

CHAPTER 709
POWERS OF ATTORNEY AND SIMILAR INSTRUMENTS

PART I

POWERS OF APPOINTMENT

(ss. 709.02-709.07)

PART II

POWERS OF ATTORNEY

(ss. 709.2101-709.2402)

PART I

POWERS OF APPOINTMENT

709.02 Power of appointment; method of release.

709.03 Power of appointment; property held in trust.

709.04 Power of appointment; effect of release.

709.05 Powers of appointment; validation of prior releases.

709.06 Powers of appointment included in law.

709.07 Power of appointment; effect of release on title to property.

709.02 Power of appointment; method of release.—Powers of appointment over any property, real, personal, intangible or mixed, may be released, in whole or in part, by a written instrument signed by the donee or donees of such powers. Such written releases shall be signed in the presence of two witnesses but need not be sealed, acknowledged or recorded in order to be valid, nor shall it be necessary to the validity of such releases for spouses of married donees to join such donees in the execution of releases, in whole or part, of powers of appointment.

History.—s. 1, ch. 23007, 1945; s. 795, ch. 97-102.

709.03 Power of appointment; property held in trust.—If property subject to a power of appointment is held in trust by a person, firm or corporation other than the donee or donees of the power, a written release, in whole or in part, of a power to appoint the same shall be delivered to such trustee or trustees before the written release becomes legally effective. In no other instance shall a delivery of a release, in whole or in part, of a power of appointment be necessary to the validity of such release.

History.—s. 2, ch. 23007, 1945.

709.04 Power of appointment; effect of release.—Any power of appointment wholly released by a written instrument signed by the donee or donees of such power shall be, in legal effect, completely revoked, and shall not, after such release, be subject to being exercised in any manner whatsoever. Any power of appointment partially released by a written instrument signed by the donee or donees of such power shall be, in legal effect, as to such released part,

completely revoked, and shall not after such release be subject to being exercised in any manner whatsoever as to such released part.

History.—s. 3, ch. 23007, 1945.

709.05 Powers of appointment; validation of prior releases.—All releases, in whole or in part, of powers of appointment heretofore executed in a manner that conforms with the provisions of this law be and they are hereby validated and shall be given the same force and effect as if executed subsequently to the effective date of this law.

History.—s. 4, ch. 23007, 1945.

709.06 Powers of appointment included in law.—Powers of appointment referred to in this law shall include not only those recognized as such by general law but also those designated as such under the tax law of the United States.

History.—s. 5, ch. 23007, 1945.

709.07 Power of appointment; effect of release on title to property.—No such release, in whole or in part, of a power of appointment shall affect the title to property of any bona fide purchaser for value who does not have notice or knowledge of such release.

History.—s. 7, ch. 23007, 1945.

PART II

POWERS OF ATTORNEY

709.2101 Short title.

709.2102 Definitions.

709.2103 Applicability.

709.2104 Durable power of attorney.

709.2105 Qualifications of agent; execution of power of attorney.

709.2106 Validity of power of attorney.

709.2107 Meaning and effectiveness of power of attorney.

709.2108 When power of attorney is effective.

709.2109 Termination or suspension of power of attorney or agent's authority.

709.2110 Revocation of power of attorney.

709.2111 Co-agents and successor agents.

709.2112 Reimbursement and compensation of agent.

709.2113 Agent's acceptance of appointment.

709.2114 Agent's duties.

709.2115 Exoneration of agent.

709.2116 Judicial relief; conflicts of interests.

709.2117 Agent's liability.

709.2118 Agent's resignation.

709.2119 Acceptance of and reliance upon power of attorney.

709.2120 Rejecting power of attorney.

709.2121 Notice.

709.2201 Authority of agent.

709.2202 Authority that requires separate signed enumeration.

709.2208 Banks and other financial institutions.

709.2301 Principles of law and equity.

709.2302 Laws applicable to financial institutions and entities.

709.2303 Remedies under other law.

709.2401 Relation to electronic signatures in federal law.

709.2402 Effect on existing powers of attorney.

709.2101 Short title.—This part may be cited as the “Florida Power of Attorney Act.”

History.—s. 3, ch. 2011-210.

709.2102 Definitions.—As used in this part, the term:

(1) “Agent” means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney in fact, or otherwise. The term includes an original agent, co-agent, and successor agent.

(2) “Another 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.

(3) “Broker-dealer” means a broker-dealer registered with the United States Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting in that capacity.

(4) “Durable” means, with respect to a power of attorney, not terminated by the principal’s incapacity.

