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To: Clients and Friends

From: David F. Dulock

Subject: 2017 Legislative Update II – Bills Affecting Durable Powers of Attorney

This legislative update summarizes three bills enacted into law from the 2017 Regular Session of the 85th Texas Legislature—House Bill 1974 (HB 1974), Senate Bill 39 (SB 39), and Senate Bill 1193 (SB 1193)—that impact durable powers of attorney under Chapters 751 and 752, Texas Estates Code. Each bill's effective date is noted in the bill summary. Previous to this legislative update, we issued Legislative Update I summarizing proposed constitutional amendments and their enabling legislation, which are found on the Articles page of the firm's website www.bmandg.com.

TEXAS DURABLE POWER OF ATTORNEY ACT AND STATUTORY DURABLE POWER OF ATTORNEY FORM ([HB 1974](#)) ([SB 39](#))

Effective September 1, 2017, HB 1974 and SB 39 each enact amendments to the Durable Power of Attorney Act in Chapters 751 and 752, Estates Code, without reference to the amendments enacted by the other bill. Section 311.025(b) of the Code Construction Act (Chapter 311, Government Code), however, provides that if the amendments are irreconcilable, the latest in date of enactment prevails. HB 1974 was enacted on May 30, 2017, and SB 39 was enacted on May 28, 2017, which means the amendments enacted by HB 1974 would prevail over the amendments enacted by SB 39 if the amendments in these two bills are irreconcilable. Our reading of these amendments leads us to conclude that they are not irreconcilable. In which case, Section 311.025(b) also provides, "if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each."

Summary of HB 1974 Amendments

HB 1974 makes various amendments to Chapters 751 and 752. This summary focuses on amendments that directly affect the use of a durable power of attorney in mortgage loan transactions and does not summarize the other amendments made by HB 1974.

SECTION 1 of HB 1974 amends Chapter 751 by adding Section 751.0015 to provide that Chapters 751 and 752 apply to all durable powers of attorney except:

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

(2) a medical power of attorney, as defined by Section 166.002, Health and Safety Code;

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

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

(Note: Exception (1) above—power of attorney coupled with an interest—would be a rare occurrence for powers of attorney used for residential mortgage lending as it would entail the power of attorney vesting the agent with an interest in the real property the subject of the loan.)

SECTION 2 of HB 1974 amends Chapter 751 by amending Sections 751.002, 751.003, and 751.006 and adding Sections 751.00201, 751.0021, 751.0022, 751.0023, 751.0024, and 751.007.

Section 751.002, under new heading “Definitions,” adds definitions for “actual knowledge,” “affiliate,” “agent,” “principal” and “record,” deletes existing text defining “durable power of attorney” and adds new text to the definition, as follows:

(1) “Actual knowledge” means the knowledge of a person without that person making any due inquiry, and without any imputed knowledge, except as expressly set forth in Section 751.211(c).

(2) “Affiliate” means a business entity that directly or indirectly controls, is controlled by, or is under common control with another business entity.

(3) “Agent” includes:

(A) an attorney in fact; and

(B) a co-agent, successor agent, or successor co-agent.

(4) “Durable power of attorney” means a writing or other record that complies with the requirements of Section 751.0021(a) or is described by Section 751.0021(b).

(5) “Principal” means an adult person who signs or directs the signing of the person’s name on a power of attorney that designates an agent to act on the person’s behalf.

(6) “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.

Section 751.00201. Meaning of Disabled or Incapacitated for Purposes of Durable Power of Attorney. This Section makes the definition of “disabled or incapacitated” included in the text of the existing statutory durable power of attorney form in Section 752.051 a statutory provision by restating the definition with appropriate grammatical changes. (*Note: The definition of “disabled or incapacitated” included in the existing statutory durable power of attorney form is carried over into the amended form in revised Section 752.051.*)

Section 751.0021. Requirements of Durable Power of Attorney. Subsection (a) provides that an instrument is a durable power of attorney if the instrument:

(1) is a writing or other record that designates another person as agent and grants authority to that agent to act in the place of the principal, regardless of whether the term “power of attorney” is used;

(*Note: The definition of record in §751.002(6) above means that a legally effective durable power of attorney no longer has to be in written form. See also §751.0023(c) below.*)

(2) is signed by an adult principal or in the adult principal’s conscious presence by another adult directed by the principal to sign the principal’s name on the instrument;

(3) contains:

(A) the words:

(i) “This power of attorney is not affected by subsequent disability or incapacity of the principal”; or

(ii) “This power of attorney becomes effective on the disability or incapacity of the principal”; or

(B) words similar to those of paragraph (A) that clearly indicate that the authority conferred on the agent is required to be exercised notwithstanding the principal's subsequent disability or incapacity; and

(4) is acknowledged by the principal or another adult directed by the principal as authorized by Subdivision (2) before an officer authorized under the laws of this state or another state to take acknowledgments and administer oaths.

