

(2) Any person may rely on a signature or similar written disclosure described in sub-

section (1) of this section for the purposes of the certifications described in subsection (1) of this section unless the person has actual knowledge that the certifications are not true.

**SECTION 20. Liability of third parties.** (1) Any person accepting the authority of an attorney-in-fact acting under a power of attorney is not liable to the principal or to the heirs, devisees or personal representative of the principal if:

(a) The applicable provisions of section 18 or 19 of this 2003 Act are satisfied;

(b) The attorney-in-fact is a successor attorney-in-fact and the attorney-in-fact provides the affidavit required by section 17 of this 2003 Act;

(c) The person does not have actual notice of the revocation of the power of attorney before the exercise of the power;

(d) The person does not have actual knowledge of the death of the principal before the exercise of the power; and

(e) The person does not have actual knowledge that the power of attorney has expired before the exercise of the power.

(2) A good faith purchaser from any person who obtains an interest in property from an attorney-in-fact is not liable to the principal or to the heirs, devisees or personal representative of the principal.

**SECTION 21. Liability of parties refusing authority of attorney-in-fact to act on principal's behalf.** (1) A person who refuses to accept the authority of an attorney-in-fact to exercise a power granted by a power of attorney is liable to the principal and to the principal's heirs, devisees and personal representative in the same manner as the person would be liable had the person refused to accept the authority of the principal to act on the principal's own behalf if the power of attorney:

(a) Is executed and acknowledged in conformity with section 27 of this 2003 Act;

(b) Contains a specimen signature of the attorney-in-fact;

(c) Is accompanied by an affidavit that satisfies the provisions of section 18 of this 2003 Act if exercise of the power relates to the execution or delivery of an instrument for a real property transaction that must or may be recorded;

(d) Is signed by the attorney-in-fact in a manner conforming to section 19 of this 2003 Act if exercise of the power does not relate to the execution or delivery of an instrument for a real property transaction that must or may be recorded; and

(e) Is accompanied by any affidavit that may be required by section 17 of this 2003 Act.

(2) A person that refuses to accept the authority of an attorney-in-fact to exercise a power granted by a power of attorney is not liable to the principal or to the principal's heirs, devisees or personal representative under subsection (1) of this section if:

(a) The power of attorney has been revoked;

(b) The power of attorney has expired; or

(c) The principal has died.

(3) Subsection (2) of this section does not affect any liability that a person would have to the principal, the principal's heirs, devisees and personal representative or to the attorney-in-fact under any other form of power of attorney under the common law or otherwise.

**SECTION 22. Duties of attorney-in-fact; standard of care.** (1) The attorney-in-fact shall keep complete records of all transactions entered into by the attorney-in-fact on behalf of the principal. The attorney-in-fact does not have a duty to render an accounting of those

1 transactions unless:

2 (a) Requested to do so at any time by the principal;

3 (b) The power of attorney requires that the attorney-in-fact render accountings and  
4 specifies to whom the accountings must be delivered;

5 (c) The attorney-in-fact has reimbursed the attorney-in-fact for any expenditure the  
6 attorney-in-fact has made on behalf of the principal; or

7 (d) The attorney-in-fact is ordered by the court to provide an accounting under section  
8 23 of this 2003 Act.

9 (2) A written statement that gives reasonable notice of all transactions entered into by  
10 the attorney-in-fact on behalf of the principal is an adequate accounting. The records of the  
11 attorney-in-fact may be examined and copied at any time by:

12 (a) The principal;

13 (b) Any person designated by the principal in the power of attorney as the recipient of  
14 accountings required by this section;

15 (c) Any fiduciary, as defined in ORS 125.005, appointed for the principal after the principal  
16 executes a power of attorney;

17 (d) The personal representative of the principal; and

18 (e) Any person designated by the court in an order under section 23 of this 2003 Act.

19 (3) The attorney-in-fact does not have a duty to exercise any power conferred upon the  
20 attorney-in-fact under the power of attorney, and the execution of a power of attorney does  
21 not entitle any person to compel any act by the attorney-in-fact that the person could not  
22 require of the principal.

23 (4) In exercising any power conferred by the power of attorney, the attorney-in-fact is a  
24 fiduciary and shall exercise the power in the same manner and with the same degree of care  
25 that an ordinarily prudent person of discretion and intelligence would exercise in the man-  
26 agement of the person's own affairs. The attorney-in-fact must always protect the interests  
27 of the principal. The attorney-in-fact is personally liable to any person, including the princi-  
28 pal, who is injured by an action taken by the attorney-in-fact in bad faith under the power  
29 of attorney or by the attorney-in-fact's failure to provide an accounting when the attorney-  
30 in-fact has a duty to provide an accounting under this section.

31 **SECTION 23. Court petition; interpretation and enforcement of power of attorney.** (1) A  
32 person designated in subsection (3) of this section may file a petition requesting that the  
33 court do one or more of the following:

34 (a) Determine whether the power of attorney is in effect.

35 (b) Compel the attorney-in-fact to submit the attorney-in-fact's accounts or report the  
36 attorney-in-fact's acts as attorney-in-fact to the principal, the spouse of the principal, a  
37 fiduciary, as defined in ORS 125.005, appointed for the principal after the principal executes  
38 a power of attorney, or to any other person required by the court in its discretion.

39 (c) Ratify past acts or approve proposed acts of the attorney-in-fact.

40 (d) Order the attorney-in-fact to exercise or refrain from exercising any power conferred  
41 by the power of attorney in a particular manner or for a particular purpose.

42 (e) Modify the authority of an attorney-in-fact under a power of attorney.

43 (f) Remove the attorney-in-fact upon a determination by the court that the attorney-in-  
44 fact has violated or is unfit to perform the fiduciary duties under the power of attorney and  
45 that the removal of the attorney-in-fact is in the best interest of the principal.

(g) Approve the resignation of the attorney-in-fact and approve the final accountings of the resigning attorney-in-fact if submitted, subject to any orders the court determines are necessary to protect the principal's interests.

(h) Confirm the authority of a successor attorney-in-fact to act under a power of attorney upon removal or resignation of the previous attorney-in-fact.

(i) Compel a third party to accept the authority of an attorney-in-fact. The court may not order a third party to accept the authority of the attorney-in-fact if the principal could not compel the third party to act in the same circumstances.

(j) Order the attorney-in-fact to furnish a bond in an amount and for the period of time the court determines to be appropriate.

(2) A petition under this section must contain:

(a) A statement identifying the principal's immediate family members, to the extent known by the petitioner, and any other persons known to the petitioner to be interested in the principal's welfare or the principal's estate, including the persons described in ORS 125.060 (2)(b) to (d); and

(b) A list of the persons identified under paragraph (a) of this subsection who have an interest in the proceedings and a statement of the nature of that interest.

