



Title XXVI TRADE AND COMMERCE

Chapter 404

< > • Effective - 28 Aug 2016, 2 histories ↓

404.710. Power of attorney with general powers. — 1. A principal may delegate to an attorney in fact in a power of attorney general powers to act in a fiduciary capacity on the principal's behalf with respect to all lawful subjects and purposes or with respect to one or more express subjects or purposes. A power of attorney with general powers may be durable or not durable.

2. If the power of attorney states that general powers are granted to the attorney in fact and further states in substance that it grants power to the attorney in fact to act with respect to all lawful subjects and purposes or that it grants general powers for general purposes or does not by its terms limit the power to the specific subject or purposes set out in the instrument, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power which an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section. When a power of attorney grants general powers to an attorney in fact to act with respect to all lawful subjects and purposes, the enumeration of one or more specific subjects or purposes does not limit the general authority granted by that power of attorney, unless otherwise provided in the power of attorney.

3. If the power of attorney states that general powers are granted to an attorney in fact with respect to one or more express subjects or purposes for which general powers are conferred, then the authority of the attorney in fact acting under the power of attorney shall extend to and include each and every action or power, but only with respect to the specific subjects or purposes expressed in the power of attorney that an adult who is nondisabled and nonincapacitated may carry out through an agent specifically authorized in the premises, with respect to any and all matters whatsoever, except as provided in subsections 6 and 7 of this section.

4. Except as provided in subsections 6 and 7 of this section, an attorney in fact with general powers has, with respect to the subjects or purposes for which the powers are conferred, all rights, power and authority to act for the principal that the principal would have with respect to his or her own person or property, including property owned jointly or by the entireties with another or others, as a nondisabled and nonincapacitated adult; and without limiting the foregoing has with respect to the subjects or purposes of the

power complete discretion to make a decision for the principal, to act or not act, to consent or not consent to, or withdraw consent for, any act, and to execute and deliver or accept any deed, bill of sale, bill of lading, assignment, contract, note, security instrument, consent, receipt, release, proof of claim, petition or other pleading, tax document, notice, application, acknowledgment or other document necessary or convenient to implement or confirm any act, transaction or decision. An attorney in fact with general powers, whether power to act with respect to all lawful subjects and purposes, or only with respect to one or more express subjects or purposes, shall have the power, unless specifically denied by the terms of the power of attorney, to make, execute and deliver to or for the benefit of or at the request of a third person, who is requested to rely upon an action of the attorney in fact, an agreement indemnifying and holding harmless any third person or persons from any liability, claims or expenses, including legal expenses, incurred by any such third person by reason of acting or refraining from acting pursuant to the request of the attorney in fact, and such indemnity agreement shall be binding upon the principal who has executed such power of attorney and upon the principal's successor or successors in interest. No such indemnity agreement shall protect any third person from any liability, claims or expenses incurred by reason of the fact that, and to the extent that, the third person has honored the power of attorney for actions outside the scope of authority granted by the power of attorney. In addition, the attorney in fact has complete discretion to employ and compensate real estate agents, brokers, attorneys, accountants and subagents of all types to represent and act for the principal in any and all matters, including tax matters involving the United States government or any other government or taxing entity, including, but not limited to, the execution of supplemental or additional powers of attorney in the name of the principal in form that may be required or preferred by any such taxing entity or other third person, and to deal with any or all third persons in the name of the principal without limitation. No such supplemental or additional power of attorney shall broaden the scope of authority granted to the attorney in fact in the original power of attorney executed by the principal.

5. An attorney in fact, who is granted general powers for all subjects and purposes or with respect to any express subjects or purposes, shall exercise the powers conferred according to the principal's instructions, in the principal's best interest, in good faith, prudently and in accordance with sections 404.712 and 404.714.