Subsection (b) provides that a writing or other record is considered a durable power of attorney under the Estates Code, if the law of a jurisdiction other than this state determines the meaning and effect of the writing or other record that grants authority to an agent to act in the place of the principal, regardless of whether the term "power of attorney" is used, and that law provides that the authority conferred on the agent is exercisable notwithstanding the principal's subsequent disability or incapacity. (**Note:** See also §751.0024 below, which means that these other jurisdiction durable powers of attorney will be recognized as durable powers of attorney under Texas law and be subject to and have the benefits of the Durable Power of Attorney Act amend by HB 1974.)

Section 751.0023. Validity of Power of Attorney. Subsection (b) provides that a durable power of attorney executed in a jurisdiction other than this state is valid in this state if, when executed, the execution of the durable power of attorney complied with: (1) the law of the jurisdiction that determines the meaning and effect of the durable power of attorney as provided by Section 751.0024; or (2) the requirements for a military power of attorney as provided by 10 U.S.C. Section 1044b.

Subsection (c) provides that, except as otherwise provided by statute other than the Durable Power of Attorney Act in Chapters 751 and 752 of the Estates Code or by the durable power of attorney, a photocopy or electronically transmitted copy of an original durable power of attorney has the same effect as the original instrument and may be relied on, without liability, by a person who is asked to accept the durable power of attorney to the same extent as the original. (**Note:** This appears to be a method of validity in addition to a durable power of attorney that is a "record" under §751.002(6) above.)

Section 751.0024. Meaning and Effect of Durable Power Of Attorney. This Section provides that the meaning and effect of a durable power of attorney is determined by the law of the jurisdiction indicated in the durable power of attorney and, in the absence of an indication of jurisdiction, by: (1) the law of the jurisdiction of the principal's domicile, if the principal's domicile is indicated in the power of attorney; or (2) the law of the jurisdiction in which the durable power of attorney was executed, if the principal's domicile is not indicated in the power of attorney. (**Note:** See also §751.0021(b) above, which means that these other jurisdiction durable powers of attorney will be recognized as durable powers of attorney under Texas law and be subject to and have the benefits of the Durable Power of Attorney Act amended by HB 1974.)

Section 751.007. Conflict with or Effect on Other Law. This Section provides that the Durable Power of Attorney Act does not: (1) supersede other law applicable to financial institutions or other entities and, to the extent of conflict, the other law controls; or (2) validate a conveyance of a real property interest executed by an agent under a durable power of attorney if the conveyance is determined under statute or common law to be void but not voidable.

SECTION 3 of HB 1974 amends Chapter 751 by adding Sections 751.021, 751.022, 751.023 and 751.024 in new Subchapter A-1, and by adding Sections 751.031, 751.032, 751.033 and 751.034 in new Subchapter A-2.

Subchapter A-1. Appointment of Agents:

Section 751.021. Co-Agents. This Section authorizes a principal to designate in a durable power of attorney two or more persons to act as co-agents and authorizes each co-agent, unless the durable power of attorney otherwise provides, to exercise authority independently of the other co-agent.

Section 751.022. Acceptance of Appointment as Agent. This Section provides that, except as otherwise provided in the durable power of attorney, a person accepts appointment as an agent under a durable power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance of the appointment.

Section 751.023. Successor Agents. Subsection (a) authorizes a principal to designate in a durable power of attorney one or more successor agents to act if an agent resigns, dies, or becomes incapacitated, is not qualified to serve, or declines to serve. (*Note: The text for the designation of a successor agent in the statutory durable power of attorney form in Section 752.051 is amended with similar language.*)

Subsection (b) authorizes a principal to grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. (*Note: This provision does not specify in what manner or by what document the "other person" may be granted this authority. Nor does the text of the amended statutory durable power of attorney form in Section 752.051 contain a provision that would grant the agent this authority. Interestingly, however, the amended form does contain a sentence granting the agent the authority to appoint co-agents.*)

Subsection (c) provides that, unless the durable power of attorney otherwise provides, a successor agent: (1) has the same authority as the authority granted to the predecessor agent; and (2) is not considered an agent under the Durable Power of Attorney Act and is prohibited from acting until all predecessor agents, including co-agents, to the successor agent have resigned, died, become incapacitated, are not qualified to serve, or have declined to serve. (*Note: We find the Subsection (c)(2) language confusing for the following reasons: (1) the statement that a successor agent "is not considered an agent under [the Durable Power of Attorney Act]" appears to be in conflict with the definition of "agent" in Section 751.002, which definition includes a successor agent and a successor co-agent, unless the statement means that a successor agent is not an agent until authorized to act; and (2) the authority that permits the power of attorney to provide that a successor agent may act before all predecessor agents cease to act for the reasons stated in Subsection (c)(2), unless this means the power of attorney may provide that a successor agent may act when one or more predecessor agents cease to act for the reasons stated.*)

Section 751.024. Reimbursement and Compensation of Agent. This Section provides that, unless the durable power of attorney otherwise provides, an agent is entitled to reimbursement of reasonable expenses incurred on the principal's behalf and compensation that is reasonable under the circumstances. (*Note: Reasonable expenses and reasonable compensation is not defined and apparently would be the subject of agreement between the principal and the agent. Interestingly, the Special*

Instructions section of the amended durable power of attorney form in Section 752.051 is partially at odds with this statutory provision, because it instructs the principal that if the principal does not initial one of the two sentences—the first authorizing reasonable expenses and compensation and the second authorizing only reasonable expenses—then the agent will be entitled to reasonable compensation. No sentence is included denying both to the agent, which Section 751.024 appears to allow. However, Section 752.101(10) provides that the agent is entitled to reimbursement for an expenditure made in exercising the powers granted by the durable power of attorney.)