(3) A petition under this section may be filed by any of the following persons:

(a) The attorney-in-fact;

(b) The principal;

(c) The spouse of the principal, unless a proceeding for separation or for dissolution or annulment of the principal's marriage has been commenced;

(d) A fiduciary, as defined in ORS 125.005, appointed for the principal after the principal executes a power of attorney; or

(e) Any other interested person, if the person demonstrates to the court that:

(A) The person is interested in the welfare of the principal;

(B) The person has a good faith belief that the court's intervention is necessary; and

(C) The principal is incapacitated at the time of filing the petition or is otherwise unable to protect the principal's own interests.

(4) In ruling on a petition filed under this section and ordering any relief, the court must consider the best interests of the principal and shall order the relief that is the least restrictive to the exercise of the power of attorney while still serving the principal's best interests. After entry of a judgment on the petition, the court has no further authority over the attorney-in-fact's actions or the power of attorney unless another petition is filed under this section or the judgment provides for further judicial enforcement of the decision of the court.

(5) In any proceeding commenced by the filing of a petition under this section by a person other than the attorney-in-fact, the court may in its discretion award reasonable attorney fees to any person participating in the proceeding from any other person participating in the proceeding, or from the assets of the principal, as the court determines to be equitable. In determining what is equitable in making the award, the court shall consider whether the petition was filed without reasonable cause. The court may order that attorney fees be paid by the attorney-in-fact individually only if the court determines that the attorney-in-fact has clearly violated fiduciary duties or has refused without justification to cooperate with the principal, with the fiduciary, as defined in ORS 125.005, appointed for the principal after the

principal executes a power of attorney or with the personal representative of the principal.

(6) In any proceeding under this section commenced by the attorney-in-fact or the principal to compel a third party to accept the authority of the attorney-in-fact, the court may order that reasonable attorney fees be paid by the third party if the court determines that:

(a) The power of attorney is a statutory durable power of attorney;

(b) The third party is liable under section 21 of this 2003 Act; and

(c) The third party did not have grounds to refuse to accept the authority of the attorney-in-fact under section 21 (2) of this 2003 Act.

(7) The following persons are entitled to notice of hearing on any petition under this section:

(a) The principal.

(b) The attorney-in-fact.

(c) The spouse of the principal, unless a proceeding for separation or for dissolution or annulment of the principal's marriage has been commenced.

(d) A fiduciary, as defined in ORS 125.005, appointed for the principal after the principal executes a power of attorney.

(e) Any other person identified in the petition as being interested in the proceedings or identified by the court as having a right to notice of the hearing.

(8) Notwithstanding subsection (7) of this section, the court may waive notice to the principal or the spouse of the principal if the principal or the spouse cannot be found or cannot be served with notice for other reason.

(9) Except as provided in this section, the Oregon Rules of Civil Procedure and the Oregon Evidence Code apply to proceedings under this section.

**SECTION 24. Liability of attorney-in-fact for improper execution of affidavits and signature.** Sections 1 to 42 of this 2003 Act do not limit any rights the principal may have against the attorney-in-fact for any fraudulent or negligent actions in executing affidavits or for signing or acting on behalf of the principal as an attorney-in-fact. An attorney-in-fact who knowingly executes a false affidavit under section 17 or 18 of this 2003 Act or makes a false certification under section 19 of this 2003 Act is liable for treble the amount of damages suffered by the principal and reasonable attorney fees.

**SECTION 25. Incorporation of powers by reference.** Any of the powers of the attorney-in-fact contained in sections 28 to 42 of this 2003 Act may be incorporated in the power of attorney by appropriate reference.

**SECTION 26. Scope of authority of attorney-in-fact.** (1) Sections 1 to 42 of this 2003 Act do not limit the power of a principal to:

(a) Grant any additional powers to the attorney-in-fact permitted by law, including any powers otherwise excluded under sections 28 to 42 of this 2003 Act; or

(b) Prohibit the exercise of any of the powers in sections 28 to 42 of this 2003 Act.

(2) If a power of attorney or other writing is not a statutory durable power of attorney executed in the form described in section 27 of this 2003 Act, but authorizes an attorney-in-fact to perform any act that the principal could personally perform relating to the principal's property, or evidences the principal's intent to give the attorney-in-fact full power to handle the principal's affairs and deal with the principal's property, the attorney-in-fact has all the powers described in sections 28 to 42 of this 2003 Act.

**SECTION 27. Form of statutory durable power of attorney; formal requirements.** The

following form may be used to create a power of attorney and, when used, must be construed in accordance with sections 28 to 42 of this 2003 Act:

**STATUTORY DURABLE POWER OF ATTORNEY**

**NOTICE:** The powers granted by this document are extensive. They are defined in sections 28 to 42 of this 2003 Act. If you have any questions about these powers, obtain competent advice. This power of attorney may be revoked by you if you wish to do so. If you designate your spouse as attorney-in-fact, the designation is automatically terminated if proceedings are commenced for legal separation or for dissolution or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney-in-fact to act for you.

**PRINCIPAL (Name and Address of Person Granting the Power)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ATTORNEY(S)-IN-FACT  
(Name(s) and Address(es))**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_

**SUCCESSOR ATTORNEY(S)-IN-FACT  
(Optional) To act if any named attorney-in-fact dies, resigns, becomes incapacitated or is removed.**

**First Successor (Name and Address)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Second Successor (Name and Address)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**NOTICE:** If more than one attorney-in-fact is designated, sign your initials or place your mark on the line in front of one of the following statements:

\_\_\_\_\_ Each attorney-in-fact may independently exercise the powers granted.

\_\_\_\_\_ All attorneys-in-fact must jointly exercise the powers granted.

**EXPIRATION DATE (Optional):**

\_\_\_\_\_  
Use Specific Month Day Year Only

**I hereby appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact:**

**FIRST:** To act for me in any way that I could act with respect to the following matters, except for a power that I have withheld, as each of the powers is defined in sections 28 to 42 of this 2003 Act:

**TO WITHHOLD A POWER, sign your initials or place your mark on the line in front of the power not granted. Failure to sign your initials or make your mark will have the effect of granting that power to your Attorney-in-Fact.**

\_\_\_\_\_ (A) real property transactions;

I choose to limit this power to real property in \_\_\_\_\_ County, Oregon, described as follows:

(Use legal description of property. Do not use street address.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(If more space is needed, continue on the back or on an attachment.)

