

House Bill 572

By: Representative Jones of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 7 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated,
2 relating to financial power of attorney, so as to revise the statutory form for financial power
3 of attorney to provide additional protection for principals by allowing for the termination of
4 the power of attorney upon the occurrence of specified disability, incapacity, or mental
5 incompetence; to provide for additional duties of the agent in the event a court appoints a
6 guardian for the principal or declares the principal to be mentally incompetent; to provide for
7 related matters; to repeal conflicting laws; and for other purposes.

8 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

9 **SECTION 1.**

10 Article 7 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to
11 financial power of attorney, is amended by revising Code Section 10-6-142, relating to the
12 statutory form for financial power of attorney, as follows:

13 "10-6-142.

14 The Georgia Statutory Form for Financial Power of Attorney shall be substantially as
15 follows:

16 **FINANCIAL POWER OF ATTORNEY**

17 County of _____

18 State of Georgia

19 I, _____, (hereinafter 'Principal'), a resident of _____ County,
20 Georgia, do hereby constitute and appoint _____ my true and
21 lawful attorney-in-fact (hereinafter 'Agent') for me and give such person the power(s)
22 specified below to act in my name, place, and stead in any way which I, myself, could do
23 if I were personally present with respect to the following matters:

24 (Directions: To give the Agent the powers described in paragraphs 1 through 13, place
 25 your initials on the blank line at the end of each paragraph. If you DO NOT want to
 26 give a power to the Agent, strike through the paragraph or a line within the paragraph
 27 and place your initials beside the stricken paragraph or stricken line. The powers
 28 described in any paragraph not initialed or which has been struck through will not be
 29 conveyed to the Agent. Both the Principal and the Agent must sign their full names at
 30 the end of the last paragraph.)

31 1. Bank and Credit Union Transactions: To make, receive, sign, endorse, execute,
 32 acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit,
 33 notes, stock certificates, withdrawal receipts and deposit instruments relating to
 34 accounts or deposits in, or certificates of deposit of banks, savings and loans, credit
 35 unions, or other institutions or associations. _____

36 2. Payment Transactions: To pay all sums of money, at any time or times, that may
 37 hereafter be owing by me upon any account, bill or exchange, check, draft, purchase,
 38 contract, note, or trade acceptance made, executed, endorsed, accepted, and delivered
 39 by me or for me in my name, by my Agent. _____

40 Note: If you initial paragraph 3 or paragraph 4 which follow, a notarized signature will
 41 be required on behalf of the Principal.

42 3. Real Property Transactions: To lease, sell, mortgage, purchase, exchange, and
 43 acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and
 44 acquisition of, and to accept, take, receive, and possess any interest in real property
 45 whatsoever, on such terms and conditions, and under such covenants, as my Agent shall
 46 deem proper; and to maintain, repair, tear down, alter, rebuild, improve, manage,
 47 insure, move, rent, lease, sell, convey, subject to liens, mortgages, and security deeds,
 48 and in any way or manner deal with all or any part of any interest in real property
 49 whatsoever, including specifically, but without limitation, real property lying and being
 50 situate in the State of Georgia, under such terms and conditions, and under such
 51 covenants, as my Agent shall deem proper and may for all deferred payments accept
 52 purchase money notes payable to me and secured by mortgages or deeds to secure debt,
 53 and may from time to time collect and cancel any of said notes, mortgages, security
 54 interests, or deeds to secure debt. _____

55 4. Personal Property Transactions: To lease, sell, mortgage, purchase, exchange, and
 56 acquire, and to agree, bargain, and contract for the lease, sale, purchase, exchange, and
 57 acquisition of, and to accept, take, receive, and possess any personal property
 58 whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and
 59 under such covenants, as my Agent shall deem proper; and to maintain, repair, improve,
 60 manage, insure, rent, lease, sell, convey, subject to liens or mortgages, or to take any

61 other security interests in said property which are recognized under the Uniform
62 Commercial Code as adopted at that time under the laws of Georgia or any applicable
63 state, or otherwise hypothecate, and in any way or manner deal with all or any part of
64 any real or personal property whatsoever, tangible or intangible, or any interest therein,
65 that I own at the time of execution or may thereafter acquire, under such terms and
66 conditions, and under such covenants, as my Agent shall deem proper. _____

