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TITLE 12

Decedents' Estates and Fiduciary Relations

Fiduciary Relations

CHAPTER 49A. DURABLE PERSONAL POWERS OF ATTORNEY ACT

Subchapter I. General Provisions

§ 49A-101. Short title.

This chapter may be cited as the "Durable Personal Powers of Attorney Act".

[77 Del. Laws, c. 467, § 4.](#);

§ 49A-102. Definitions.

In this chapter:

(1) "Agent" means a person granted authority to act for the benefit of a principal under a durable power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, concurrent agent, joint agent, successor agent, and a person to which an agent's authority is delegated.

(2) "Durable," with respect to a power of attorney, means not terminated by the principal's incapacity, and satisfying the requirements set forth in § 49A-104 of this title.

(3) "Durable power of attorney" means a power of attorney that is durable, meeting the requirements of § 49A-104 of this title.

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

(5) "Good faith" means honesty in fact.

(6) "Incapacity" means inability of an individual to manage his or her property or business affairs.

(7) "Internal Revenue Code" refers to the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after October 1, 2010.

(8) "Person" means an individual, corporation, statutory trust, estate, trust, partnership (general or limited), limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity or association.

(9) "Personal power of attorney" means any durable power of attorney executed in this State or, if executed other than in this State, specifying that the laws of this State shall govern such power of attorney, other than those powers of attorney to which this chapter is not applicable as set forth in § 49A-103(a) of this title.

(10) "Power of attorney" means a grant of authority to an agent to act in the place of the principal, whether or not the term power of attorney is used, authorizing the agent to convey rights in property of the principal to the agent or any other person.

(11) "Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a

specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity, only by will, or only by an instrument determining the disposition of property upon the death of the principal.

(12) "Principal" means an individual who grants authority to an agent in a power of attorney acting for himself or herself and not as a fiduciary, officer, employee, representative, agent or official of any legal, governmental, or commercial entity or association,.

(13) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(14) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(15) "Sign" means, with present intent to authenticate or adopt a record:

- a. To execute or adopt a tangible symbol; or
- b. To attach to or logically associate with the record an electronic sound, symbol, or process.

(16) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

[*77 Del. Laws, c. 467, § 4; 70 Del. Laws, c. 186, § 1.*](#)

§ 49A-103. Applicability.

(a) This chapter shall not apply to any of the following powers of attorney which, if durable, shall be governed by Chapter 49 of this title, to the extent applicable, or by another applicable chapter or by the common law of this State:

(1) A power of attorney given primarily for a business or commercial purpose;

(2) A power of attorney to the extent it is coupled with an interest in the subject of the power;

(3) A power of attorney given to or for the benefit of a creditor in connection with a loan or other credit transaction or a secured party in connection with a secured transaction;

(4) A power of attorney to make health-care decisions;

(5) A proxy or other delegation to exercise voting rights or management rights with respect to a corporation, partnership (general or limited), limited liability company, condominium or other legal or commercial entity or association;

(6) A power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;

(7) A power of attorney given to facilitate a specified transfer or disposition of one or more identified stocks, bonds or other assets, whether real, personal, tangible or intangible;

(8) A power of attorney authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government or governmental subdivision, agency or instrumentality or other third party;

(9) A power of attorney authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power;

(10) A power of attorney given by an individual who is, or is seeking to become, a director, officer, stockholder, employee, partner (general or limited), member, unit owner,

equity owner, trustee, manager or agent of a corporation, partnership (general or limited), limited liability company, condominium or other legal or commercial entity or association, in that individual's capacity as such, including a power of attorney contained in a subscription agreement;

(11) A power of attorney contained in a certificate of incorporation, bylaws, general or limited partnership agreement, limited liability company agreement, declaration of trust, declaration of condominium, condominium bylaws or offering plan or other agreement or instrument governing the internal affairs of an entity or association, authorizing a director, officer, shareholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager or other person to take lawful action relating to such entity or association;

(12) A power of attorney given to a condominium managing agent to take action in connection with the use, management and operation of a condominium unit;

(13) A power of attorney given to an agent within the scope of the agent's business to the extent such business is subject to the regulatory authority of any Delaware governmental agency, including, without limitation, a power of attorney given to a licensed real estate broker to take action in connection with a listing of real property, mortgage loan, lease or management agreement;

(14) A power of attorney authorizing acceptance of service of process on behalf of the principal; and

(15) A power of attorney created pursuant to authorization provided by a federal or state statute, other than this chapter, that specifically contemplates creation of the power.