(5) “Electronic” means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(6) “Financial institution” has the same meaning as in s. 655.005.

(7) “Incapacity” means the inability of an individual to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(8) “Knowledge” means a person has actual knowledge of the fact, has received a notice or notification of the fact, or has reason to know the fact from all other facts and circumstances known to the person at the time in question. An organization that conducts activities through employees has notice or knowledge of a fact involving a power of attorney only from the time information was received by an employee having responsibility to act on matters involving the

power of attorney, or would have had if brought to the employee's attention if the organization had exercised reasonable diligence. An organization exercises reasonable diligence if the organization maintains reasonable routines for communicating significant information to the employee having responsibility to act on matters involving the power of attorney and there is reasonable compliance with the routines. Reasonable diligence does not require an employee to communicate information unless the communication is part of the individual's regular duties or the individual knows that a matter involving the power of attorney would be materially affected by the information.

(9) "Power of attorney" means a writing that grants authority to an agent to act in the place of the principal, whether or not the term is used in that writing.

(10) "Presently exercisable general power of appointment" means, with respect to property or a property interest subject to a power of appointment, 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 or only by will.

(11) "Principal" means an individual who grants authority to an agent in a power of attorney.

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

(13) "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.

(14) "Sign" means having present intent to authenticate or adopt a record to:

(a) Execute by signature or mark; or

(b) Attach to, or logically associate with the record an electronic sound, symbol, or process.

(15) "Third person" means any person other than the principal, or the agent in the agent's capacity as agent.

History.—s. 4, ch. 2011-210; s. 1, ch. 2013-90.

709.2103 Applicability.—This part applies to all powers of attorney except:

(1) A proxy or other delegation to exercise voting rights or management rights with respect to an entity;

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

(3) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

(4) A power created by a person other than an individual;

(5) A power given to a transfer agent to facilitate a specific transfer or disposition of one or more identified stocks, bonds, or other financial instruments;

(6) A power authorizing a financial institution or broker-dealer, or an employee of the financial institution or broker-dealer, to act as agent for the account owner in executing trades or transfers of cash, securities, commodities, or other financial assets in the regular course of business; and

(7) A delegation of powers by a trustee in accordance with s. 736.0807.

History.—s. 5, ch. 2011-210; s. 2, ch. 2013-90.

709.2104 Durable power of attorney.—Except as otherwise provided under this part, a power of attorney is durable if it contains the words: “This durable power of attorney is not terminated by subsequent incapacity of the principal except as provided in chapter 709, Florida Statutes,” or similar words that show the principal’s intent that the authority conferred is exercisable notwithstanding the principal’s subsequent incapacity.

History.—s. 6, ch. 2011-210.

709.2105 Qualifications of agent; execution of power of attorney.—

(1) The agent must be a natural person who is 18 years of age or older or a financial institution that has trust powers, has a place of business in this state, and is authorized to conduct trust business in this state.

(2) A power of attorney must be signed by the principal and by two subscribing witnesses and be acknowledged by the principal before a notary public or as otherwise provided in s. 695.03.

(3) If the principal is physically unable to sign the power of attorney, the notary public before whom the principal’s oath or acknowledgment is made may sign the principal’s name on the power of attorney pursuant to s. 117.05(14).

History.—s. 7, ch. 2011-210; s. 3, ch. 2013-90.

709.2106 Validity of power of attorney.—

(1) A power of attorney executed on or after October 1, 2011, is valid if its execution complies with s. 709.2105.

(2) A power of attorney executed before October 1, 2011, is valid if its execution complied with the law of this state at the time of execution.

(3) A power of attorney executed in another state which does not comply with the execution requirements of this part is valid in this state if, when the power of attorney was executed, the

power of attorney and its execution complied with the law of the state of execution. A third person who is requested to accept a power of attorney that is valid in this state solely because of this subsection may in good faith request, and rely upon, without further investigation, an opinion of counsel as to any matter of law concerning the power of attorney, including the due execution and validity of the power of attorney. An opinion of counsel requested under this subsection must be provided at the principal's expense. A third person may reject a power of attorney that is valid in this state solely because of this subsection if the agent does not provide the requested opinion of counsel, and in such case, a third person has no liability for rejecting the power of attorney. This subsection does not affect any other rights of a third person who is requested to accept the power of attorney under this part, or any other provisions of applicable law.

(4) A military power of attorney is valid if it is executed in accordance with 10 U.S.C. s. 1044b, as amended. A deployment-contingent power of attorney may be signed in advance, is effective upon the deployment of the principal, and shall be afforded full force and effect by the courts of this state.