Subchapter A-2. Authority of Agent under Durable Power of Attorney:

Section 751.031. Grants of Authority in General and Certain Limitations.

Subsection (a) provides that, subject to Subsections (b), (c), and (d) and Section 751.032, if a durable power of attorney grants to an agent the authority to perform all acts that the principal could perform, the agent has the general authority conferred by Subchapter C of Chapter 752 (Construction of Powers Related to Statutory Durable Power of Attorney). (**Note:** *As mentioned in the Note to Section 751.024 above, Section 752.101(10) entitles the agent to be reimbursed for an expenditure made in exercising the powers granted by the durable power of attorney.*)

Subsection (b) authorizes the agent to take five enumerated actions on the principal's behalf or with respect to the principal's property only if the durable power of attorney expressly grants the agent the authority and the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject. One of the enumerated actions is the authority to "delegate the authority granted under the power of attorney." (**Note:** *It is unclear if this delegation authority granted to the agent is limited to delegation of the authority to take the other enumerated actions in subsection (b) or if it is general in nature and applies to all authority granted under the power of attorney. In either case, if the power of attorney expressly grants the agent the power to delegate, reliance thereon by a third party could be problematic due to the condition that "the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject."*)

Subsection (e) provides that authority granted in a durable power of attorney is exercisable not only with respect to property that the principal has when the power of attorney is executed but also to property the principal acquires later, regardless of whether the property is located in this state and the authority is exercised in this state or the power of attorney is executed in this state.

SECTION 4 of HB 1974 amends Chapter 751 by amending Sections 751.051, 751.057, 751.101, 751.102, 751.103, 751.104, 751.105, and 751.106.

Section 751.051. Effect of Acts Performed by Agent. This Section is amended to provide that an act performed by an agent under a durable 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. (**Note:** *The text of current Section 751.051 is limited to the agent's acts "during a period of the principal's disability or incapacity." This amendment expands Section 751.051 to include all periods during which the durable power of attorney is effective and clears up any confusion current Section 751.051 may have caused regarding the effect of an agent's authority in periods when the principal is not disabled or incapacitated.*)

SECTION 5 of HB 1974 amends Chapter 751 by adding Subchapters C-1 and C-2.

Subchapter C-2. Duration of Durable Power of Attorney and Agent's Authority:

Section 751.131. Termination of Durable Power of Attorney. This Section provides that a durable power of attorney terminates when: (1) the principal dies; (2) the principal revokes the power of attorney; (3) the power of attorney provides that it terminates; (4) the purpose of the power of attorney is accomplished; (5) one of the circumstances with respect to an agent described by Section 751.132(a)(1), (2), or (3) arises and the power of attorney does not provide for another agent to act under the power of attorney; or (6) a permanent guardian of the estate of the principal has qualified to serve in that capacity.

Section 751.132. Termination of Agent's Authority. Subsection (a) provides that an agent's authority under a durable power of attorney terminates when: (1) the principal revokes the authority; (2) the agent dies, becomes incapacitated, is no longer qualified, or resigns; (3) the agent's marriage to the principal is dissolved by court decree of divorce or annulment or is declared void by a court, unless the power of attorney otherwise provides; or (4) the power of attorney terminates.

SECTION 7 of HB 1974 amends Section 751.151 by adding a home equity lien to the list of instruments requiring the recording of a durable power of attorney for a real property transaction requiring the execution and delivery of an instrument that is to be recorded.

SECTION 8 of HB 1974 amends Chapter 751 by adding Subchapters E and F.

Subchapter E. Acceptance of and Reliance on Durable Power of Attorney:

(Note: Unlike the existing Durable Power of Attorney Act, which has no such provisions, new Subchapter E limits a person's right to reject a Durable Power of Attorney.)

Section 751.201. Acceptance of Durable Power of Attorney Required; Exceptions.

Subsection (a) provides that, unless one or more grounds for refusal exist as provided in Section 751.206 (Grounds for Refusing Acceptance), a person presented with and asked to accept a durable power of attorney by the agent must accept the power of attorney or, before accepting the power of attorney, must request an agent's certification under Section 751.203 or an opinion of counsel under Section 751.204 not later than the 10th business day after the date the power of attorney is presented or, if applicable, to request an English translation under Section 751.205 not later than the fifth business day after the date the power of attorney is presented.

Subsection (b) provides that, unless one or more grounds for refusal under Section 751.206 exist, a person who requests an agent's certification or an opinion of counsel is required to accept the durable power of attorney not later than seventh business day after the date the person receives the requested certification or an opinion of counsel, as applicable.

Subsection (c) provides that the agent presenting a durable power of attorney for acceptance and the person to whom the power of attorney is presented may agree to extend a period prescribed by Subsection (a) or (b).