(b) If for any reason a durable personal power of attorney given in compliance with the requirements of this chapter and referencing this chapter is determined to be given primarily for a business or commercial purpose or otherwise excepted from this chapter under subsection (a) of this section, such power of attorney shall be valid if it complies with Chapter 49 of this title, to the extent applicable, or with another applicable chapter of this Code or with the common law of this State.

(c) A power of attorney excepted from this chapter pursuant to subsection (a) of this section that was granted in compliance with the laws of the jurisdiction governing such power of attorney will be recognized and enforceable under the laws of the State of Delaware in accordance with its terms.

[77 Del. Laws, c. 467, § 4; 70 Del. Laws, c. 186, § 1.;](#)

§ 49A-104. Power of attorney is durable.

A power of attorney is durable if it contains the words: "This power of attorney shall not be affected by the subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

[77 Del. Laws, c. 467, § 4.;](#)

**§ 49A-105. Execution of personal power of attorney
[Effective until Jan. 1, 2013]**

(a) A personal power of attorney must be:

(1) In writing;

(2) Signed by the principal or by another person subscribing the principal's name in the principal's presence and at the principal's express direction;

(3) Dated;

(4) Signed in the presence of a notarial officer; and

(5) Signed in the presence of 1 adult witness who is not:

a. Related to the principal by blood, marriage, or adoption; or

b. Entitled to any portion of the estate of the principal under the principal's then existing will or codicil or amendment thereto or trust instrument.

(b) A personal power of attorney may be accompanied by a notice in the following form, signed by the principal and placed at the beginning of the personal power of attorney. In the absence of a signed notice, upon a challenge to the authority of an agent to act under the personal power of attorney, the agent shall have the burden of demonstrating that the personal power of attorney is valid.

"NOTICE

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate

(your "Agent") broad powers to handle your property, which may include powers

to sell, dispose of, or encumber any real or personal property without advance

notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care

decisions for you.

Unless you specify otherwise, your Agent's authority will continue even if you

become incapacitated, or until you die or revoke the power of attorney, or

until your Agent resigns or is unable to act for you. You should select

someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise

granted powers, but when powers are exercised, your Agent must use due care to

act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's

funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not

acting properly.

The powers and duties of an Agent under a durable power of attorney are

explained more fully in Delaware Code, Title 12, Chapter 49A, § 49A-114 and §§

49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should

ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Principal Date"

(c) The agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:

"AGENT'S CERTIFICATION

I, (Name of Agent) , have read the attached durable power of attorney and I am

the person identified as the Agent or identified as the Agent for the

Principal. To the best of my knowledge this power has not been revoked. I

hereby acknowledge that, in the absence of a specific provision to the

contrary in the durable power of attorney, when I act as Agent:

I shall exercise the powers for the benefit of the Principal.

I shall keep the assets of the Principal separate from my assets.

I shall exercise reasonable caution and prudence.

I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

I shall, to the extent reasonably practicable under the circumstances, keep in

regular contact with the Principal and communicate with the Principal.

Agent Date"

Agent Date"

[77 Del. Laws, c. 467, § 4.](#);

**§ 49A-105. Execution of personal power of attorney
[Effective Jan. 1, 2013]**

(a) A personal power of attorney must be:

(1) In writing;

(2) Signed by the principal or by another person subscribing the principal's name in the principal's presence and at the principal's express direction;

(3) Dated;

(4) Signed in the presence of a notarial officer; and

(5) Signed in the presence of one adult witness who is neither:

a. Related to the principal by blood, marriage, or adoption; nor

b. Entitled to any portion of the estate of the principal under the principal's then existing will or codicil or amendment thereto or trust instrument.

(b) A personal power of attorney may be accompanied by a notice in the following form, signed by the principal and placed at the beginning of the personal power of attorney. In the absence of a signed notice, upon a challenge to the authority of an agent to act under the personal power of attorney, the agent shall have the burden of demonstrating that the personal power of attorney is valid.

"NOTICE

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate

(your "Agent") broad powers to handle your property, which may include powers

to sell, dispose of, or encumber any real or personal property without advance

notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care

decisions for you.