\_\_\_\_\_ (B) tangible personal property transactions;

\_\_\_\_\_ (C) bond, share and commodity transactions;

\_\_\_\_\_ (D) banking transactions;

\_\_\_\_\_ (E) business operating transactions;

\_\_\_\_\_ (F) insurance transactions;

\_\_\_\_\_ (G) beneficiary transactions;

\_\_\_\_\_ (H) gift transactions;

\_\_\_\_\_ (I) fiduciary transactions;

\_\_\_\_\_ (J) claims and litigation;

\_\_\_\_\_ (K) family maintenance;

\_\_\_\_\_ (L) benefits from military service;

\_\_\_\_\_ (M) records, reports, statements and tax matters.

**IF NO POWER LISTED ABOVE IS INITIALED OR MARKED, THIS DOCUMENT SHALL BE CONSTRUED AND INTERPRETED AS A GENERAL POWER OF ATTORNEY AND MY ATTORNEY-IN-FACT SHALL HAVE THE POWER AND AUTHORITY TO PERFORM OR UNDERTAKE ANY ACTION I COULD PERFORM OR UNDERTAKE IF I WERE PERSONALLY PRESENT.**

**SPECIAL INSTRUCTIONS ABOUT GIFTS: If you have not initialed or marked Item H above, then your Attorney-in-Fact has the authority to make gifts of your property to your spouse, your children, your descendants and ancestors or to the spouse of any of your children or descendants and to organizations you have supported in the past. You may enlarge or reduce the group to whom gifts may be made, and you may limit the amount or purpose of gifts made to any person or group. Sign your initials or make your mark on each line that includes your special instructions:**

\_\_\_\_\_ My Attorney-in-Fact is also authorized to make gifts to the following (for example, step-children, domestic partner, extended family members):

\_\_\_\_\_

\_\_\_\_\_ My Attorney-in-Fact is not authorized to make gifts to the following:

\_\_\_\_\_

\_\_\_\_\_ The amount and purposes for which my Attorney-in-Fact is authorized to give are restricted to the following:

\_\_\_\_\_

**SPECIAL INSTRUCTIONS:** On the following lines you may give special instructions limiting or extending the powers granted to your Attorney-in-Fact.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SECOND: UNLESS YOU DIRECT OTHERWISE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED EVEN IF YOU SUBSEQUENTLY BECOME INCAPACITATED. YOU MAY DELAY THE EFFECTIVE DATE OF THIS POWER OF ATTORNEY BY SIGNING YOUR INITIALS OR MAKING YOUR MARK ON THE LINE IN FRONT OF THE FOLLOWING ALTERNATIVE:**

\_\_\_\_\_ This power of attorney becomes effective only upon my incapacity.

If the effective date of this power of attorney is delayed and a definition of my incapacity or a procedure to determine my incapacity is not contained in this power of attorney, then I shall be considered incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am incapacitated. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my incapacity.

**THIRD: UNLESS YOU DIRECT OTHERWISE, THIS POWER OF ATTORNEY AUTHORIZES YOUR ATTORNEY-IN-FACT TO TRANSFER YOUR PROPERTY TO THE ATTORNEY-IN-FACT FOR MANAGEMENT PURPOSES. YOU MAY WITHHOLD THIS POWER BY SIGNING YOUR INITIALS OR PLACING YOUR MARK ON THE LINE IN FRONT OF THE FOLLOWING ALTERNATIVE:**

\_\_\_\_\_ This power of attorney does not authorize my Attorney-in-Fact to transfer my property to the Attorney-in-Fact.

IN WITNESS WHEREOF I have signed my name this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
(Signature of Principal)

STATE OF OREGON )

) ss.

COUNTY OF \_\_\_\_\_ )

Acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by \_\_\_\_\_, the  
Principal named above

Seal

Notary Public for \_\_\_\_\_

My commission expires: \_\_\_\_\_

Specimen Signature of Attorney(s)-in-Fact (Optional) (Notarization not required) (Printed  
Name) (Signature)

**SECTION 28. Construction; generally.** If a principal executes a statutory durable power of attorney that grants the attorney-in-fact power over any class of transactions described in sections 28 to 42 of this 2003 Act, the power of attorney empowers the attorney-in-fact for that class of transactions to:

(1) Demand, receive or obtain by action, proceeding or otherwise any money or other thing of value to which the principal is, may become or may claim to be entitled, to conserve, invest, disburse or utilize anything so received for purposes intended and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact.

(2) Contract, in any manner, with any person and on any terms that the attorney-in-fact may select, for the performance of those transactions and to perform, rescind, reform, release or modify the contract or any other similar contract made by or on behalf of the principal.

(3) Execute, acknowledge, seal and deliver any deed, revocation, mortgage, lease, notice, check or other instrument that the attorney-in-fact deems useful for the performance of any transaction.

(4) Prosecute, defend, submit to arbitration and settle, and propose or accept a compromise with respect to, any claim existing in favor of or against the principal or to intervene in any action or proceeding relating to the claim.

(5) Perform any act of management or conservation, including to insure against any casualty, liability or loss, to obtain or regain possession, to protect by action, proceeding or otherwise, to pay, compromise or contest taxes or assessments, to apply for and receive refunds in connection with taxes or assessments, to move from place to place or store for hire or on a gratuitous bailment any property, to use, alter and make repairs or alterations and to form an entity in furtherance of any authorized purpose in the power of attorney and transfer, assign and convey assets to such entity in exchange for equity or debt interests.

(6) Hire, discharge and compensate any attorney, accountant, expert witness, other professional and nonprofessional personnel or assistants when the attorney-in-fact deems that action to be desirable for the proper execution of any power and for the keeping of needed records.

(7) Commence legal proceedings on the principal's behalf necessary to carry out an act authorized by the power of attorney.

(8) Participate in any reorganization with respect to any interest owned or claimed to be owned by the principal, to receive and hold any shares of stock or instrument of similar

character received in accordance with a plan of reorganization and to act with respect to the shares or ownership interests, including to sell or otherwise dispose of the shares or ownership interests, to exercise or sell any option, conversion or similar right with respect to the shares or ownership interests and to vote on the shares or ownership interests in person or by the granting of a proxy.

(9) Prepare, execute and file a record, report or other document the attorney-in-fact considers necessary or desirable to safeguard or promote the principal's interest under any federal, state or local statute, ordinance or governmental regulation.

(10) Perform any other lawful act that the principal may perform with respect to a transaction.

**SECTION 29. Construction; real property transactions.** (1) If a principal does not check the box in a statutory durable power of attorney form that withholds from the attorney-in-fact power over real property transactions, the attorney-in-fact has the power to:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive or otherwise acquire ownership or possession of any estate or interest in real property, including mineral interests, or the right incident to real property.

(b) Sell, exchange, convey, with or without covenants, quitclaim, release, abandon, surrender, mortgage, encumber, partition or consent to partitioning, plat or consent to platting, apply for zoning, rezoning or other governmental permits, grant options concerning, lease or sublet or otherwise dispose of and manage any estate or interest in real property, including contingent and expectant interests, marital rights and survivorship rights.

