

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 92

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending section 5501 (MCL 700.5501).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 5501. (1) A durable power of attorney is a power of
2 attorney by which a principal designates another as the principal's
3 attorney in fact in ~~A writing and the writing~~ **THAT** contains the
4 words "This power of attorney is not affected by the principal's
5 subsequent disability or incapacity, or by the lapse of time", or
6 "This power of attorney is effective upon the disability or
7 incapacity of the principal", or similar words showing the
8 principal's intent that the authority conferred is exercisable
9 notwithstanding the principal's subsequent disability or incapacity

1 and, unless the power states a termination time, notwithstanding
2 the lapse of time since the execution of the instrument.

3 (2) A DURABLE POWER OF ATTORNEY UNDER THIS SECTION SHALL BE
4 DATED AND SIGNED VOLUNTARILY BY THE PRINCIPAL OR SIGNED BY A NOTARY
5 PUBLIC ON THE PRINCIPAL'S BEHALF PURSUANT TO SECTION 33 OF THE
6 MICHIGAN NOTARY PUBLIC ACT, 2003 PA 238, MCL 55.293. THE DURABLE
7 POWER OF ATTORNEY SHALL BE 1 OR BOTH OF THE FOLLOWING:

8 (A) SIGNED IN THE PRESENCE OF 2 WITNESSES, NEITHER OF WHOM IS
9 THE ATTORNEY-IN-FACT, AND BOTH OF WHOM ALSO SIGN THE DURABLE POWER
10 OF ATTORNEY.

11 (B) ACKNOWLEDGED BY THE PRINCIPAL BEFORE A NOTARY PUBLIC, WHO
12 ENDORSES ON THE DURABLE POWER OF ATTORNEY A CERTIFICATE OF THAT
13 ACKNOWLEDGMENT AND THE TRUE DATE OF TAKING THE ACKNOWLEDGMENT.

14 (3) AN ATTORNEY-IN-FACT DESIGNATED AND ACTING UNDER A DURABLE
15 POWER OF ATTORNEY HAS THE AUTHORITY, RIGHTS, RESPONSIBILITIES, AND
16 LIMITATIONS AS PROVIDED BY LAW WITH RESPECT TO A DURABLE POWER OF
17 ATTORNEY, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

18 (A) EXCEPT AS PROVIDED IN THE DURABLE POWER OF ATTORNEY, THE
19 ATTORNEY-IN-FACT SHALL ACT IN ACCORDANCE WITH THE STANDARDS OF CARE
20 APPLICABLE TO FIDUCIARIES EXERCISING POWERS UNDER A DURABLE POWER
21 OF ATTORNEY.

22 (B) THE ATTORNEY-IN-FACT SHALL TAKE REASONABLE STEPS TO FOLLOW
23 THE INSTRUCTIONS OF THE PRINCIPAL.

24 (C) UPON REQUEST OF THE PRINCIPAL, THE ATTORNEY-IN-FACT SHALL
25 KEEP THE PRINCIPAL INFORMED OF THE ATTORNEY-IN-FACT'S ACTIONS. THE
26 ATTORNEY-IN-FACT SHALL PROVIDE AN ACCOUNTING TO THE PRINCIPAL UPON
27 REQUEST OF THE PRINCIPAL, TO A CONSERVATOR OR GUARDIAN APPOINTED ON

1 BEHALF OF THE PRINCIPAL UPON REQUEST OF THE GUARDIAN OR
2 CONSERVATOR, OR PURSUANT TO JUDICIAL ORDER.

3 (D) THE ATTORNEY-IN-FACT SHALL NOT MAKE A GIFT OF ALL OR ANY
4 PART OF THE PRINCIPAL'S ASSETS, UNLESS PROVIDED FOR IN THE DURABLE
5 POWER OF ATTORNEY OR BY JUDICIAL ORDER.

6 (E) UNLESS PROVIDED IN THE DURABLE POWER OF ATTORNEY OR BY
7 JUDICIAL ORDER, THE ATTORNEY-IN-FACT, WHILE ACTING AS ATTORNEY-IN-
8 FACT, SHALL NOT CREATE AN ACCOUNT OR OTHER ASSET IN JOINT TENANCY
9 BETWEEN THE PRINCIPAL AND THE ATTORNEY-IN-FACT.

10 (F) THE ATTORNEY-IN-FACT SHALL MAINTAIN RECORDS OF THE
11 ATTORNEY-IN-FACT'S ACTIONS ON BEHALF OF THE PRINCIPAL, INCLUDING
12 TRANSACTIONS, RECEIPTS, DISBURSEMENTS, AND INVESTMENTS.