Unless you specify otherwise, your Agent's authority will continue even if you

become incapacitated, or until you die or revoke the power of attorney, or

until your Agent resigns or is unable to act for you. You should select

someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise

granted powers, but when powers are exercised, your Agent must use due care to

act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's

funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not

acting properly.

The powers and duties of an Agent under a durable power of attorney are

explained more fully in Delaware Code, Title 12, Chapter 49A, § 49A-114 and §§

49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should

ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Principal Date"

(c) Regardless of the method by which a person accepts appointment as an agent under a personal power of attorney (pursuant to § 49A-113 of this title), such agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:

AGENT'S CERTIFICATION

I, (Name of Agent), have read the attached durable personal power of attorney

and I am the person identified as the Agent or identified as the Agent for the

Principal. To the best of my knowledge this power has not been revoked. I

hereby acknowledge that, when I act as Agent, I shall:

Act in accordance with the principal's reasonable expectations to the extent

actually known to me and, otherwise, in the Principal's best interest;

Act in good faith;

Act only within the scope of authority granted in the personal power of

attorney; and

To the extent reasonably practicable under the circumstances, keep in regular

contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the

durable personal power of attorney, when I act as Agent, I shall:

Keep the assets of the Principal separate from my assets;

Exercise reasonable caution and prudence; and

Keep a full and accurate record of all actions, receipts and disbursements on

behalf of the Principal.

Agent Date

Agent Date

[77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, §§ 1, 2.;](#)

§ 49A-106. Execution of personal power of attorney.

(a) A personal power of attorney executed on or after October 1, 2010, is validly executed if it complies with § 49A-105 of this title, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complies with the laws of such other jurisdiction.

(b) A personal power of attorney executed before October 1, 2010, is validly executed if it complied with the laws of this State as they existed at the time of execution, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complied with the laws of such other jurisdiction.

(c) A durable power of attorney (other than a personal power of attorney) will be deemed to be validly executed under the laws of this State if, when the power of attorney was executed, the execution complied with:

(1) The law of the jurisdiction that determines the meaning and effect of the power of attorney; or

(2) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

(d) Except as otherwise provided by statute other than this chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

[*77 Del. Laws, c. 467, § 4.*](#);

§ 49A-107. [Reserved.]

§ 49A-108. Nomination of guardian of person or property; relation of agent to court-appointed fiduciary.

(a) The appointment by a court of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person shall terminate all personal powers of attorney to the extent the powers held by the agent prior to the appointment of a guardian or other fiduciary are granted by such court to the guardian or other fiduciary. The person serving as an agent of the principal pursuant to this chapter shall, upon the request of the agent and absent cause to the contrary, be appointed the guardian or other fiduciary in a proceeding under Chapter 39 of this title.

(b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person, the agent is accountable to such guardian or other fiduciary as well as to the principal as to any personal powers of attorney which the agent continues to hold. A guardian or other fiduciary shall only have such powers to revoke or amend the powers of the agent as shall be given to such guardian or other fiduciary by the court.

[*77 Del. Laws, c. 467, § 4.*](#);

§ 49A-109. When personal power of attorney effective.

(a) A personal power of attorney is effective when executed unless the principal provides in the personal power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a personal power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the personal power of attorney, may authorize 1 or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a personal power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person or persons to determine whether the principal is incapacitated, or the person or persons authorized is or are unable or unwilling to make the determination, the personal power of attorney becomes effective upon a determination in a writing or other record by a physician or by the Court of Chancery or other court of competent jurisdiction that the principal is incapacitated.

(d) A person authorized by the principal in the personal power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act [P.L. 104-191], §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d et seq., as amended, and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

[77 Del. Laws, c. 467, § 4.](#);

§ 49A-110. Termination of personal power of attorney or agent's authority.

(a) A personal power of attorney terminates when:

(1) The principal dies;

(2) The principal revokes the personal power of attorney;

(3) A terminating event set forth in the personal power of attorney occurs;

(4) The purpose of the personal power of attorney is accomplished;

(5) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the personal power of attorney does not provide for another agent to act; or

(6) The personal power of attorney is revoked by order of the Court of Chancery pursuant to § 49A-116 of this title or otherwise.