(5) Except as otherwise provided in the power of attorney, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. Notwithstanding this subsection, an original power of attorney that is relied upon to affect the title to real property may be required for recording in the official records.

(6) An original of a properly executed power of attorney may be presented to the clerk of the circuit court for recording in the official records as provided under s. 28.222 upon payment of the service charge as provided under s. 28.24.

History.—s. 8, ch. 2011-210; s. 4, ch. 2013-90.

709.2107 Meaning and effectiveness of power of attorney.—The meaning and effectiveness of a power of attorney is governed by this part if the power of attorney:

- (1) Is used in this state; or
- (2) States that it is to be governed by the laws of this state.

History.—s. 9, ch. 2011-210.

709.2108 When power of attorney is effective.—

- (1) Except as provided in this section, a power of attorney is exercisable when executed.
- (2) If a power of attorney executed before October 1, 2011, is conditioned on the principal's lack of capacity and the power of attorney has not become exercisable before that date, the power of attorney is exercisable upon the delivery of the affidavit of a physician who has primary responsibility for the treatment and care of the principal and who is licensed to practice medicine or osteopathic medicine pursuant to chapter 458 or chapter 459 as of the date of the affidavit. The affidavit executed by the physician must state that the physician is

licensed to practice medicine or osteopathic medicine pursuant to chapter 458 or chapter 459, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property.

(3) Except as provided in subsection (2) and s. 709.2106(4), a power of attorney is ineffective if the power of attorney provides that it is to become effective at a future date or upon the occurrence of a future event or contingency.

History.—s. 10, ch. 2011-210.

709.2109 Termination or suspension of power of attorney or agent’s authority.—

(1) A power of attorney terminates when:

- (a) The principal dies;
- (b) The principal becomes incapacitated, if the power of attorney is not durable;
- (c) The principal is adjudicated totally or partially incapacitated by a court, unless the court determines that certain authority granted by the power of attorney is to be exercisable by the agent;
- (d) The principal revokes the power of attorney;
- (e) The power of attorney provides that it terminates;
- (f) The purpose of the power of attorney is accomplished; or
- (g) The agent’s authority terminates and the power of attorney does not provide for another agent to act under the power of attorney.

(2) An agent’s authority is exercisable until the authority terminates. An agent’s authority terminates when:

- (a) The agent dies, becomes incapacitated, resigns, or is removed by a court;
- (b) An action is filed for the dissolution or annulment of the agent’s marriage to the principal or for their legal separation, unless the power of attorney otherwise provides; or
- (c) The power of attorney terminates.

(3) If any person initiates judicial proceedings to determine the principal’s incapacity or for the appointment of a guardian advocate, the authority granted under the power of attorney is suspended until the petition is dismissed or withdrawn or the court enters an order authorizing the agent to exercise one or more powers granted under the power of attorney.

(a) If an emergency arises after initiation of proceedings to determine incapacity and before adjudication regarding the principal’s capacity, the agent may petition the court in which the proceeding is pending for authorization to exercise a power granted under the power of attorney. The petition must set forth the nature of the emergency, the property or matter involved, and the power to be exercised by the agent.

(b) Notwithstanding the provisions of this section, unless otherwise ordered by the court, a proceeding to determine incapacity does not affect the authority of the agent to make health care decisions for the principal, including, but not limited to, those provided in chapter 765. If the principal has executed a health care advance directive designating a health care surrogate, the terms of the directive control if the directive and the power of attorney are in conflict unless the power of attorney is later executed and expressly states otherwise.

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

History.—s. 11, ch. 2011-210.

709.2110 Revocation of power of attorney.—

(1) A principal may revoke a power of attorney by expressing the revocation in a subsequently executed power of attorney or other writing signed by the principal. The principal may give notice of the revocation to an agent who has accepted authority under the revoked power of attorney.

(2) Except as provided in subsection (1), the execution of a power of attorney does not revoke a power of attorney previously executed by the principal.

History.—s. 12, ch. 2011-210.

709.2111 Co-agents and successor agents.—

(1) A principal may designate two or more persons to act as co-agents. Unless the power of attorney otherwise provides, each co-agent may exercise its authority independently.

(2) 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 power of attorney otherwise provides, a successor agent:

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

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

(3) Except as otherwise provided in the power of attorney and subsection (4), an agent who 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 or omissions of the other agent.

(4) An agent who has actual knowledge of a breach or imminent breach of fiduciary duty by another agent, including a predecessor agent, must take any action reasonably appropriate in the circumstances to safeguard the principal's best interests. If the agent in good faith believes that the principal is not incapacitated, giving notice to the principal is a sufficient action. An agent who fails to take action as required by this subsection is liable to the principal for the

principal's reasonably foreseeable damages that could have been avoided if the agent had taken such action.