Subsection (d) provides that if the person to whom the power of attorney is presented timely requests an English translation of a durable power of attorney, the power of attorney is not considered presented for acceptance under Subsection (a) until the date the person receives the translation; after which, the power of attorney shall be treated as a power of attorney originally prepared in English for all the purposes of Subchapter E.

Subsection (e) provides that a person is not required to accept a durable power of attorney if the agent refuses to or does not provide the requested certification, opinion of counsel, or English translation, as applicable.

(Note: The wording of Section 751.201 does not appear to permit a person to request a certification and an opinion of counsel.)

Section 751.202. Other Form or Recording of Durable Power Of Attorney as Condition of Acceptance Prohibited. This Section provides that a person who is asked to accept a durable power of attorney under Section 751.201 is prohibited from requiring that an additional or different form of the power of attorney be presented for the authority that is granted in the power of attorney presented to the person or requiring the power of attorney be recorded unless the recording of the instrument is required by Section 751.151 or another law of this state. *(Note: For real property transactions, the provision prohibiting the person from requiring the power of attorney to be recorded will not apply, unless the durable power of attorney is used only for execution of an instrument that is not to be recorded—for example, a promissory note.)*

Section 751.203. Agent's Certification. Subsection (a) provides that before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request that the agent provide to the person an agent's certification, under penalty of perjury, of any factual matter concerning the principal, agent, or power of attorney. Subsection (a) also provides that if under its terms the power of attorney becomes effective on the disability or incapacity of the principal, the person may also request that the certification include a written statement from a physician attending the principal that states that the principal is presently disabled or incapacitated.

Subsection (b) sets forth the authorized language and content for the agent's certification form. *(Note: See Attachment 1 to this legislative update for the text of the agent's certification form set out in Subsection (b).)*

Subsection (c) provides that an agent's certification made in compliance with this Section is conclusive proof of the factual matter that is the subject of the certification.

Section 751.204. Opinion of Counsel. Subsection (a) provides that before accepting a durable power of attorney under Section 751.201, the person to whom the power of attorney is presented may request from the agent an opinion of counsel regarding any matter

of law concerning the power of attorney so long as the person provides to the agent the reason for the request in a writing or other record.

Subsection (b) requires a requested opinion of counsel to be provided by the principal or agent at the principal's expense, except as otherwise provided in an agreement to extend the request period under Section 751.201(c). Subsection (b) also provides that if, without an extension, the opinion is requested later than the 10th business day after the date the power of attorney is presented, the principal or agent may, but is not required to, provide the opinion, at the requestor's expense.

Section 751.205. English Translation. Subsection (a) provides that before accepting a durable power of attorney under Section 751.201 that contains, wholly or partly, language other than English, the person to whom the power of attorney is presented may request from the agent presenting the power of attorney an English translation of the power of attorney.

Subsection (b) requires a requested English translation to be provided by the principal or agent at the principal's expense, except as otherwise provided in an agreement to extend the request period under Section 751.201(c). Subsection (b) also provides that if, without an extension, the translation is requested later than the fifth business day after the date the power of attorney is presented, the principal or agent may, but is not required to, provide the translation, at the requestor's expense.

Section 751.206. Grounds for Refusing Acceptance. This Section lists the reasons a person is not required to accept a durable power of attorney under Subchapter E, as follows:

(1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

(A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or

(B) acquire a product or service under the power of attorney that the person does not offer;

(2) the person's engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

(A) another law of this state or a federal statute, rule, or regulation;

(B) a request from a law enforcement agency; or

(C) a policy adopted by the person in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to the person;

(3) the person would not engage in a similar transaction with the agent because the person or an affiliate of the person:

(A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to the principal or agent;

(B) believes in good faith that the principal or agent has a prior criminal history

involving financial crimes; or

(C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:

- (i) material loss to the person;
- (ii) financial mismanagement by the agent;
- (iii) litigation between the person and the agent alleging substantial damages; or
- (iv) multiple nuisance lawsuits filed by the agent;

(4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

(5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is incorrect, incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

(6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

- (A) the power of attorney is not valid;
- (B) the agent does not have the authority to act as attempted; or
- (C) the performance of the requested act would violate the terms of:
 - (i) a business entity's governing documents; or
 - (ii) an agreement affecting a business entity, including how the entity's

business is conducted;

(7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

(8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

- (A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance; or
- (B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

(9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, 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 with or on behalf of the agent;

(10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under

different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter; or

(11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney's meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.

(Note: Regarding reason (3)(A) above, Federal law requires a suspicious activity report (SAR) to be kept confidential and prohibits disclosure of a SAR or any information revealing a SAR's existence (see 31 U.S.C. Section 5318(g)(2)(A) and 31 CFR Section 103.18(e)). See Note to Section 751.207(b) for additional comments regarding this issue.)

Section 751.207. Written Statement of Refusal of Acceptance Required.

Subsection (a) requires a person who refuses to accept a durable power of attorney, except as provided by Subsection (b), to provide to the agent presenting the power of attorney for acceptance a written statement advising the agent of the reason or reasons the person is refusing to accept the power of attorney.

