

Powers Conferred by Powers of Attorney

Construction of Powers **Generally** (Section 752.101 of Estates Code)

By executing a statutory durable power of attorney that confers authority with respect to any class of transactions, the principal empowers the attorney in fact or agent for that class of transactions to:

- (1) demand, receive, and obtain by litigation, action, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled;
 - (2) conserve, invest, disburse, or use any money or other thing of value received on behalf of the principal for the purposes intended;
 - (3) contract in any manner with any person, on terms agreeable to the attorney in fact or agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify that contract or another contract made by or on behalf of the principal;
 - (4) execute, acknowledge, seal, and deliver a deed, revocation, mortgage, lease, notice, check, release, or other instrument the attorney in fact or agent considers desirable to accomplish a purpose of a transaction;
 - (5) with respect to a claim existing in favor of or against the principal:
 - (A) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise; or
 - (B) intervene in an action or litigation relating to the claim;
 - (6) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;
 - (7) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;
 - (8) keep appropriate records of each transaction, including an accounting of receipts and disbursements;
 - (9) prepare, execute, and file a record, report, or other document the attorney in fact or agent considers necessary or desirable to safeguard or promote the principal's interest under a statute or governmental regulation;
 - (10) reimburse the attorney in fact or agent for an expenditure made in exercising the powers granted by the durable power of attorney; and
 - (11) in general, perform any other lawful act that the principal may perform with respect to the transaction.
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Construction of Power Relating to **Real Property Transactions**
(Section 752.102 of Estates Code)

The language conferring authority with respect to real property transactions in a statutory durable power of attorney empowers the attorney in fact or agent, without further reference to a specific description of the real property, to:

- (1) accept as a gift or as security for a loan or reject, demand, buy, lease, receive, or otherwise acquire an interest in real property or a right incident to real property;
- (2) sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition or consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease or sublet, or otherwise dispose of an estate or interest in real property or a right incident to real property;
- (3) release, assign, satisfy, and enforce by litigation, action, or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist;
- (4) perform any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including the authority to:
 - (A) insure against a casualty, liability, or loss;
 - (B) obtain or regain possession or protect the interest or right by litigation, action, or otherwise;
 - (C) pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with the taxes or assessments;
 - (D) purchase supplies, hire assistance or labor, or make repairs or alterations to the real property; and
 - (E) manage and supervise an interest in real property, including the mineral estate, by, for example:
 - (i) entering into a lease for oil, gas, and mineral purposes;
 - (ii) making contracts for development of the mineral estate; or
 - (iii) making pooling and unitization agreements;
- (5) use, develop, alter, replace, remove, erect, or install structures or other improvements on real property in which the principal has or claims to have an estate, interest, or right;
- (6) participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property, receive and hold shares of stock or obligations received in a plan or reorganization, and act with respect to the shares or obligations, including:
 - (A) selling or otherwise disposing of the shares or obligations;

(B) exercising or selling an option, conversion, or similar right with respect to the shares or obligations; and

(C) voting the shares or obligations in person or by proxy;

(7) change the form of title of an interest in or right incident to real property; and

(8) dedicate easements or other real property in which the principal has or claims to have an interest to public use, with or without consideration.

Construction of Power Relating to **Banking and Other Financial Institution Transactions**
(Section 752.106 of Estates Code)

The language conferring authority with respect to banking and other financial institution transactions in a statutory durable power of attorney empowers the attorney in fact or agent to:

(1) continue, modify, or terminate an account or other banking arrangement made by or on behalf of the principal;

(2) establish, modify, or terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the attorney in fact or agent;

(3) rent a safe deposit box or space in a vault;

(4) contract to procure other services available from a financial institution as the attorney in fact or agent considers desirable;

(5) withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;

(6) receive bank statements, vouchers, notices, or similar documents from a financial institution and act with respect to those documents;

(7) enter a safe deposit box or vault and withdraw from or add to its contents;

(8) borrow money at an interest rate agreeable to the attorney in fact or agent and pledge as security the principal's property as necessary to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(9) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, bills of exchange, checks, drafts, or other negotiable or nonnegotiable paper of the principal, or payable to the principal or the principal's order to receive the cash or other proceeds of those transactions, to accept a draft drawn by a person on the principal, and to pay the principal when due;

(10) receive for the principal and act on a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;

(11) apply for and receive letters of credit, credit cards, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

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