(5) A successor agent does not have a duty to review the conduct or decisions of a predecessor agent. Except as provided in subsection (4), a successor agent does not have a duty to institute any proceeding against a predecessor agent, or to file any claim against a predecessor agent's estate, for any of the predecessor agent's actions or omissions as agent.

(6) If a power of attorney requires that two or more persons act together as co-agents, notwithstanding the requirement that they act together, one or more of the agents may delegate to a co-agent the authority to conduct banking transactions as provided in s. 709.2208(1), whether the authority to conduct banking transactions is specifically enumerated or incorporated by reference to that section in the power of attorney.

History.—s. 13, ch. 2011-210.

709.2112 Reimbursement and compensation of agent.—

(1) Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(2) Unless the power of attorney otherwise provides, a qualified agent is entitled to compensation that is reasonable under the circumstances.

(3) Notwithstanding any provision in the power of attorney, an agent may not be paid compensation unless the agent is a qualified agent.

(4) For purposes of this section, the term “qualified agent” means an agent who is the spouse of the principal, an heir of the principal within the meaning of s. 732.103, a financial institution that has trust powers and a place of business in this state, an attorney or certified public accountant who is licensed in this state, or a natural person who is a resident of this state and who has never been an agent for more than three principals at the same time.

History.—s. 14, ch. 2011-210.

709.2113 Agent's acceptance of appointment.—Except as otherwise provided in the power of attorney, a person accepts appointment as an agent by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. The scope of an agent's acceptance is limited to those aspects of the power of attorney for which the agent's assertions or conduct reasonably manifests acceptance.

History.—s. 15, ch. 2011-210.

709.2114 Agent's duties.—

(1) An agent is a fiduciary. Notwithstanding the provisions in the power of attorney, an agent who has accepted appointment:

(a) Must act only within the scope of authority granted in the power of attorney. In exercising that authority, the agent:

1. May not act contrary to the principal's reasonable expectations actually known by the agent;
 2. Must act in good faith;
 3. May not act in a manner that is contrary to the principal's best interest, except as provided in paragraph (2)(d) and s. 709.2202; and
 4. Must attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:
 - a. The value and nature of the principal's property;
 - b. The principal's foreseeable obligations and need for maintenance;
 - c. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
 - d. Eligibility for a benefit, a program, or assistance under a statute or rule; and
 - e. The principal's personal history of making or joining in making gifts;
- (b) May not delegate authority to a third person except as authorized under s. 518.112 or this part or by executing a power of attorney on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;
- (c) Must keep a record of all receipts, disbursements, and transactions made on behalf of the principal; and
- (d) Must create and maintain an accurate inventory each time the agent accesses the principal's safe-deposit box, if the power of attorney authorizes the agent to access the box.
- (2) Except as otherwise provided in the power of attorney, an agent who has accepted appointment shall:
- (a) Act loyally for the sole benefit of the principal;
 - (b) 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;
 - (c) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances; and
 - (d) Cooperate with a person who has authority to make health care decisions for the principal in order to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.
- (3) An agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.
- (4) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the 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.

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

(6) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, transactions conducted on behalf of the principal, or safe-deposit box inventories, unless ordered by a court or requested by the principal, a court-appointed guardian, 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 requested, the agent must comply with the request within 60 days or provide a writing or other record substantiating why additional time is needed and comply with the request within an additional 60 days.

History.—s. 16, ch. 2011-210; s. 5, ch. 2013-90.

709.2115 Exoneration of agent.—A power of attorney may provide that the agent is not liable for any acts or decisions made by the agent in good faith and under the power of attorney, except to the extent the provision:

(1) Relieves the agent of liability for breach of a duty committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or

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

History.—s. 17, ch. 2011-210.

709.2116 Judicial relief; conflicts of interests.—

(1) A court may construe or enforce a power of attorney, review the agent's conduct, terminate the agent's authority, remove the agent, and grant other appropriate relief.

(2) The following persons may petition the court:

(a) The principal or the agent, including any nominated successor agent.

(b) A guardian, conservator, trustee, or other fiduciary acting for the principal or the principal's estate.

(c) A person authorized to make health care decisions for the principal if the health care of the principal is affected by the actions of the agent.

(d) Any other interested person if 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 the court's intervention is necessary.

(e) A governmental agency having regulatory authority to protect the welfare of the principal.

(f) A person asked to honor the power of attorney.