Subsection (b) provides that if the reason a person refuses to accept a durable power of attorney is a reason described by Section 751.206(2) or (3), the person is required to provide to the agent a written statement signed by the person under penalty of perjury stating that the reason for the refusal is a reason described by Section 751.206(2) or (3); the person is not required to provide any additional explanation for refusing to accept the power of attorney. *(Note: Just making reference to reason (3) in the written statement, when the reason is filing a SAR under 3(A), may violate Federal law because it could be construed as information revealing a SAR's existence. In our view, this makes using reason 3 in this instance problematic.)*

Subsection (c) requires the person to provide to the agent the written statement required under Subsection (a) or (b) on or before the date the person would otherwise be required to accept the durable power of attorney under Section 751.201.

Section 751.208. Date of Acceptance. This Section provides that a durable power of attorney is considered accepted by a person on the first day the person agrees to act at the agent's direction under the power of attorney. *(Note: We advise lenders and mortgage originators to implement procedures that will avoid inadvertently triggering acceptance under this Section before a decision has been made to accept or reject the power of attorney under Section 751.201 or Section 751.207.)*

Section 751.212. Cause of Action for Refusal to Accept Durable Power of Attorney. Subsection (a) authorizes the principal or an agent acting on the principal's behalf to bring an action against a person who refuses to accept a durable power of attorney in violation of Subchapter E.

Subsection (b) prohibits an action to be commenced against a person until after the date the person is required to accept the durable power of attorney under Section 751.201.

Subsection (c) provides that if the court finds that the person refused to accept the durable power of attorney in violation of Subchapter E, the court, as the exclusive remedy under Chapter 751, must order the person to accept the power of attorney and may award the plaintiff court costs and reasonable and necessary attorney's fees.

Subsection (d) requires the court to dismiss an action that was commenced after the date a written statement of refusal under Section 751.207(b) was provided to the agent.

Subsection (e) provides that notwithstanding Subsection (c), if the agent receives a written statement of refusal under Section 751.207(b) after the date a timely action is commenced under this Section 751.212, the court is prohibited from ordering the person to accept the durable power of attorney, but instead the court may award the plaintiff court costs and reasonable and necessary attorney's fees as the exclusive remedy under Chapter 751.

Section 751.213. Liability of Principal. Subsection (a) provides that Subsection (b) applies to an action brought under Section 751.212 if: (1) the court finds that the action was commenced after the date the written statement of refusal under Section 751.207(b) was timely provided to the agent; (2) the court expressly finds that the refusal of the person against whom the action was brought to accept the durable power of attorney was permitted under Chapter 751; or (3) Section 751.212(e) does not apply and the court does not issue an order ordering the person to accept the power of attorney.

Subsection (b) provides that under any of the circumstances described by Subsection (a), the principal may be liable to the person who refused to accept the durable power of attorney for court costs and reasonable and necessary attorney's fees incurred by the person in defending the action as the exclusive remedy under Chapter 751.

Subchapter F. Civil Remedies:

Section 751.251. Judicial Relief. Subsection (b) authorizes a person who is asked to accept a durable power of attorney to bring an action requesting a court to construe, or determine the validity or enforceability of, the power of attorney.

(General Note for Chapter 751: HB 1974 deleted the term "attorney-in-fact" from the Sections of Chapters 751 amended by HB 1974, as amended Section 751.002 defines "agent" to include an attorney-in-fact.)

SECTION 9 of HB 1974 amends the language and content of the "Statutory Durable Power of Attorney" form in Section 752.051. (**Note:** See Attachment 2 to this legislative update for the text of the Statutory Durable Power of Attorney form, as amended by HB 1974 and SB 39.)

SECTION 10 of HB 1974 adds Section 752.052 to permit the statutory durable power of attorney to be modified to allow the principal to grant the agent the authority to take five enumerated actions on the principal's behalf or with respect to the principal's property described by and subject to the conditions of Section 751.031(b), including the authority to "delegate the authority

granted under the power of attorney,” by including the following language in the power of attorney:

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death.

INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

___ Create, amend, revoke, or terminate an inter vivos trust

___ Make a gift, subject to the limitations of Section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney

___ Create or change rights of survivorship

___ Create or change a beneficiary designation

___ Authorize another person to exercise the authority granted under this power of attorney.

(Note: In the Note to Section 751.031(b), we caution that if the power of attorney expressly grants the agent the power to delegate authority, reliance thereon by a third party could be problematic due to the condition in Section 751.031(b) that “the exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject.”)

SECTION 11 of HB 1974 amends Section 752.102 by creating Subsection (a) and adding Subsection (b).

Section 752.102, Real Property Transactions, which provides that the language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the agent, without further reference to a specific description of the real property, to perform certain enumerated acts, is amended as follows:

Subsection (a), created from the existing text, amends the authority in 4(E), which confers authority to manage and supervise an interest in real property, including the mineral estate, by deleting therefrom the three examples in 4(E)(i), (ii) and (iii), respectively; adds expanded authority regarding the mineral estate in new (9) that confers authority to enter into mineral transactions, including the mineral transactions listed in (9)(A) through (L); and adds authority in new (10) to designate the property that constitutes the principal’s homestead.