(c) Invest and reinvest all or any part of any proceeds of sale, financing or cash flow derived from operations of any property or interest in property.

(d) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part and enforce by action, proceeding or otherwise any mortgage, encumbrance, lien or other claim to real property that exists, or is claimed to exist, in favor of the principal.

(e) Use in any way, develop, modify, alter, abandon, replace, remove, erect or install structures or other improvements upon, over or under any real property in which the principal has, or claims to have, any estate or interest.

(2) Except as provided in subsection (3) of this section, all powers described in this section and section 28 of this 2003 Act may be exercised in the same manner for any estate or interest in real property owned by the principal at the time the power of attorney is executed and any estate or interest in real property acquired by the principal after execution of the power of attorney, whether located in this state or elsewhere.

(3) If a legal description of specific real property is included in the statutory durable power of attorney, the powers described in this section are exercisable only with respect to the estate or interest owned by the principal in the property described.

**SECTION 30. Construction; tangible personal property transactions.** (1) If a principal does not check the box in a statutory durable power of attorney form that withholds from the attorney-in-fact power over tangible person property transactions, the attorney-in-fact has the power to:

(a) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive or otherwise acquire ownership or possession of any tangible personal property or any interest in tangible personal property.

(b) Sell, exchange, convey, with or without covenants, release, abandon, surrender,

1 mortgage, encumber, pledge, hypothecate, pawn, grant options concerning, lease or sublet  
 2 or otherwise dispose of and manage any tangible personal property or any interest in tangible  
 3 personal property, including contingent and expectant interests, marital rights and  
 4 survivorship rights.

5 (c) Invest and reinvest all or any part of any proceeds of sale, financing or cash flow  
 6 derived from any tangible personal property or any interest in tangible personal property.

7 (d) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part  
 8 and enforce by action, proceeding or otherwise any mortgage, encumbrance, lien or other  
 9 claim that exists, or is claimed to exist, in favor of the principal with respect to any tangible  
 10 personal property or any interest in tangible personal property.

11 (2) All powers described in this section and section 28 of this 2003 Act may be exercised  
 12 in the same manner for any tangible personal property or interest in tangible personal  
 13 property owned by the principal at the time the power of attorney is executed and any tan-  
 14 gible personal property or interest in tangible personal property acquired by the principal  
 15 after execution of the power of attorney, whether located in this state or elsewhere.

16 SECTION 31. Construction; bond, share and commodity transactions. (1) If a principal  
 17 does not check the box in a statutory durable power of attorney form that withholds from  
 18 the attorney-in-fact power over bond, share and commodity transactions, the attorney-in-  
 19 fact has the power to:

20 (a) Accept as a gift or as security for a loan, reject, demand, buy, receive or otherwise  
 21 acquire ownership or possession of any bond, share, ownership interest, instrument of simi-  
 22 lar character, commodity interest or any instrument with respect to the bond, share or in-  
 23 terest, together with the interest, dividends, proceeds or other distributions connected with  
 24 any of those instruments.

25 (b) Sell or sell short, exchange, transfer, with or without a guaranty, release, surrender,  
 26 hypothecate, pledge, grant options concerning, loan, trade in or otherwise dispose of any  
 27 bond, share, ownership interest, instrument of similar character, commodity interest or any  
 28 instrument with respect to the bond, share or interest, including contingent and expectant  
 29 interests, marital rights and survivorship rights.

30 (c) Invest and reinvest all or any part of any proceeds of sale, financing or cash flow  
 31 derived from the ownership of any bond, share, ownership interest, instrument of similar  
 32 character, commodity interest or any instrument with respect to the bond, share or interest.

33 (d) Release in whole or in part, assign the whole or a part of, satisfy in whole or in part  
 34 and enforce by action, proceeding or otherwise any pledge, encumbrance, lien or other claim  
 35 as to any bond, share, ownership interest, instrument of similar character, commodity in-  
 36 terest or any instrument with respect to the bond, share or interest, when the pledge,  
 37 encumbrance, lien or other claim is owned, or claimed to be owned, by the principal.

38 (e) Consent to and participate in any reorganization, recapitalization, liquidation, merger,  
 39 consolidation, sale or lease or other change in or revival of a corporation or other business  
 40 entity or association, or change in the financial structure of any corporation or other busi-  
 41 ness entity or association, or in the priorities, voting rights or other special rights with re-  
 42 spect to the corporation, entity or association, to become a depositor with any protective,  
 43 reorganization or similar committee of the bond, share, ownership interest, instrument of  
 44 similar character, commodity interest or any instrument with respect to the bond, share or  
 45 interest belonging to the principal, to make any payments reasonably incident to the fore-

going, to exercise or sell any option, conversion or similar right or to vote in person or by the granting of a proxy, with or without the power of substitution, either discretionary, general or otherwise, for the performance of any transaction enumerated in this section.

(f) Carry in the name of a nominee selected by the attorney-in-fact any evidence of the ownership of any bond, share, ownership interest, instrument of similar character, commodity interest or any instrument with respect to the bond, share or interest belonging to the principal.

(g) Employ, in any way believed to be desirable by the attorney-in-fact, any bond, share, ownership interest, instrument of similar character, commodity interest or any instrument with respect to the bond, share or interest in which the principal has or claims to have any interest for the protection or continued operation of any speculative or margin transaction personally begun or personally guaranteed, in whole or in part, by the principal.

(2) All powers described in this section and section 28 of this 2003 Act may be exercised in the same manner for any bond, share, commodity interest or other interest of a similar nature that is owned by the principal at the time the power of attorney is executed and any bond, share, commodity interest or other interest of a similar nature acquired by the principal after execution of the power of attorney, whether the instrument evidencing that interest is located in this state or elsewhere.

**SECTION 32. Construction; banking transactions.** (1) If a principal does not check the box in a statutory durable power of attorney form that withholds from the attorney-in-fact power over banking transactions, the attorney-in-fact has the power to:

(a) Continue, modify and terminate any deposit account or other banking arrangement made by or on behalf of the principal prior to the execution of the power of attorney.

(b) Open in the name of the principal alone, or in a way that clearly evidences the principal and attorney-in-fact relationship, a deposit account of any type with any bank, trust company, savings association, credit union, thrift company, brokerage firm or other financial institution that serves as a depository for funds selected by the attorney-in-fact, to hire safe deposit box or vault space and to make other contracts for procuring other services made available by the banking or financial institution as the attorney-in-fact deems desirable.

(c) Make, sign and deliver checks or drafts for any purpose and to withdraw by check, order or otherwise any funds or property of the principal deposited with or left in the custody of any banking or financial institution, wherever located, either before or after the execution of the power of attorney.

(d) Prepare any necessary financial statements of the assets and liabilities or income and expenses of the principal for submission to any banking or financial institution.