(3) In any proceeding commenced by filing a petition under this section, including, but not limited to, the unreasonable refusal of a third person to allow an agent to act pursuant to the power of attorney, and in challenges to the proper exercise of authority by the agent, the court shall award reasonable attorney fees and costs as in chancery actions.

(4) If an agent's exercise of a power is challenged in a judicial proceeding brought by or on behalf of the principal on the grounds that the exercise of the power was affected by a conflict of interest, and evidence is presented that the agent or an affiliate of the agent had a personal interest in the exercise of the power, the agent or affiliate has the burden of proving, by clear and convincing evidence that the agent acted:

(a) Solely in the interest of the principal; or

(b) In good faith in the principal's best interest, and the conflict of interest was expressly authorized in the power of attorney.

(5) For purposes of subsection (4):

(a) A provision authorizing an agent to engage in a transaction affected by a conflict of interest which is inserted into a power of attorney as the result of the abuse of a fiduciary or confidential relationship with the principal by the agent or the agent's affiliate is invalid.

(b) Affiliates of an agent include:

1. The agent's spouse;
2. The agent's descendants, siblings, parents, or their spouses;
3. A corporation or other entity in which the agent, or a person who owns a significant interest in the agent, has an interest that might affect the agent's best judgment;
4. A person or entity that owns a significant interest in the agent; or
5. The agent acting in a fiduciary capacity for someone other than the principal.

History.—s. 18, ch. 2011-210; s. 6, ch. 2013-90.

709.2117 Agent's liability.—An agent who violates this part is liable to the principal or the principal's successors in interest for the amount required to:

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

(2) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid from the principal's funds on the agent's behalf in defense of the agent's actions.

History.—s. 19, ch. 2011-210.

709.2118 Agent's resignation.—Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal, to the guardian if the principal is incapacitated and one has been appointed for the principal, and to any co-agent, or if none, the next successor agent.

History.—s. 20, ch. 2011-210.

709.2119 Acceptance of and reliance upon power of attorney.—

(1)(a) A third person who in good faith accepts a power of attorney that appears to be executed in the manner required by law at the time of its execution may rely upon the power of attorney and the actions of the agent which are reasonably within the scope of the agent's authority and may enforce any obligation created by the actions of the agent as if:

1. The power of attorney were genuine, valid, and still in effect;
2. The agent's authority were genuine, valid, and still in effect; and
3. The authority of the officer executing for or on behalf of a financial institution that has trust powers and acting as agent is genuine, valid, and still in effect.

(b) For purposes of this subsection, and without limiting what constitutes good faith, a third person does not accept a power of attorney in good faith if the third person has notice that:

1. The power of attorney is void, invalid, or terminated; or
2. The purported agent's authority is void, invalid, suspended, or terminated.

(2) A third person may require:

(a) An agent to execute an affidavit stating where the principal is domiciled; that the principal is not deceased; that there has been no revocation, or partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney; that there has been no suspension by initiation of proceedings to determine incapacity, or to appoint a guardian, of the principal; that the agent's authority has not been terminated by the filing of an action for dissolution or annulment of marriage or legal separation of the agent and principal; and, if the affiant is a successor agent, the reasons for the unavailability of the predecessor agents, if any, at the time the authority is exercised.

(b) An officer of a financial institution acting as agent to execute a separate affidavit, or include in the form of the affidavit, the officer's title and a statement that the officer has full authority to perform all acts and enter into all transactions authorized by the power of attorney for and on behalf of the financial institution in its capacity as agent.

(c) A written affidavit executed by the agent under this subsection may, but need not, be in the following form:

STATE OF
COUNTY OF

Before me, the undersigned authority, personally appeared (agent) (“Affiant”), who swore or affirmed that:

1. Affiant is the agent named in the Power of Attorney executed by (principal) (“Principal”) on (date).
2. This Power of Attorney is currently exercisable by Affiant. The principal is domiciled in (insert name of state, territory, or foreign country).
3. To the best of Affiant’s knowledge after diligent search and inquiry:
 - a. The Principal is not deceased;
 - b. Affiant’s authority has not been suspended by initiation of proceedings to determine incapacity or to appoint a guardian or a guardian advocate;
 - c. Affiant’s authority has not been terminated by the filing of an action for dissolution or annulment of Affiant’s marriage to the principal, or their legal separation; and
 - d. There has been no revocation, or partial or complete termination, of the power of attorney or of Affiant’s authority.
4. Affiant is acting within the scope of authority granted in the power of attorney.
5. Affiant is the successor to (insert name of predecessor agent), who has resigned, died, become incapacitated, is no longer qualified to serve, has declined to serve as agent, or is otherwise unable to act, if applicable.
6. Affiant agrees not to exercise any powers granted by the Power of Attorney if Affiant attains knowledge that the power of attorney has been revoked, has been partially or completely terminated or suspended, or is no longer valid because of the death or adjudication of incapacity of the Principal.