Subsection (b) is added to provide that the power to mortgage and encumber real property provided by Section 752.102 includes the power to execute documents to create a lien against the principal’s homestead as provided by Section 50, Article XVI, Texas Constitution, and to consent to the creation of a lien against property owned by the principal’s spouse in which the principal has a homestead interest.

(General Note for Chapter 752: HB 1974 deleted the term “attorney-in-fact” from the Sections of Chapters 751 amended by HB 1974, as amended Section 751.002 defines “agent” to include an attorney-in-fact.)

SECTION 15 of HB 1974 repeals the following sections of Chapter 751:

- (1) Section 751.004 (Duration of Durable Power of Attorney);
- (2) Section 751.053 (Effect of Principal's Divorce or Marriage Annulment if Former Spouse is Attorney in Fact or Agent);
- (3) Section 751.054 (Knowledge of Termination of Power; Good-Faith Acts);
- (4) Section 751.055 (Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance);
- (5) Section 751.056 (Nonliability of Third Party on Good-Faith Reliance); and
- (6) Section 751.058 (Effect of Revocation of Durable Power of Attorney on Third Party).

(Note: The substance of many of the provisions in these deleted Sections are incorporated into the amendments made by HB 1974.)

SECTION 16 of HB 1974 provides as follows:

(a) Except as HB 1974 otherwise provides, HB 1974 applies to a durable power of attorney, including a statutory durable power of attorney, created before, on, or after September 1, 2017 (the effective date of HB 1974) and a judicial proceeding concerning a durable power of attorney pending on, or commenced on or after, September 1, 2017.

(b) The following provisions apply only to a durable power of attorney, including a statutory durable power of attorney, executed on or after September 1, 2017:

- (1) Section 751.024 (Reimbursement and Compensation of Agent) added by HB 1974;
- (2) Subchapter A-2 (Authority of Agent under Durable Power of Attorney), Chapter 751, added by HB 1974;
- (3) Subchapters B, C, and D of Chapter 751, as amended by HB 1974, which include the following amended sections: Section 751.051 (Effect of Acts Performed by Attorney In Fact or Agent During Principal's Disability or Incapacity), Section 751.057 (Effect of Bankruptcy Proceeding), Section 751.101 (Fiduciary Duties), Section 751.102 (Duty to Timely Inform Principal), Section 751.103 (Maintenance of Records), Section 51.104 (Accounting), Section 751.105 (Effect of Failure to Comply; Suit), Section 751.106 (Effect of Subchapter on Principal's Rights), Section 751.151 (Recording for Real Property Transactions); and
- (4) Chapter 752, as amended by HB 1974.

(c) A durable power of attorney, including a statutory durable power of attorney, executed before September 1, 2017, is governed by the provisions specified in (b)(3) and (4) above as those provisions existed on the date the durable power of attorney was executed, and the former law is continued in effect for that purpose.

(d) If the court finds that application of a provision of HB 1974 would substantially interfere with the effective conduct of a judicial proceeding concerning a durable power of attorney commenced before September 1, 2017, or would prejudice the rights of a party to the proceeding, the provision of HB 1974 does not apply and the former law continues in effect for that purpose and applies in those circumstances.

(e) An act performed by a principal or agent with respect to a durable power of attorney before September 1, 2017, is not affected by HB 1974.

Summary of SB 39 Amendments

SB 39 amends various sections of the Estates Code, including sections of Chapters 751 and 752, and adds new provisions, including new Chapter 753 that provides for the removal of an attorney in fact or agent. However, as stated in the preamble to the summary of HB 1974, this summary of HB 39 focuses on the amendments that directly affect the use of a durable power of attorney in mortgage loan transactions and does not summarize the other amendments made by SB 39.

SECTION 5 of SB 39 makes certain amendments to the language and content of the “Statutory Durable Power of Attorney form set forth in Section 752.051. (**Note:** See Attachment 2 to this legislative update for the text of the Statutory Durable Power of Attorney form amended by SB 39 and HB 1974.)

SECTION 14 of SB 39 provides as follows:

(a) Section 751.052 (Relation of Attorney in Fact or Agent to Court-Appointed Guardian of Estate), Subsection (a) of Section 751.054 (Knowledge of Termination of Power; Good-Faith Acts), and Subsection (a) of Section 751.055 (Affidavit Regarding Lack of Knowledge of Termination of Power or of Disability or Incapacity; Good-Faith Reliance), as amended by SB 39, and Chapter 753 (Removal of Attorney in Fact or Agent), as added by SB 39, apply to a durable power of attorney, including a statutory durable power of attorney, executed before, on, or after September 1, 2017 (the effective date of SB 39).

(b) Section 752.051 (Statutory Durable Power of Attorney Form), as amended by SB 39, applies to a statutory durable power of attorney executed on or after September 1, 2017. A statutory durable power of attorney executed before September 1, 2017, is governed by the law as it existed on the date the statutory durable power of attorney was executed, and the former law is continued in effect for that purpose.