6. Any power of attorney, whether durable or not durable, and whether or not it grants general powers for all subjects and purposes or with respect to express subjects or purposes, shall be construed to grant power or authority to an attorney in fact to carry out any of the actions described in this subsection if the actions are expressly enumerated and authorized in the power of attorney. Any power of attorney may grant power of authority

to an attorney in fact to carry out any of the following actions if the actions are expressly authorized in the power of attorney:

- (1) To execute, amend or revoke any trust agreement;
- (2) To fund with the principal's assets any trust not created by the principal;
- (3) To make or revoke a gift of the principal's property in trust or otherwise;
- (4) To disclaim a gift or devise of property to or for the benefit of the principal, including but not limited to the ability to disclaim or release any power of appointment granted to the principal and the ability to disclaim all or part of the principal's interest in appointive property to the extent authorized under sections 456.970 to 456.1135;
- (5) To create or change survivorship interests in the principal's property or in property in which the principal may have an interest; provided, however, that the inclusion of the authority set out in this subdivision shall not be necessary in order to grant to an attorney in fact acting under a power of attorney granting general powers with respect to all lawful subjects and purposes the authority to withdraw funds or other property from any account, contract or other similar arrangement held in the names of the principal and one or more other persons with any financial institution, brokerage company or other depository to the same extent that the principal would be authorized to do if the principal were present, not disabled or incapacitated, and seeking to act in the principal's own behalf;
- (6) To designate or change the designation of beneficiaries to receive any property, benefit or contract right on the principal's death;
- (7) To give or withhold consent to an autopsy or postmortem examination;
- (8) To make an anatomical gift of, or prohibit an anatomical gift of, all or part of the principal's body under the Revised Uniform Anatomical Gift Act or to exercise the right of sepulcher over the principal's body under section 194.119;
- (9) To nominate a guardian or conservator for the principal; and if so stated in the power of attorney, the attorney in fact may nominate himself as such;
- (10) To give consent to or prohibit any type of health care, medical care, treatment or procedure to the extent authorized by sections 404.800 to 404.865;
- (11) To designate one or more substitute or successor or additional attorneys in fact; or
- (12) To exercise, to revoke or amend the release of, or to contract to exercise or not to exercise, any power of appointment granted to the principal to the extent authorized under sections 456.970 to 456.1135.

7. No power of attorney, whether durable or not durable, and whether or not it delegates general powers, may delegate or grant power or authority to an attorney in fact to do or carry out any of the following actions for the principal:

- (1) To make, publish, declare, amend or revoke a will for the principal;
- (2) To make, execute, modify or revoke a living will declaration for the principal;
- (3) To require the principal, against his or her will, to take any action or to refrain from taking any action; or
- (4) To carry out any actions specifically forbidden by the principal while not under any disability or incapacity.

8. A third person may freely rely on, contract and deal with an attorney in fact delegated general powers with respect to the subjects and purposes encompassed or expressed in the power of attorney without regard to whether the power of attorney expressly identifies the specific property, account, security, storage facility or matter as being within the scope of a subject or purpose contained in the power of attorney, and without regard to whether the power of attorney expressly authorizes the specific act, transaction or decision by the attorney in fact.

9. It is the policy of this state that an attorney in fact acting pursuant to the provisions of a power of attorney granting general powers shall be accorded the same rights and privileges with respect to the personal welfare, property and business interests of the principal, and if the power of attorney enumerates some express subjects or purposes, with respect to those subjects or purposes, as if the principal himself or herself were personally present and acting or seeking to act; and any provision of law and any purported waiver, consent or agreement executed or granted by the principal to the contrary shall be void and unenforceable.

10. Sections 404.700 to 404.735 shall not be construed to preclude any person or business enterprise from providing in a contract with the principal as to the procedure that thereafter must be followed by the principal or the principal's attorney in fact in order to give a valid notice to the person or business enterprise of any modification or termination of the appointment of an attorney in fact by the principal; and any such contractual provision for notice shall be valid and binding on the principal and the principal's successors so long as such provision is reasonably capable of being carried out.

(L. 1989 H.B. 145 § 5, A.L. 1991 S.B. 148, A.L. 1997 S.B. 265, A.L. 2011 S.B. 59, A.L. 2016 H.B. 1765)

- All versions

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