(Affiant)

Sworn to (or affirmed) and subscribed before me this day of (month), (year),
by (name of person making statement)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

(Type of Identification Produced)

(3) A third person who is asked to accept a power of attorney that appears to be executed in accordance with s. 709.2105 may in good faith request, and rely upon, without further investigation:

(a) A certified English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English;

(b) An opinion of counsel as to any matter of law concerning the power of attorney if the third person making the request provides in a writing or other record the reason for the request; or

(c) The affidavit described in subsection (2).

(4) An English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made after the time specified in s. 709.2120(1) for acceptance or rejection of the power of attorney.

(5) Third persons who act in reliance upon the authority granted to an agent and in accordance with the instructions of the agent shall be held harmless by the principal from any loss suffered or liability incurred as a result of actions taken before the receipt of notice as provided in s. 709.2121. A third person who acts in good faith upon any representation, direction, decision, or act of the agent is not liable to the principal or the principal's estate, beneficiaries, or joint owners for those acts.

(6) The acts of an agent under a power of attorney are as valid and binding on the principal or the principal's estate as if the principal were alive and competent if, in connection with any activity pertaining to hostilities in which the United States is then engaged, the principal is officially listed or reported by a branch of the United States Armed Forces in a missing status as defined in 37 U.S.C. s. 551 or 5 U.S.C. s. 5561, regardless of whether the principal is dead, alive, or incompetent. Homestead property held as tenants by the entirety may not be conveyed by a power of attorney regulated under this provision until 1 year after the first official report or listing of the principal as missing or missing in action. An affidavit of an officer of the Armed Forces having maintenance and control of the records pertaining to those missing or missing in action that the principal has been in that status for a given period is conclusive presumption of the fact.

History.—s. 21, ch. 2011-210; s. 7, ch. 2013-90.

709.2120 Rejecting power of attorney.—

(1) A third person must accept or reject a power of attorney within a reasonable time. Four days, excluding Saturdays, Sundays, and legal holidays, are presumed to be a reasonable time for a financial institution or broker-dealer to accept or reject a power of attorney with respect to:

(a) A banking transaction, if the power of attorney expressly contains authority to conduct banking transactions pursuant to s. 709.2208(1); or

(b) An investment transaction, if the power of attorney expressly contains authority to conduct investment transactions pursuant to s. 709.2208(2).

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

(3) A third person who rejects a power of attorney for any reason other than as provided in paragraph (4)(a) must state in writing the reason for the rejection.

(4) A third person is not required to accept a power of attorney if:

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

(b) The third person has knowledge of the termination or suspension of the agent's authority or of the power of attorney before exercising the power;

(c) A timely request by the third person for an affidavit, English translation, or opinion of counsel under s. 709.2119(4) is refused by the agent;

(d) Except as provided in paragraph (b), the third person believes in good faith that the power is not valid or that the agent does not have authority to perform the act requested; or

(e) The third person makes, or has knowledge that another person has made, a report to the local adult protective services office 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.

(5) A third person who, in violation of this section, rejects a power of attorney is subject to:

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

(b) Liability for damages, including reasonable attorney fees and costs, incurred in any action or proceeding that confirms, for the purpose tendered, the validity of the power of attorney or mandates acceptance of the power of attorney.

History.—s. 22, ch. 2011-210; s. 8, ch. 2013-90.

709.2121 Notice.—

(1) A notice, including a notice of revocation, notice of partial or complete termination by adjudication of incapacity or by the occurrence of an event referenced in the power of attorney, notice of death of the principal, notice of suspension by initiation of proceedings to determine incapacity or to appoint a guardian, or other notice, is not effective until written notice is provided to the agent or any third persons relying upon a power of attorney.

(2) Notice must be in writing and must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document. Permissible methods of notice or for sending a document include first-class mail, personal delivery, delivery to the person's last known place of residence or place of business, or a properly directed facsimile or other electronic message.

(3) Notice to a financial institution or broker-dealer must contain the principal's name and address and the last four digits of the principal's taxpayer identification number and be directed to an officer or a manager of the financial institution or broker-dealer in this state.

(4) Notice is effective when given, except that notice upon a financial institution, brokerage company, or title insurance company is not effective until 5 days, excluding Saturdays, Sundays, and legal holidays, after it is received.