13 (G) THE ATTORNEY-IN-FACT MAY BE LIABLE FOR ANY DAMAGE OR LOSS
14 TO THE PRINCIPAL, AND MAY BE SUBJECT TO ANY OTHER AVAILABLE REMEDY,
15 FOR BREACH OF FIDUCIARY DUTY OWED TO THE PRINCIPAL. IN THE DURABLE
16 POWER OF ATTORNEY, THE PRINCIPAL MAY EXONERATE THE ATTORNEY-IN-FACT
17 OF ANY LIABILITY TO THE PRINCIPAL FOR BREACH OF FIDUCIARY DUTY
18 EXCEPT FOR ACTIONS COMMITTED BY THE ATTORNEY-IN-FACT IN BAD FAITH
19 OR WITH RECKLESS INDIFFERENCE. AN EXONERATION CLAUSE IS NOT
20 ENFORCEABLE IF INSERTED AS THE RESULT OF AN ABUSE BY THE ATTORNEY-
21 IN-FACT OF A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE
22 PRINCIPAL.

23 (H) THE ATTORNEY-IN-FACT MAY RECEIVE REASONABLE COMPENSATION
24 FOR THE ATTORNEY-IN-FACT'S SERVICES IF PROVIDED FOR IN THE DURABLE
25 POWER OF ATTORNEY.

26 (4) BEFORE EXERCISING AUTHORITY UNDER A DURABLE POWER OF
27 ATTORNEY, AN ATTORNEY-IN-FACT SHALL EXECUTE AN ACKNOWLEDGMENT OF

1 THE ATTORNEY-IN-FACT'S RESPONSIBILITIES THAT CONTAINS ALL OF THE
2 SUBSTANTIVE STATEMENTS IN SUBSTANTIALLY THE FOLLOWING FORM:

3 I, _____, HAVE BEEN APPOINTED AS ATTORNEY-IN-FACT
4 FOR _____, THE PRINCIPAL, UNDER A DURABLE POWER OF
5 ATTORNEY DATED _____. BY SIGNING THIS DOCUMENT, I ACKNOWLEDGE
6 THAT IF AND WHEN I ACT AS ATTORNEY-IN-FACT, ALL OF THE FOLLOWING
7 APPLY:

8 (A) EXCEPT AS PROVIDED IN THE DURABLE POWER OF ATTORNEY, I
9 MUST ACT IN ACCORDANCE WITH THE STANDARDS OF CARE APPLICABLE TO
10 FIDUCIARIES ACTING UNDER DURABLE POWERS OF ATTORNEY.

11 (B) I MUST TAKE REASONABLE STEPS TO FOLLOW THE INSTRUCTIONS OF
12 THE PRINCIPAL.

13 (C) UPON REQUEST OF THE PRINCIPAL, I MUST KEEP THE PRINCIPAL
14 INFORMED OF MY ACTIONS. I MUST PROVIDE AN ACCOUNTING TO THE
15 PRINCIPAL UPON REQUEST OF THE PRINCIPAL, TO A GUARDIAN OR
16 CONSERVATOR APPOINTED ON BEHALF OF THE PRINCIPAL UPON THE REQUEST
17 OF THAT GUARDIAN OR CONSERVATOR, OR PURSUANT TO JUDICIAL ORDER.

18 (D) I CANNOT MAKE A GIFT FROM THE PRINCIPAL'S PROPERTY, UNLESS
19 PROVIDED FOR IN THE DURABLE POWER OF ATTORNEY OR BY JUDICIAL ORDER.

20 (E) UNLESS PROVIDED IN THE DURABLE POWER OF ATTORNEY OR BY
21 JUDICIAL ORDER, I, WHILE ACTING AS ATTORNEY-IN-FACT, SHALL NOT
22 CREATE AN ACCOUNT OR OTHER ASSET IN JOINT TENANCY BETWEEN THE
23 PRINCIPAL AND ME.

24 (F) I MUST MAINTAIN RECORDS OF MY TRANSACTIONS AS ATTORNEY-IN-
25 FACT, INCLUDING RECEIPTS, DISBURSEMENTS, AND INVESTMENTS.

26 (G) I MAY BE LIABLE FOR ANY DAMAGE OR LOSS TO THE PRINCIPAL,
27 AND MAY BE SUBJECT TO ANY OTHER AVAILABLE REMEDY, FOR BREACH OF

1 FIDUCIARY DUTY OWED TO THE PRINCIPAL. IN THE DURABLE POWER OF
2 ATTORNEY, THE PRINCIPAL MAY EXONERATE ME OF ANY LIABILITY TO THE
3 PRINCIPAL FOR BREACH OF FIDUCIARY DUTY EXCEPT FOR ACTIONS COMMITTED
4 BY ME IN BAD FAITH OR WITH RECKLESS INDIFFERENCE. AN EXONERATION
5 CLAUSE IS NOT ENFORCEABLE IF INSERTED AS THE RESULT OF MY ABUSE OF
6 A FIDUCIARY OR CONFIDENTIAL RELATIONSHIP TO THE PRINCIPAL.