(b) An agent's authority terminates when:

(1) The principal revokes the authority;

(2) The agent dies, becomes incapacitated, or resigns;

(3) An action is filed for the dissolution or annulment of the agent's marriage to the principal, unless the personal power of attorney otherwise provides; or

(4) The personal power of attorney terminates.

(c) Unless the personal power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the personal power of attorney.

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

(e) The execution of a personal power of attorney does not revoke a personal power of attorney previously executed by the principal unless the subsequent personal power of attorney provides that the previous personal power of attorney is revoked or that all other personal powers of attorney are revoked.

[*77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 3.*](#)

§ 49A-111. Concurrent agents, joint agents, and successor agents.

(a) A principal may designate 2 or more persons to act as concurrent agents. Each concurrent agent may exercise its authority independently.

(b) A principal may designate 2 or more persons to act as joint agents. No joint agent shall have the power to act without the agreement of all other joint agents and shall have no power to act independent of the other agent.

(c) If the principal designates more than 1 agent and does not specify that they are concurrent agents or joint agents, such agents shall be considered concurrent agents.

(d) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the personal power of attorney otherwise provides, a successor agent:

(1) Has the same authority as that granted to the original agent; and

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

(e) A principal may give an appointed agent or another person designated by name, office or function the authority to designate by a writing executed by such person, 1 or more concurrent, joint, or successor agents in addition to those designated in the personal power of attorney. Unless the personal power of attorney authorizing the appointment of such further agents otherwise provides, a concurrent, joint, or successor agent appointed by this method:

(1) Has the same authority as that granted to the original agent; and

(2) May not act until the predecessor designee has resigned, died, become incapacitated, is no longer qualified to serve, or has declined to serve.

(f) Except as otherwise provided in the personal power of attorney and subsection (g) of this section, an acting agent that does not participate in or conceal a breach of fiduciary duty

committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

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

[77 Del. Laws, c. 467, § 4.;](#)

§ 49A-112. Reimbursement and compensation of agent.

(a) An agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(b) An agent shall not be entitled to compensation unless:

(1) The personal power of attorney so provides; and

(2) The compensation is reasonable under the circumstances.

[77 Del. Laws, c. 467, § 4.;](#)

§ 49A-113. Agent's acceptance.

Except as otherwise provided in the personal power of attorney, a person accepts appointment as an agent under a personal power of attorney by signing the agent's certification (pursuant to § 49A-105(c) of this title) or by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

[77 Del. Laws, c. 467, § 4.;](#)

§ 49A-114. Agent's duties.

(a) Notwithstanding provisions in the personal power of attorney, an agent that has accepted appointment pursuant to a

personal power of attorney shall, in connection with exercising the authority granted to such agent therein:

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

(2) Act in good faith;

(3) Act only within the scope of authority granted in the personal power of attorney; and

(4) To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

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

(1) Act loyally for the principal's benefit;

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

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

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

(5) Cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, if not known, to act in the principal's best interest; and

(6) Not act in a manner inconsistent with the principal's testamentary plan.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal's testamentary plan for failure to act in a manner consistent with the testamentary plan.

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

(e) If an agent has special skills or expertise the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(f) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(g) Except as otherwise provided in the personal power of attorney and by § 49A-108(b) of this title, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested the agent shall comply with the request within a reasonable period of time.

[77 Del. Laws, c. 467, § 4.;](#)

§ 49A-115. Exoneration of agent.

A provision in a personal power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

(1) Relieves the agent of liability for breach of duty committed in bad faith or with reckless indifference to the purposes of the personal power of attorney or the best interest of the principal; or

(2) Was inserted as a result of undue influence upon the principal.

[77 Del. Laws, c. 467, § 4.](#);

§ 49A-116. Judicial relief.

(a) A person designated in subsection (b) of this section may petition the Court of Chancery requesting that the Court:

(1) Determine whether the personal power of attorney or the authority of an agent is in effect or has terminated pursuant to § 49A-110 of this title or otherwise;

(2) Compel the agent to exercise or refrain from exercising authority in a particular manner or for a particular purpose;

(3) Compel the agent to account for transactions conducted on the principal's behalf pursuant to § 49A-114(g) of this title;

(4) Modify, suspend, or revoke the powers of the agent to act under a personal power of attorney, and, if the principal has not designated another agent or successor agent in the personal power of attorney, appoint another agent to act in place of the agent whose powers are modified, suspended, or revoked;

(5) Determine an agent's liability for violation of his or her duties pursuant to § 49A-114 of this title; or

(6) Compel a person to accept a personal power of attorney if required to by § 49A-120 of this title.