History.—s. 23, ch. 2011-210; s. 9, ch. 2013-90.

709.2201 Authority of agent.—

(1) Except as provided in this section or other applicable law, an agent may only exercise authority specifically granted to the agent in the power of attorney and any authority reasonably necessary to give effect to that express grant of specific authority. General provisions in a power of attorney which do not identify the specific authority granted, such as provisions purporting to give the agent authority to do all acts that the principal can do, are not express grants of specific authority and do not grant any authority to the agent. Court approval is not required for any action of the agent in furtherance of an express grant of specific authority.

(2) As a confirmation of the law in effect in this state when this part became effective, such authorization may include, without limitation, authority to:

(a) Execute stock powers or similar documents on behalf of the principal and delegate to a transfer agent or similar person the authority to register any stocks, bonds, or other securities into or out of the principal's or nominee's name.

(b) Convey or mortgage homestead property. However, if the principal is married, the agent may not mortgage or convey homestead property without joinder of the principal's spouse or the spouse's guardian. Joinder by a spouse may be accomplished by the exercise of authority in a power of attorney executed by the joining spouse, and either spouse may appoint the other as his or her agent.

(c) If such authority is specifically granted in a durable power of attorney, make all health care decisions on behalf of the principal, including, but not limited to, those set forth in chapter 765.

(3) Notwithstanding the provisions of this section, an agent may not:

(a) Perform duties under a contract that requires the exercise of personal services of the principal;

(b) Make any affidavit as to the personal knowledge of the principal;

(c) Vote in any public election on behalf of the principal;

(d) Execute or revoke any will or codicil for the principal; or

(e) Exercise powers and authority granted to the principal as trustee or as court-appointed fiduciary.

(4) Subject to s. 709.2202, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(5) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed and to property that the principal acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(6) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

History.—s. 24, ch. 2011-210.

709.2202 Authority that requires separate signed enumeration.—

(1) Notwithstanding s. 709.2201, an agent may exercise the following authority only if the principal signed or initialed next to each specific enumeration of the authority, the exercise of the authority is consistent with the agent's duties under s. 709.2114, and the exercise is not otherwise prohibited by another agreement or instrument:

- (a) Create an inter vivos trust;
- (b) With respect to a trust created by or on behalf of the principal, amend, modify, revoke, or terminate the trust, but only if the trust instrument explicitly provides for amendment, modification, revocation, or termination by the settlor's agent;
- (c) Make a gift, subject to subsection (4);
- (d) Create or change rights of survivorship;
- (e) Create or change a beneficiary designation;
- (f) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
- (g) Disclaim property and powers of appointment.

(2) In addition to signing the power of attorney on behalf of the principal pursuant to s. 709.2105(3), if the principal is physically unable to sign or initial next to any enumerated authority for which subsection (1) requires the principal to sign or initial, the notary public before whom the principal's oath or acknowledgment is made may sign the principal's name or initials if:

- (a) The principal directs the notary to sign the principal's name or initials on the power of attorney next to any enumerated authority for which subsection (1) requires the principal to sign or initial;
- (b) The signing or initialing by the notary is done in the presence of the principal and witnessed by two disinterested subscribing witnesses; and
- (c) The notary writes the statement "Signature or initials affixed by the notary pursuant to s. 709.2202(2), Florida Statutes," below each signature or initial that the notary writes on behalf of the principal.

Only one notarial certificate in substantially the same form as those described in s. 117.05(14), which states the circumstances of all signatures and initials written by the notary public, is required to be completed by the notary public.

(3) Notwithstanding a grant of authority to do an act described in subsection (1), unless the power of attorney otherwise provides, an agent who is not an ancestor, spouse, or descendant of the principal may not exercise authority to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(4) Unless the power of attorney otherwise provides, a provision in a power of attorney granting general authority with respect to gifts authorizes the agent to only:

(a) Make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee per calendar year not to exceed the annual dollar limits of the federal gift tax exclusion under 26 U.S.C. s. 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to 26 U.S.C. s. 2513, as amended, in an amount per donee per calendar year not to exceed twice the annual federal gift tax exclusion limit; and

(b) Consent, pursuant to 26 U.S.C. s. 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee per calendar year not to exceed the aggregate annual gift tax exclusions for both spouses.