(e) Receive statements, vouchers, notices or other documents from any banking or financial institution and to act with respect to them.

(f) Enter at any time any safe deposit box or vault that the principal could enter if personally present.

(g) Borrow money at any interest rate the attorney-in-fact selects, to pledge as security any assets of the principal the attorney-in-fact deems desirable or necessary for borrowing and to pay, renew or extend the time of payment of any debt of the principal.

(h) Make, assign, draw, endorse, discount, guarantee and negotiate all promissory notes, bills of exchange, checks, drafts or other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, to receive the cash or other proceeds of

1 any of those transactions, to accept any bill of exchange or draft drawn by any person upon  
2 the principal and to pay the bill or draft when due.

3 (i) Invest and reinvest all or any part of any proceeds of sale, financing or cash flow de-  
4 rived from any banking or other financial transaction.

5 (j) Receive for the principal and to deal in and with any sight draft, warehouse receipt  
6 or other negotiable or nonnegotiable instrument in which the principal has or claims to have  
7 an interest.

8 (k) Apply for and to receive letters of credit from any banking or financial institution  
9 selected by the attorney-in-fact, giving indemnity or other agreement in connection with the  
10 letters of credit that the attorney-in-fact deems desirable or necessary.

11 (L) Consent to an extension in the time of payment with respect to any commercial paper  
12 or any banking or other financial transaction in which the principal has an interest or by  
13 which the principal is, or might be, affected in any way.

14 (2) All powers described in this section and section 28 of this 2003 Act may be exercised  
15 in the same manner for any banking transaction engaged in by the principal at the time the  
16 power of attorney is executed or engaged in thereafter, whether conducted in this state or  
17 elsewhere.

18 **SECTION 33. Construction; business operating transactions.** (1) If a principal does not  
19 check the box in a statutory durable power of attorney form that withholds from the  
20 attorney-in-fact power over business operating transactions, the attorney-in-fact has the  
21 power to:

22 (a) Operate, buy, sell, enlarge, reduce or terminate a business interest of the principal,  
23 regardless of the form of the enterprise, including partnerships, limited partnerships, limited  
24 liability companies, corporations and business trusts.

25 (b) Discharge and perform any duty or liability, to exercise any right, power, privilege  
26 or option that the principal has, or claims to have, under any agreement, certificate or other  
27 instrument affecting a business relationship, interest or enterprise, including a partnership,  
28 limited liability company, limited partnership or corporation, regardless of the role of prin-  
29 cipal in such business relationship or enterprise, to enter into and enforce the terms of any  
30 agreement for the protection of the principal by action, proceeding or otherwise, as the  
31 attorney-in-fact deems desirable or necessary, to establish, manage, perfect, defend, license  
32 and dispose of any intangible and intellectual property of the principal or in which the prin-  
33 cipal claims an interest, including patents, trademarks, copyrights and trade secrets, to es-  
34 tablish the value of a business or business interest under a buy-sell agreement to which the  
35 principal is a party and to defend, submit to arbitration, settle or compromise any action or  
36 other legal proceeding to which the principal is a party because of the role of the principal  
37 in the business relationship or enterprise.

38 (c) Exercise in person or by proxy, or to enforce by action, proceeding or otherwise, any  
39 right, power, privilege or option that the principal has as the holder or owner of any bond,  
40 share, ownership interest or instrument of similar character and to defend, submit to arbi-  
41 tration, settle or compromise any action or other legal proceeding to which the principal is  
42 a party because of a bond, share, ownership interest or other instrument of similar charac-  
43 ter.

44 (d) With respect to any business enterprise owned solely by the principal:

45 (A) Continue, modify, renegotiate, extend and terminate any contractual arrangements

1 made with any person or entity, firm, association or corporation by or on behalf of the  
2 principal with respect to the business enterprise before the power of attorney became effective;  
3

4 (B) Determine the policy of the business enterprise as to the location of the site or sites  
5 to be used for its operation, the nature and extent of the business to be undertaken by it,  
6 the methods of manufacturing, selling, merchandising, financing, accounting and advertising  
7 to be employed in its operation, the amount and types of insurance to be carried and the  
8 mode of securing, compensating and dealing with accountants, attorneys, servants and other  
9 agents and employees required for its operation, to contract, in any manner, with any person  
10 and on any terms that the attorney-in-fact deems desirable or necessary, for effectuating  
11 any or all of the decisions of the attorney-in-fact as to policy and to perform, rescind, re-  
12 form, release or modify the contract or any other similar contract made by or on behalf of  
13 the principal;

14 (C) Change the name or form of organization under which the business enterprise is op-  
15 erated and to enter into a partnership agreement with other persons or to organize a cor-  
16 poration to take over the operation of the business or any part of the business, as the  
17 attorney-in-fact deems desirable or necessary; and

18 (D) Demand and receive all money that is or may become due to the principal or that  
19 may be claimed by or for the principal in the operation of the business enterprise, to control  
20 and disburse the funds in the operation of the enterprise in any way that the attorney-in-fact  
21 deems desirable or necessary and to engage in any banking or financial transactions that the  
22 attorney-in-fact deems desirable or necessary to perform any of the powers of the attorney-  
23 in-fact described in paragraph (c) of this subsection.

24 (e) Invest and reinvest all or any part of any proceeds of sale, financing or cash flow  
25 derived from the ownership of any business relationship or enterprise.

26 (2) All powers described in this section and section 28 of this 2003 Act may be exercised  
27 in the same manner for any business in which the principal has an interest at the time the  
28 power of attorney is executed or in which the principal acquires an interest thereafter,  
29 whether the business operates in this state or elsewhere.

30 **SECTION 34. Construction; insurance transactions.** (1) If a principal does not check the  
31 box in a statutory durable power of attorney form that withholds from the attorney-in-fact  
32 power over insurance transactions, the attorney-in-fact has the power to:

33 (a) Continue, pay the premium or assessment on, modify, rescind, release or terminate  
34 any contract of life, accident, health or disability insurance or for the provision of health  
35 care services, or any combination of these contracts, procured by or on behalf of the prin-  
36 cipal before the power of attorney became effective, that insures the principal or any other  
37 person, without regard to whether the principal is a beneficiary under the contract.

38 (b) Procure new, different or additional contracts of life, accident, health or disability  
39 insurance for the principal or for the provision of health care services for the principal, to  
40 select the amount and the type of insurance and the mode of payment under each contract,  
41 to pay the premium or assessment on, modify, rescind, release or terminate any contract  
42 so procured by the attorney-in-fact, and to designate the beneficiary of the contract, pro-  
43 vided that the attorney-in-fact cannot be named as a beneficiary unless the principal confers  
44 on the attorney-in-fact the power to make gifts to the attorney-in-fact pursuant to section  
45 36 of this 2003 Act or, if the attorney-in-fact was named as a beneficiary under the contract

1 that was procured by the principal before the power of attorney became effective, then the  
 2 attorney-in-fact may continue as a beneficiary under the contract or under any extension  
 3 or renewal of or substitute for the contract.