(b) Any of the following persons may file a petition seeking appropriate relief under this section:

(1) The principal or the agent;

(2) The spouse, child, or parent of the principal;

(2) A guardian, trustee, or other fiduciary acting for the principal;

(3) The personal representative, trustee, or a beneficiary of the principal's estate;

(4) Any other interested person, as long as the person demonstrates to the Court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that:

a. The Court's intervention is necessary; and

b. The principal is incapacitated at the time of filing the petition or otherwise unable to protect that principal's own interests; or

(5) A person asked to accept a personal power of attorney.

(c) Upon motion by the principal, who shall be presumed to have legal capacity, the Court shall dismiss a petition filed under this section, unless the Court finds that the principal lacks capacity to revoke the agent's authority or the personal power of attorney.

(d) Nothing in this section shall preclude or diminish the Court's authority to appoint a guardian or other fiduciary pursuant to Chapter 39 of this title, or to order other judicial relief, in order to grant appropriate relief upon review of a personal power of attorney or an agent's conduct with respect to a personal power of attorney.

(e) Nothing in this section shall preclude the Department of Health and Social Services, the Public Guardian, or other governmental agency having authority to protect the welfare of the principal from petitioning the Court for access to the principal or to records necessary to determine, or terminate, possible abuse, neglect, exploitation or abandonment of the principal.

[77 Del. Laws, c. 467, § 4; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 369, § 4.](#)

§ 49A-117. [Reserved.]

§ 49A-118. Agent's resignation; notice.

Unless the personal power of attorney provides a different method for an agent's resignation, an agent may resign by

giving written notice to the principal and, if the principal is incapacitated:

(1) To the guardian, if one has been appointed for the principal, and a concurrent agent or successor agent; or

(2) If there is no person described in paragraph (1) of this section, to:

a. The principal's primary caregiver;

b. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

c. A governmental agency having authority to protect the welfare of the principal.

[77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 5.;](#)

§ 49A-119. Acceptance of and reliance upon acknowledged personal power of attorney.

(a) For purposes of this section and § 49A-120 of this title, "acknowledged" means purportedly verified before a notarial officer.

(b) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the signature is not genuine may rely upon a presumption that the signature is genuine.

(c) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the personal power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the personal power of attorney as if the personal power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

(d) A person that is asked to accept an acknowledged personal power of attorney may request, and rely upon, without

further investigation, an English translation, under oath of the translator, of the personal power of attorney if it contains, in whole or in part, language other than English.

(e) For purposes of this section and § 49A-120 of this title, a person that conducts activities through employees is without actual knowledge of a fact relating to a personal power of attorney, a principal, or an agent if the employee conducting the transaction involving the personal power of attorney is without actual knowledge of the fact. Notification of revocation of a personal power of attorney by a principal or agent to an officer of a bank or other financial institution shall constitute actual notice to all employees.

[77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, §§ 6, 7.;](#)

§ 49A-120. Liability for refusal to accept acknowledged personal power of attorney.

(a) Except as otherwise provided in subsection (b) of this section:

(1) A person shall accept an acknowledged personal power of attorney that is originally written in English or is translated into English, under oath of the translator;

(2) A person may not require an additional or different form of personal power of attorney for authority granted in the personal power of attorney presented; and

(3) A person may not refuse to accept an acknowledged personal power of attorney solely upon the basis that the form of such acknowledged personal power of attorney varies from the form set forth in § 49A-301 of this title.

(b) A person is not required to accept an acknowledged personal power of attorney if:

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

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

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

(4) The person has actual knowledge that the personal power of attorney has been terminated or revoked, or is void or invalid, or that the agent does not have the authority to perform the act requested; or

(5) The person promptly makes, has made, or has actual knowledge that another person has made, a report to the appropriate law-enforcement or social service agency stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(c) A person that refuses in violation of this section to accept an acknowledged personal power of attorney is subject to:

(1) A court order compelling acceptance of the personal power of attorney; and

(2) Liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity of the personal power of attorney or authority of the agent to act, or compels acceptance of the personal power of attorney.

[77 Del. Laws, c. 467, § 4; 78 Del. Laws, c. 369, § 8; 79 Del. Laws, c. 152, § 1.](#)