ADOPTION OF THE TEXAS REVISED UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT ([SB 1193](#))

Effective September 1, 2017, SB 1193 also enacts amendments to the Durable Power of Attorney Act in Chapter 752, Estates Code, without reference to the amendments enacted by HB 1974 and SB 39 summarized above, by adding to the Estates Code Chapter 2001 (Texas Revised Uniform Fiduciary Access to Digital Assets Act). See the preamble to the above summaries of HB 1974 and SB 39 regarding the applicability of Section 311.025(b) of the Code Construction Act (Chapter 311, Government Code) when amendments to the same statute are enacted at the same session of the legislature without reference to the other amendments. The date of enactment of SB 1193 was May 23, 2017, and our reading of its amendments leads us to conclude that they are not irreconcilable with the amendments enacted by HB 1974 and SB 39.

SECTION 2 of SB 1193 amends Section 752.051, Estates Code, (Form) to create a new line in the section of the Statutory Durable Power of Attorney form describing the power(s) granted to the agent to include a new power for digital assets and the content of an electronic communication and to change the references to N to O and M to N. (**Note:** See Attachment 2 to this legislative update for the Statutory Durable Power of Attorney form amended by SB 1193, SB 39 and HB 1974.)

SECTION 3 of SB 1193 adds Section 752.1145, Estates Code, as follows:

Sec. 752.1145. DIGITAL ASSET TRANSACTIONS. (a) In this section, “digital asset” has the meaning assigned by Section 2001.002.

(b) The language conferring authority with respect to digital assets in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific digital asset, to access digital assets as provided in Chapter 2001.

(Note: Section 2001.002(8): "Digital asset" means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability unless the asset or liability is itself an electronic record." Section 2001.002(5): "Content of an electronic communication" means information concerning the substance or meaning of an electronic communication that: (A) has been sent, uploaded, received, or downloaded by a user; (B) is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and (C) is not readily accessible to the public.")

SECTION 4 of SB 1193 amends Section 752.115, Estates Code, (Existing Interests; Foreign Interests) to change the reference to Sections 752.102 through 752.114 to Sections 752.102 through 752.1145.

SECTION 7 of SB 1193 provides in subdivision (1) that Chapter 2001, Estate Code, applies to a fiduciary acting under a power of attorney executed before, on, or after September 1, 2017 (the effective date of SB 1193)

Closing Comments

The above summaries of HB 1974, SB 39 and SB 1193 do not summarize all the amendments made by these bills. Therefore, we advise you to review the entirety of these bills. You may request copies from us or you may click on the hyperlink in the title to each bill.

The following acts apply to a person who is presented with and asked to accept a durable power of attorney by an agent authorized to act under the power of attorney:

(1) The person must accept or reject the power of attorney within the applicable timeframes specified by Section 751.201. (See page 6)

(2) Before accepting the power of attorney, the person should timely request the agent's written certification under Section 751.203. (See page 7 and Attachment 1)

(3) If applicable, the person should request an English translation of the power of attorney within the timeframe specified by Section 751.201. (See page 6)

(4) The person's refusal to accept the power of attorney is limited to those reasons specified in Section 751.206. (See pages 8 through 10)

(5) The person's refusal to accept the power of attorney must be in writing provided in

accordance with the requirements of Section 751.207. (See page 10)

(6) The person's failure to accept or reject a power of attorney timely or properly may subject the person to civil liability under Section 751.212. (See pages 10 and 11)

We advise lenders and mortgage originators to implement procedures that will avoid inadvertently triggering acceptance under Section 751.208 (see page 10) before a decision has been made to accept or reject the power of attorney under Section 751.201 or Section 751.207.

Attachments: Attachment 1 - Certification of Durable Power of Attorney by Agent
Attachment 2 – Statutory Durable Power of Attorney

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ATTACHMENT 1

CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

I, _____ (agent), certify under penalty of perjury that:

1. I am the agent named in the power of attorney validly executed by _____ (principal) ("principal") on _____(date), and the power of attorney is now in full force and effect.

2. The principal is not deceased and is presently domiciled in _____ (city and state/territory or foreign country).

3. To the best of my knowledge after diligent search and inquiry:

a. The power of attorney has not been revoked by the principal or suspended or terminated by the occurrence of any event, whether or not referenced in the power of attorney;

b. At the time the power of attorney was executed, the principal was mentally competent to transact legal matters and was not acting under the undue influence of any other person;

c. A permanent guardian of the estate of the principal has not qualified to serve in that capacity;

d. My powers under the power of attorney have not been suspended by a court in a temporary guardianship or other proceeding;

e. If I am (or was) the principal's spouse, my marriage to the principal has not been dissolved by court decree of divorce or annulment or declared void by a court, or the power of attorney provides specifically that my appointment as the agent for the principal does not terminate if my marriage to the principal has been dissolved by court decree of divorce or annulment or declared void by a court;

f. No proceeding has been commenced for a temporary or permanent guardianship of the person or estate, or both, of the principal; and

g. The exercise of my authority is not prohibited by another agreement or instrument.

4. If under its terms the power of attorney becomes effective on the disability or incapacity of the principal or at a future time or on the occurrence of a contingency, the principal now has a disability or is incapacitated or the specified future time or contingency has occurred.