4 (c) Apply for and receive any available loan on the security of the contract of insurance,  
 5 whether for the payment of a premium or for the procuring of cash, to surrender and then  
 6 to receive the cash surrender value, to exercise any election as to beneficiary or mode of  
 7 payment, to change the manner of paying premiums, to change or convert the type of in-  
 8 surance contract with respect to any contract of life, accident, health, disability, casualty  
 9 or liability insurance as to which the principal has, or claims to have, one or more of the  
 10 powers described in this section and to change the beneficiary of the contract of insurance,  
 11 provided that the attorney-in-fact cannot be a new beneficiary unless the principal confers  
 12 on the attorney-in-fact the power to make gifts to the attorney-in-fact pursuant to section  
 13 36 of this 2003 Act or, if the attorney-in-fact was named as a beneficiary under the contract  
 14 that was procured by the principal before the power of attorney became effective, then the  
 15 attorney-in-fact may continue as a beneficiary under the contract or under any extension  
 16 or renewal of or substitute for the contract.

17 (d) Invest and reinvest all or any part of any cash proceeds derived in any manner from  
 18 the ownership of any contract of insurance.

19 (e) Apply for and procure any available governmental aid in the guaranteeing or paying  
 20 of premiums of any contract of insurance on the life of the principal.

21 (f) Continue, procure, pay the premium or assessment on, modify, rescind, release, ter-  
 22 minate or otherwise deal with any contract of insurance, other than those enumerated in  
 23 paragraphs (a) and (b) of this subsection, whether fire, marine, burglary, compensation, li-  
 24 ability, hurricane, casualty or other type or any combination of insurance, and to perform  
 25 any act or acts with respect to the contract or with respect to its proceeds or enforcement  
 26 that the attorney-in-fact deems desirable or necessary for the promotion or protection of the  
 27 interests of the principal.

28 (2) All powers described in this section and section 28 of this 2003 Act may be exercised  
 29 in the same manner for any contract of insurance or for the provision of health care services  
 30 issued to or on behalf of the principal at the time the power of attorney is executed or  
 31 thereafter, whether entered into in this state or elsewhere.

32 **SECTION 35. Construction; beneficiary transactions.** (1) For the purposes of this section,  
 33 “fund” means any trust, probate estate, guardianship, conservatorship, escrow,  
 34 custodianship, qualified benefit plan, nonqualified benefit plan or individual retirement asset,  
 35 plan or benefit sponsored or administered by any federal, state or local governmental agency  
 36 or authority or other fund in which the principal has or claims to have an interest or  
 37 entitlement.

38 (2) If a principal does not check the box in a statutory durable power of attorney form  
 39 that withholds from the attorney-in-fact power over beneficiary transactions, the attorney-  
 40 in-fact has the power to:

41 (a) Represent and act for the principal in all ways and in all matters affecting any fund  
 42 out of which the principal is entitled, or claims to be entitled, as a beneficiary or participant,  
 43 to some share or payment, including the power to:

44 (A) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange  
 45 or consent to a reduction in or modification of any share in or payment from the fund;

(B) Demand or obtain by action, proceeding or otherwise any money or other thing of value to which the principal is, may become or may claim to be entitled by reason of the fund, including any right to claim an elective share in an estate or under any will, to initiate, participate in or oppose any proceeding, judicial or otherwise, for the ascertainment of the meaning, validity or effect of any deed, declaration of trust or other transaction affecting in any way the interest of the principal, to initiate, participate in or oppose any proceeding, judicial or otherwise, for the removal, substitution or surcharge of a fiduciary, to conserve, invest, disburse or use anything so received for purposes listed in this section and to reimburse the attorney-in-fact for any expenditures properly made by the attorney-in-fact in the execution of the powers conferred on the attorney-in-fact by the statutory durable power of attorney;

(C) Prepare, sign, file and deliver all reports, compilations of information, returns or papers with respect to any interest had or claimed by or on behalf of the principal in the fund and to pay, compromise or contest, and apply for and receive refunds in connection with, any tax or assessment with respect to any interest had or claimed by or on behalf of the principal in the fund;

(D) Contract, in any manner, with any person and on any terms the attorney-in-fact may select, for the accomplishment of the purposes listed in this section and to perform, rescind, reform, release or modify the contract or any other similar contract made by or on behalf of the principal;

(E) Execute, acknowledge, verify, seal, file and deliver any deed, assignment, mortgage, lease, consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance or other instrument that the attorney-in-fact deems useful for the performance of any transaction enumerated in this section;

(F) Submit to arbitration, settle or propose or accept a compromise with respect to any controversy or claim that affects the administration of any fund in which the principal has, or claims to have, an interest and to perform any and all acts that the attorney-in-fact deems to be desirable or necessary in effectuating the compromise; and

(G) Transfer any part or all of any interest that the principal may have in real estate, stocks, bonds, bank accounts, insurance and any other assets of any kind and nature to the trustee of any revocable or irrevocable trust created by the principal as grantor.

(b) Execute a revocable trust agreement for the principal with such trustee or trustees as the attorney-in-fact may select, and include such terms and dispositions as the attorney-in-fact determines reasonable and appropriate as long as such dispositive terms are substantially the same as those that would have governed had the trust not been created, and to deliver and convey to the trustee any or all of the principal's interests in real estate, stocks, bonds, bank accounts, insurance and any other assets of any kind and nature.

(3) All powers described in this section and section 28 of this 2003 Act may be exercised in the same manner for the administration or disposition of any fund in which the principal has an interest when the power of attorney is executed or in which the principal acquires an interest thereafter, whether located in this state or elsewhere.

**SECTION 36. Construction; gift transactions.** (1) If a principal does not check the box in a statutory durable power of attorney form that withholds from the attorney-in-fact power over gift transactions, the attorney-in-fact has the power to:

1 (a) Make gifts to organizations, whether charitable or otherwise, to which the principal  
2 has made gifts and to satisfy pledges made to organizations by the principal.

3 (b) Make gifts on behalf of the principal, outright or in trust, to the principal's spouse,  
4 children or other descendants and ancestors, the spouse of any child or other descendant or  
5 others designated by the principal in writing, including the attorney-in-fact if the attorney-  
6 in-fact bears any such relationship to the principal, outright or in trust, for purposes that  
7 the attorney-in-fact deems to be in the best interest of the principal, specifically including  
8 minimization of income, estate, inheritance or gift taxes, provided that no attorney-in-fact  
9 nor anyone the attorney-in-fact has a legal obligation to support may be the recipient of any  
10 gifts in any one calendar year that, in the aggregate, exceed an amount equal to the annual  
11 exclusion allowed for federal gift tax purposes to each recipient, regardless of whether the  
12 gift qualifies for such annual exclusion.