67 5. Stock and Bond Transactions: To purchase, sell, exchange, surrender, assign,
68 redeem, vote at any meeting, or otherwise transfer any and all shares of stock, bonds,
69 or other securities in any business, association, corporation, partnership, or other legal
70 entity, whether private or public, now or hereafter belonging to me. _____

71 6. Safe Deposits: To have free access at any time or times to any safe-deposit box or
72 vault to which I might have access. _____

73 7. Borrowing: To borrow from time to time such sums of money as my Agent may
74 deem proper and execute promissory notes, security deeds or agreements, financing
75 statements, or other security instruments in such form as the lender may request and
76 renew said notes and security instruments from time to time in whole or in part.
77 _____

78 8. Business Operating Transactions: To conduct, engage in, and otherwise transact the
79 affairs of any and all lawful business ventures of whatever nature or kind that I may
80 now or hereafter be involved in. _____

81 9. Insurance Transactions: To exercise or perform any act, power, duty, right, or
82 obligation, in regard to any contract of life, accident, health, disability, liability, or other
83 type of insurance or any combination of insurance; and to procure new or additional
84 contracts of insurance for me and to designate the beneficiary of same; provided,
85 however, that my Agent cannot designate himself or herself as beneficiary of any such
86 insurance contracts. _____

87 10. Disputes and Proceedings: To commence, prosecute, discontinue, or defend all
88 actions or other legal proceedings touching my property, real or personal, or any part
89 thereof, or touching any matter in which I or my property, real or personal, may be in
90 any way concerned. To defend, settle, adjust, make allowances, compound, submit to
91 arbitration, and compromise all accounts, reckonings, claims, and demands whatsoever
92 that now are, or hereafter shall be, pending between me and any person, firm,
93 corporation, or other legal entity, in such manner and in all respects as my Agent shall
94 deem proper. _____

95 11. Hiring Representatives: To hire accountants, attorneys at law, consultants, clerks,
96 physicians, nurses, agents, servants, workmen, and others and to remove them, and to

97 appoint others in their place, and to pay and allow the persons so employed such
98 salaries, wages, or other remunerations, as my Agent shall deem proper. _____

99 12. Tax, Social Security, and Unemployment: To prepare, to make elections, to
100 execute and to file all tax, social security, unemployment insurance, and informational
101 returns required by the laws of the United States, or of any state or subdivision thereof,
102 or of any foreign government; to prepare, to execute, and to file all other papers and
103 instruments which the Agent shall think to be desirable or necessary for safeguarding
104 of me against excess or illegal taxation or against penalties imposed for claimed
105 violation of any law or other governmental regulation; and to pay, to compromise, or
106 to contest or to apply for refunds in connection with any taxes or assessments for which
107 I am or may be liable. _____

108 13. Broad Powers: Without, in any way, limiting the foregoing, generally to do,
109 execute, and perform any other act, deed, matter, or thing whatsoever that should be
110 done, executed, or performed, including, but not limited to, powers conferred by Code
111 Section 53-12-261 of the Official Code of Georgia Annotated, or that in the opinion of
112 my Agent should be done, executed, or performed, for my benefit or the benefit of my
113 property, real or personal, and in my name of every nature and kind whatsoever, as
114 fully and effectually as I could do if personally present. _____

115 14. Effective Date: This document will become effective upon the date of the
116 Principal's signature unless the Principal indicates that it should become effective at a
117 later date by completing the following, which is optional.

118 The powers conveyed in this document shall not become effective until the following
119 time or upon the occurrence of the following event or contingency:

120 _____
121 _____

122 Note: The Principal may choose to designate one or more persons to determine
123 conclusively that the above-specified event or contingency has occurred. Such person
124 or persons must make a written declaration under penalty of false swearing that such
125 event or contingency has occurred in order to make this document effective.
126 Completion of this provision is optional.