(5) Notwithstanding subsection (1), if a power of attorney is otherwise sufficient to grant an agent authority to conduct banking transactions, as provided in s. 709.2208(1), conduct investment transactions as provided in s. 709.2208(2), or otherwise make additions to or withdrawals from an account of the principal, making a deposit to or withdrawal from an insurance policy, retirement account, individual retirement account, benefit plan, bank account, or any other account held jointly or otherwise held in survivorship or payable on death, is not considered to be a change to the survivorship feature or beneficiary designation, and no further specific authority is required for the agent to exercise such authority. A financial institution or broker-dealer does not have a duty to inquire as to the appropriateness of the agent's exercise of that authority and is not liable to the principal or any other person for actions taken in good faith reliance on the appropriateness of the agent's actions. This subsection does not eliminate the agent's fiduciary duties to the principal with respect to any exercise of the power of attorney.

(6) This section does not apply to a power of attorney executed before October 1, 2011.

History.—s. 25, ch. 2011-210; s. 10, ch. 2013-90.

709.2208 Banks and other financial institutions.—

(1) A power of attorney that includes the statement that the agent has “authority to conduct banking transactions as provided in section 709.2208(1), Florida Statutes” grants general authority to the agent to engage in the following transactions with financial institutions without additional specific enumeration in the power of attorney:

(a) Establish, continue, modify, or terminate an account or other banking arrangement with a financial institution.

(b) Contract for services available from a financial institution, including renting a safe-deposit box or space in a vault.

(c) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution.

(d) Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them.

(e) Purchase cashier’s checks, official checks, counter checks, bank drafts, money orders, and similar instruments.

(f) Endorse and negotiate checks, cashier’s checks, official checks, drafts, and other negotiable paper of the principal or payable to the principal or the principal’s order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due.

(g) Apply for, receive, and use debit cards, electronic transaction authorizations, and traveler’s checks from a financial institution.

(h) Use, charge, or draw upon any line of credit, credit card, or other credit established by the principal with a financial institution.

(i) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

(2) A power of attorney that specifically includes the statement that the agent has “authority to conduct investment transactions as provided in section 709.2208(2), Florida Statutes” grants general authority to the agent with respect to securities held by financial institutions or broker-dealers to take the following actions without additional specific enumeration in the power of attorney:

(a) Buy, sell, and exchange investment instruments.

(b) Establish, continue, modify, or terminate an account with respect to investment instruments.

(c) Pledge investment instruments as security to borrow, pay, renew, or extend the time of payment of a debt of the principal.

(d) Receive certificates and other evidences of ownership with respect to investment instruments.

(e) Exercise voting rights with respect to investment instruments in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

(f) Sell commodity futures contracts and call and put options on stocks and stock indexes.

For purposes of this subsection, the term “investment instruments” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner, including shares or interests in a private investment fund, including, but not limited to, a private investment fund organized as a limited partnership, a limited liability company, a statutory or common law business trust, a statutory trust, or a real estate investment trust, joint venture, or any other general or limited partnership; derivatives or other interests of any nature in securities such as options, options on futures, and variable forward contracts; mutual funds; common trust funds; money market funds; hedge funds; private equity or venture capital funds; insurance contracts; and other entities or vehicles investing in securities or interests in securities whether registered or otherwise, except commodity futures contracts and call and put options on stocks and stock indexes.

History.—s. 26, ch. 2011-210; s. 11, ch. 2013-90.

709.2301 Principles of law and equity.—The common law of agency and principles of equity supplement this part, except as modified by this part or other state law.

History.—s. 27, ch. 2011-210.

709.2302 Laws applicable to financial institutions and entities.—This part does not supersede any other law applicable to financial institutions or other entities, and that law controls if inconsistent with this part.

History.—s. 28, ch. 2011-210.

709.2303 Remedies under other law.—The remedies under this part are not exclusive and do not abrogate any right or remedy under any other law other than this part.

History.—s. 29, ch. 2011-210.

709.2401 Relation to electronic signatures in federal law.—This part modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify, limit, or supersede s. 101(c) of that act, or authorize electronic delivery of any of the notices described in s. 103(b) of that act.

History.—s. 30, ch. 2011-210.

709.2402 Effect on existing powers of attorney.—Except as otherwise provided in this part:

(1) With respect to formalities of execution, this part applies to a power of attorney created on or after October 1, 2011.

(2) With respect to all matters other than formalities of execution, this part applies to a power of attorney regardless of the date of creation.

(3) With respect to a power of attorney existing on October 1, 2011, this part does not invalidate such power of attorney and it shall remain in effect. If a right was acquired under any other law before October 1, 2011, that law continues to apply to the right even if it has been repealed or superseded.

(4) An act of an agent occurring before October 1, 2011, is not affected by this part.

History.—s. 31, ch. 2011-210.