13 (c) Consent to the splitting of gifts for federal gift tax purposes and any similar pro-  
14 visions of any state or local gift tax laws and to pay any gift tax that may arise by reason  
15 of such gift.

16 (d) Renounce and disclaim any property or interest in property or powers to which the  
17 principal may become entitled.

18 (2) All powers described in this section and section 28 of this 2003 Act may be exercised  
19 in the same manner for a gift of any property in which the principal has an interest when  
20 the power of attorney is executed or in which the principal thereafter acquires an interest,  
21 whether located in this state or elsewhere.

22 **SECTION 37. Construction; fiduciary transactions.** (1) For the purposes of this section,  
23 "fund" means any trust, probate estate, guardianship, conservatorship, escrow,  
24 custodianship or any other fund in which the principal has, or claims to have, an interest  
25 as a fiduciary.

26 (2) If a principal does not check the box in a statutory durable power of attorney form  
27 that withholds from the attorney-in-fact power over fiduciary transactions, the attorney-in-  
28 fact has the power to:

29 (a) Represent and act for the principal in all ways and in all matters affecting any fund  
30 with respect to which the principal is a fiduciary.

31 (b) Renounce or resign from any fiduciary position to which the principal has been ap-  
32 pointed or elected.

33 (c) Initiate, participate in or oppose any proceeding, judicial or otherwise, for the re-  
34 moval, substitution or surcharge of a fiduciary and to conserve, invest or disburse anything  
35 received for the purposes of the fund for which it is received.

36 (3) This section does not authorize the delegation of any power of a fiduciary unless the  
37 power is one the principal, as the fiduciary, is authorized to delegate under the terms of the  
38 instrument governing the exercise of the power or under the laws of this state.

39 (4) All powers described in this section and section 28 of this 2003 Act may be exercised  
40 in the same manner for any fund of which the principal is a fiduciary when the power of  
41 attorney is executed or of which the principal thereafter becomes the fiduciary, whether lo-  
42 cated in this state or elsewhere.

43 **SECTION 38. Construction; claims and litigation.** (1) If a principal does not check the box  
44 in a statutory durable power of attorney form that withholds from the attorney-in-fact power  
45 over claims and litigation, the attorney-in-fact has the power to:

(a) Assert and prosecute before any court, administrative board, department, commissioner or other tribunal, any cause of action, claim, counterclaim, offset or defense, that the principal has, or claims to have, against any individual, partnership, association, corporation, government or other person or instrumentality, including the power to sue for the recovery of land or of any other thing of value, for the recovery of damages sustained by the principal in any manner, for the elimination or modification of tax liability, for an injunction, for specific performance or for any other relief.

(b) Bring an interpleader action or other action to determine adverse claims, to intervene or interplead in any action or proceeding and to act in any litigation as amicus curiae.

(c) In connection with any action or proceeding, apply for an attachment, a garnishment or any other available procedure for the enforcement or satisfaction of the judgment.

(d) In connection with any action or proceeding, perform any act that the principal might perform, including the acceptance of tender, offer of judgment, admission of any facts, submission of any controversy on an agreed statement of facts and consent to examination before trial and generally to bind the principal in the conduct of any litigation or controversy as seems desirable to the attorney-in-fact.

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

(f) Appear for, represent and act for the principal with respect to bankruptcy or insolvency proceedings, whether voluntary or involuntary, whether of the principal or of some other person, with respect to any reorganization proceeding or with respect to any receivership or application for the appointment of a receiver or trustee that in any way affects any interest of the principal in any real property, bond, share, commodity interest, tangible personal property or other thing of value.

(g) Pay, from funds in the control of the attorney-in-fact, any judgment against the principal or any settlement that may be made in connection with any transaction, to receive and conserve any money or other thing of value paid in settlement of or as proceeds of one or more of the transactions enumerated in this section and to receive, endorse and deposit checks.

(2) All powers described in this section and section 28 of this 2003 Act may be exercised in the same manner for any claim or litigation that exists when the power of attorney is executed or that thereafter comes into existence, whether arising in this state or elsewhere.

**SECTION 39. Construction; family maintenance.** If a principal does not check the box in a statutory durable power of attorney form that withholds from the attorney-in-fact power over family maintenance, the attorney-in-fact has the power to:

(1) Perform all acts necessary for maintaining the customary standard of living of the

principal, the members of the principal's household and others customarily supported by the principal, including the principal's spouse and children, to provide living quarters by purchase, lease or other contract or by payment of the operating costs, including interest, amortization payments, repairs and taxes of premises owned by the principal and occupied by the principal or the principal's family or dependents, to provide domestic help for the operation of the household, to provide usual vacations and usual travel expenses, to provide usual educational facilities and to provide funds for all the current living costs of the principal and the principal's spouse, children and other dependents, including, among other things, shelter, clothing, food and incidentals.

(2) Make all necessary arrangements, contractual or otherwise, and pay for necessary medical, dental, rehabilitation and surgical care, hospitalization, hospice and custodial care, supervisory personnel and companions for the principal, the principal's spouse and children and other dependents of the principal.

(3) Continue whatever provision has been made by the principal, either prior to or after the execution of the power of attorney, for the principal's spouse and other persons customarily supported by the principal with respect to automobiles or other means of transportation, including the power to license, insure and replace any automobiles owned by the principal and customarily used by the principal's spouse and children or other persons customarily supported by the principal.

(4) Continue any charge accounts maintained by the principal before the power of attorney became effective, or thereafter, for the convenience of the principal's spouse and children or other persons customarily supported by the principal, to open new accounts that the attorney-in-fact deems desirable for the accomplishment of any of the purposes enumerated in this section and to pay the items charged on those accounts before the power of attorney became effective by any person authorized or permitted by the principal to make charges.

(5) Continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization or to continue contributions to those organizations.

(6) Use any asset of the principal for the performance of the powers enumerated in this section. The power to use any asset includes the power to draw money by check or otherwise from any bank deposit of the principal, to sell and convert to cash any asset of the principal, to borrow money and to pledge as security for a loan any asset, including insurance, that belongs to the principal.

(7) Request, receive and review any information, verbal or written, regarding the principal's personal affairs or physical or mental health, including medical and hospital records, to execute any releases or other documents that may be required in order to obtain such information and to disclose such information to such persons, organizations, firms or corporations as the attorney-in-fact deems appropriate.

(8) Grant releases to hospital staff, physicians, nurses and other medical and hospital administrative personnel who act in reliance on instructions given by the attorney-in-fact or who render written opinions to the attorney-in-fact in connection with any matters involving the principal's health and medical care from all liability for damages suffered or to be suffered by the principal.