5. I am acting within the scope of my authority under the power of attorney, and my authority has not been altered or terminated.

6. If applicable, I am the successor to _____(predecessor agent), who has resigned, died, or become incapacitated, is not qualified to serve or has declined to serve as agent, or is otherwise unable to act. There are no unsatisfied conditions remaining under the power of attorney that preclude my acting as successor agent.

7. I agree not to:

a. Exercise any powers granted by the power of attorney if I attain knowledge that the power of attorney has been revoked, suspended, or terminated; or

b. Exercise any specific powers that have been revoked, suspended, or terminated.

8. A true and correct copy of the power of attorney is attached to this document.

9. If used in connection with an extension of credit under Section 50(a)(6), Article XVI, Texas Constitution, the power of attorney was executed in the office of the lender, the office of a title company, or the law office of _____.

Date: _____, 20__.

_____ (signature of agent)

ATTACHMENT 2*

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent [~~(attorney in fact)~~]. Unless you specify otherwise, generally the agent's [~~(attorney in fact's)~~] authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent [~~(attorney in fact)~~] resigns, **is removed by court order**, or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, _____ (insert your name and address), appoint _____ (insert the name and address of the person appointed) as my agent [~~(attorney in fact)~~] to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF **(O)** [~~(N)~~] AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH **(N)** [~~(M)~~].

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- ___ (A) Real property transactions;
- ___ (B) Tangible personal property transactions;
- ___ (C) Stock and bond transactions;
- ___ (D) Commodity and option transactions;
- ___ (E) Banking and other financial institution transactions;
- ___ (F) Business operating transactions;
- ___ (G) Insurance and annuity transactions;
- ___ (H) Estate, trust, and other beneficiary transactions;
- ___ (I) Claims and litigation;
- ___ (J) Personal and family maintenance;
- ___ (K) Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- ___ (L) Retirement plan transactions;
- ___ (M) Tax matters;

____ **(N) Digital assets and the content of an electronic communication;**

____ **(O) [(N)]** ALL OF THE POWERS LISTED IN (A) THROUGH **(N) [(M)]**. YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE **(O) [(N)]**.

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

____ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.

____ My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

Special instructions applicable to co-agents (if you have appointed co-agents to act, initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to act independently):

____ Each of my co-agents may act independently for me.

____ My co-agents may act for me only if the co-agents act jointly.

____ My co-agents may act for me only if a majority of the co-agents act jointly.

Special instructions applicable to gifts (initial in front of the following sentence to have it apply):

____ I grant my agent ~~[(attorney in fact)]~~ the power to apply my property to make gifts outright to or for the benefit of a person, including by the exercise of a presently exercisable general power of appointment held by me, except that the amount of a gift to an individual may not exceed the amount of annual exclusions allowed from the federal gift tax for the calendar year of the gift.

ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

UNLESS YOU DIRECT OTHERWISE BELOW ~~[ABOVE]~~, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES ~~[IS REVOKED]~~.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

(A) This power of attorney is not affected by my subsequent disability or incapacity.

(B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

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

I agree that any third party who receives a copy of this document may act under it. Termination [~~Revocation~~] of this [~~the~~] durable power of attorney is not effective as to a third party until the third party has actual knowledge [~~receives actual notice~~] of the termination [~~revocation~~]. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas law.

If any agent named by me dies, becomes incapacitated [~~legally disabled~~], resigns, [~~or~~] refuses to act, **or is removed by court order**, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this _____ day of _____, _____

(your signature)

State of _____

County of _____

This document was acknowledged before me on _____(date) by _____
(name of principal)

(signature of notarial officer)

(Seal, if any, of notary) _____
(printed name)

My commission expires: _____

IMPORTANT INFORMATION FOR AGENT [~~(ATTORNEY IN FACT)~~]

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, **suspended**, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent [~~or attorney in fact~~] when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" [~~or "attorney in fact"~~] in the following manner:

(Principal's Name) by (Your Signature) as Agent [~~or as Attorney in Fact~~]

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
 - (A) the property belonging to the principal that has come to your knowledge or into your possession;
 - (B) each action taken or decision made by you as agent [~~or attorney in fact~~];
 - (C) a complete account of receipts, disbursements, and other actions of you as agent [~~or attorney in fact~~] that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
 - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
 - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
 - (F) each known liability;
 - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and
 - (H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. An event that terminates **or suspends** this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;
- (5) the appointment and qualification of a permanent guardian of the principal's estate **unless a court order provides otherwise**; or
- (6) **if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise [if**

~~ordered by a court, the suspension of this power of attorney on the appointment and qualification of a temporary guardian until the date the term of the temporary guardian expires].~~

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE ~~[ATTORNEY IN FACT OR]~~ AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

***Attachment 2 contains the amendments to the Statutory Durable Power of Attorney form made by HB 1974, SB 39 and SB 1193. Added text is underlined and deleted text is enclosed in brackets with strikethroughs. The SB 39 and SB 1193 amendments are also in bold to differentiate them from the HB 1974 amendments.**