7 (H) I MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES IF I
8 VIOLATE MY DUTIES TO THE PRINCIPAL.

9 SIGNATURE: _____ DATE: _____

10 (5) A THIRD PARTY IS NOT LIABLE TO THE PRINCIPAL OR ANY OTHER
11 PERSON BECAUSE THE THIRD PARTY HAS COMPLIED IN GOOD FAITH WITH
12 INSTRUCTIONS FROM AN ATTORNEY-IN-FACT NAMED IN A DURABLE POWER OF
13 ATTORNEY WHETHER OR NOT THE ATTORNEY-IN-FACT HAS EXECUTED AN
14 ACKNOWLEDGMENT THAT COMPLIES WITH SUBSECTION (4). A THIRD PARTY IS
15 NOT LIABLE TO THE PRINCIPAL OR ANY OTHER PERSON IF THE THIRD PARTY
16 REQUIRES AN ATTORNEY-IN-FACT NAMED IN A DURABLE POWER OF ATTORNEY
17 TO EXECUTE AN ACKNOWLEDGMENT THAT COMPLIES WITH SUBSECTION (4)
18 BEFORE RECOGNIZING THE DURABLE POWER OF ATTORNEY.

19 (6) AN ATTORNEY-IN-FACT'S FAILURE TO COMPLY WITH SUBSECTION
20 (4) DOES NOT AFFECT THE ATTORNEY-IN-FACT'S AUTHORITY TO ACT FOR THE
21 PRINCIPAL AS PROVIDED FOR IN THE DURABLE POWER OF ATTORNEY AND DOES
22 NOT AFFECT THE ATTORNEY-IN-FACT'S RESPONSIBILITIES OR POTENTIAL
23 LIABILITY TO THE PRINCIPAL.

24 (7) SUBSECTIONS (2) TO (6) DO NOT APPLY TO ANY OF THE
25 FOLLOWING:

26 (A) A DURABLE POWER OF ATTORNEY EXECUTED BEFORE OCTOBER 1,
27 2012.

1 (B) A DELEGATION UNDER SECTION 5103 OR A SIMILAR POWER OF
2 ATTORNEY CREATED BY A PARENT OR GUARDIAN REGARDING THE CARE,
3 CUSTODY, OR PROPERTY OF A MINOR CHILD OR WARD.

4 (C) A PATIENT ADVOCATE DESIGNATION OR A SIMILAR POWER OF
5 ATTORNEY RELATING TO THE PRINCIPAL'S HEALTH CARE.

6 (D) A DURABLE POWER OF ATTORNEY THAT IS COUPLED WITH AN
7 INTEREST IN THE SUBJECT MATTER OF THE POWER.

8 (E) A DURABLE POWER OF ATTORNEY THAT IS CONTAINED IN OR IS
9 PART OF A LOAN AGREEMENT, SECURITY AGREEMENT, PLEDGE AGREEMENT,
10 ESCROW AGREEMENT, OR OTHER SIMILAR TRANSACTION.

11 (F) A DURABLE POWER OF ATTORNEY IN CONNECTION WITH A
12 TRANSACTION WITH A JOINT VENTURE, LIMITED LIABILITY COMPANY,
13 PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP,
14 CORPORATION, CONDOMINIUM, CONDOMINIUM ASSOCIATION, CONDOMINIUM
15 TRUST, OR SIMILAR ENTITY, INCLUDING, WITHOUT LIMITATION, A VOTING
16 AGREEMENT, VOTING TRUST, JOINT VENTURE AGREEMENT, ROYALTY
17 AGREEMENT, LICENSE AGREEMENT, PROXY, SHAREHOLDER'S AGREEMENT,
18 OPERATING AGREEMENT, PARTNERSHIP AGREEMENT, MANAGEMENT AGREEMENT,
19 SUBSCRIPTION AGREEMENT, CERTIFICATION OF INCORPORATION, BYLAWS, OR
20 OTHER AGREEMENT THAT PRIMARILY RELATES TO SUCH AN ENTITY.

21 (G) A POWER OF ATTORNEY GIVEN PRIMARILY FOR A BUSINESS OR A
22 COMMERCIAL PURPOSE.

23 (H) A POWER OF ATTORNEY CREATED ON A FORM PRESCRIBED BY A
24 GOVERNMENT OR A GOVERNMENTAL SUBDIVISION, AGENCY, OR
25 INSTRUMENTALITY FOR A GOVERNMENTAL PURPOSE.