**SECTION 40. Construction; benefits from military service.** (1) If a principal does not check the box in a statutory durable power of attorney form that withholds from the

1 attorney-in-fact power over benefits from military service, the attorney-in-fact has the  
2 power to:

3 (a) Execute vouchers in the name of the principal for any and all allowances and re-  
4 imbursements payable by the United States or by any state or subdivision of a state to the  
5 principal, including all allowances and reimbursements for transportation of the principal  
6 and the principal's dependents and for shipment of household effects, and to receive, endorse  
7 and collect the proceeds of any check payable to the order of the principal drawn on the  
8 treasurer or other fiscal officer or depository of the United States or of any state or subdi-  
9 vision of a state.

10 (b) Take possession and order the removal and shipment of any property of the principal  
11 from any post, warehouse, depot, dock or other place of storage or safekeeping, either gov-  
12 ernmental or private, and to execute and deliver any release, voucher, receipt, bill of lading,  
13 shipping ticket, certificate or other instrument that the attorney-in-fact deems desirable or  
14 necessary for that purpose.

15 (c) Prepare, file and prosecute the claim of the principal to any benefit or assistance, fi-  
16 nancial or otherwise, to which the principal is, or claims to be, entitled under the provisions  
17 of any statute or regulation existing at the execution of the power of attorney or enacted  
18 after that time by the United States, by any state or subdivision of a state or by any foreign  
19 government, which benefit or assistance arises from or is based upon military service per-  
20 formed prior to or after the execution of the power of attorney by the principal or by any  
21 person related by blood or marriage to the principal, and to execute any receipt or other  
22 instrument that the attorney-in-fact deems desirable or necessary for the enforcement or  
23 collection of that claim.

24 (d) Receive the financial proceeds of any claim of the types described in this section and  
25 to conserve, invest, disburse or use anything so received for purposes enumerated in this  
26 section.

27 (2) All powers described in this section and section 28 of this 2003 Act may be exercised  
28 in the same manner for benefits from military service existing at the time the power of at-  
29 torney is executed or accruing thereafter, whether those benefits accrue in this state or  
30 elsewhere.

31 **SECTION 41. Construction; records, reports, statements and tax matters.** (1) If a prin-  
32 cipal does not check the box in a statutory durable power of attorney form that withholds  
33 from the attorney-in-fact power over records, reports, statements and tax matters, the  
34 attorney-in-fact has the power to:

35 (a) Keep records of all cash received and disbursed for or on account of the principal, of  
36 all credits and debits to the account of the principal and of all transactions affecting in any  
37 way the assets and liabilities of the principal.

38 (b) Prepare, execute and file all tax and tax information returns, for all periods, required  
39 by the laws of the United States, any state or subdivision of a state or any foreign govern-  
40 ment, to represent the principal in all tax matters pertaining to a tax year on which the  
41 statute of limitation has not run and 25 years following that tax year, to receive confidential  
42 information, to prepare, execute and file all other tax-related documents for all tax periods,  
43 including requests for extension of time, offers, waivers, consents, powers of attorney, ben-  
44 eficiary agreements, closing agreements, posting bonds and petitions to any tax court re-  
45 garding tax matters, and to prepare, execute and file all other instruments that the

attorney-in-fact deems desirable or necessary for the safeguarding of the principal against excessive or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation. The attorney-in-fact is permitted to represent the principal respecting all taxes that the principal has paid and all tax returns that the principal has filed, either personally or through an agent, with the Internal Revenue Service or any other agency of the United States government, any state department of revenue, any political subdivision of a state and any foreign country or political subdivision of a foreign country.

(c) Prepare, execute and file any return, report, declaration or other document required by the laws of the United States, any state or subdivision of a state or any foreign government, including any report or declaration required by the Social Security Administration or any other governmental agency, that the attorney-in-fact deems desirable or necessary for the safeguarding or maintenance of the principal's interest or participation in any plan, program, business or activity.

(d) Prepare, execute and file any record, report or statement that the attorney-in-fact deems desirable or necessary for the safeguarding or maintenance of the principal's interest with respect to price, rent, wage or rationing control or other governmental activity.

(2) All powers described in this section and section 28 of this 2003 Act may be exercised in the same manner for records, reports, tax matters or statements of or concerning the affairs of the principal existing when the power of attorney is executed or arising thereafter, whether arising in this state or elsewhere.

**SECTION 42. All other matters.** If a principal does not check any box in a statutory durable power of attorney form that withholds from the attorney-in-fact a power, the attorney-in-fact has the power to act as the agent of the principal with respect to any and all possible matters and affairs affecting the principal and property owned by the principal.

**SECTION 43.** ORS 93.670 is amended to read:

93.670. (1) Every *[letter]* **power** of attorney, or other instrument containing a power to convey lands, as agent or attorney for the owner of such lands, and every executory contract for the sale or purchase of lands, when acknowledged or proved in the manner prescribed for the acknowledgment or proof of conveyances, may be recorded in the county clerk's office of any county in which the lands to which such power **of attorney or other instrument** or contract relates *[is]* **are** situated. When so acknowledged or proved, *[such letter]* **the power of attorney**, instrument or contract, and the record thereof when recorded, or the certified transcript of such record, may be read in evidence in any court in this state without further proof of the same.

(2) *[No letter]* **A power** of attorney, or other instrument so recorded, is *[deemed to be]* **not** revoked by any act of the party by whom it was executed unless the instrument containing such revocation is also recorded in the same office in which *[the instrument containing]* the power **of attorney or other instrument** was recorded.

**SECTION 44.** ORS 125.710 is amended to read:

125.710. (1) The public guardian and conservator may serve as the guardian or conservator, or both, of any person of whom the court having probate jurisdiction in the county may have jurisdiction. The public guardian and conservator may serve as guardian or conservator upon the petition of any person or upon the own petition of the public guardian and conservator.

(2) When appointed as guardian or conservator by the court having probate jurisdiction, the public guardian and conservator shall serve as provided in ORS chapter 125, *[ORS 127.005 and 127.015]* except as specifically stated to the contrary in ORS 125.700 to 125.730.

1       (3) The public guardian and conservator in the discretion of the public guardian and conservator  
2 may employ private attorneys if the fees for the attorneys can be defrayed out of funds of the  
3 guardianship or conservatorship estate.

4       **SECTION 45. ORS 127.005, 127.015, 127.025, 127.035 and 127.045 are repealed.**

5       **SECTION 46. The section captions used in this 2003 Act are provided only for the con-**  
6 **venience of the reader and do not become part of the statutory law of this state or express**  
7 **any legislative intent in the enactment of this 2003 Act.**

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