127 The following person or persons are designated to determine conclusively that the
128 above-specified event or contingency has occurred:

129 _____
130 _____

131 It is my desire and intention that this power of attorney shall not be affected by my
132 subsequent disability, incapacity, or mental incompetence and that any and all acts done
133 by the Agent pursuant to the powers conveyed herein during any period of my disability.

134 incapacity, or mental incompetence shall have the same force and effect as if I were not
135 disabled, incapacitated, or mentally incompetent; provided, however, that the Agent's
136 power shall be revoked upon the occurrence of any of the following terminating events
137 or contingencies:

138 _____
139 _____

140 Note: The Principal may choose to designate one or more persons to determine
141 conclusively that an above-specified terminating event or contingency has occurred.
142 Such person or persons must make a written declaration under penalty of false swearing
143 that such terminating event or contingency has occurred in order to terminate the power
144 of attorney. Completion of this provision is optional.

145 The following person or persons are designated to determine conclusively that an
146 above-specified terminating event or contingency has occurred:

147 _____
148 _____

149 Signed: _____

150 Principal

151 _____

152 Agent

153 ~~It is my desire and intention that this power of attorney shall not be affected by my~~
154 ~~subsequent disability, incapacity, or mental incompetence. However, I understand that~~
155 ~~it shall be revoked and the Agent's power canceled in the event a guardian is appointed~~
156 ~~for my property. As long as no such guardian is appointed, any and all acts done by the~~
157 ~~Agent pursuant to the powers conveyed herein during any period of my disability,~~
158 ~~incapacity, or mental incompetence shall have the same force and effect as if I were not~~
159 ~~disabled, incapacitated, or mentally incompetent.~~

160 I may, at any time, revoke this power of attorney, and it shall be canceled by my death:
161 ~~Otherwise, unless a guardian is appointed for my property~~ or the occurrence of any
162 terminating event or contingency contemplated herein. ~~Otherwise, this power of attorney~~
163 shall be deemed to be in full force and effect as to all persons, institutions, and
164 organizations which shall act in reliance thereon ~~prior to~~ until the receipt of written
165 revocation thereof signed by me and prior to my death ~~or the occurrence of any~~
166 terminating event or contingency contemplated herein.

167 I do hereby ratify and confirm all acts whatsoever which my Agent shall do, or cause to
168 be done, in or about the premises, by virtue of this power of attorney.

169 All parties dealing in good faith with my Agent may fully rely upon the power of and
170 authority of my Agent to act for me on my behalf and in my name, and may accept and
171 rely on agreements and other instruments entered into or executed by the agent pursuant
172 to this power of attorney.

173 This instrument shall not be effective as a grant of powers to my Agent until my Agent
174 has executed the Acceptance of Appointment appearing at the end of this instrument.

175 This instrument shall remain effective until revocation by me, ~~or my death,~~ or the
176 occurrence of any terminating event or contingency contemplated herein, whichever
177 occurs first.

178 Compensation of Agent. (Directions: Initial the line following your choice.)

179 1. My Agent shall receive no compensation for services rendered. _____

180 2. My Agent shall receive reasonable compensation for services rendered. _____

181 3. My Agent shall receive \$_____ for services rendered. _____

182 IN WITNESS WHEREOF, I have hereunto set my hand and seal on this _____ day of
183 _____, ____.

184 _____

185 Principal

186 WITNESSES

187 _____

188 _____

189 Signature and Address

190 _____

191 _____

192 Signature and Address

193 Note: A notarized signature is not required unless you have initialed paragraph 3 or 4
194 regarding property transactions.

195 I, _____, a Notary Public, do hereby certify that
196 _____ personally appeared before me this date and acknowledged
197 the due execution of the foregoing Power of Attorney.

198 _____

199 Notary Public

200 State of Georgia

201 County of _____

202

ACCEPTANCE OF APPOINTMENT

203 I, _____ (print name), have read the foregoing Power of Attorney
204 and am the person identified therein as Agent for _____ (name of
205 grantor of power of attorney), the Principal named therein. I hereby acknowledge the
206 following:

207 I owe a duty of loyalty and good faith to the Principal, and must use the powers granted
208 to me only for the benefit of the Principal.

209 I must keep the Principal's funds and other assets separate and apart from my funds and
210 other assets and titled in the name of the Principal. I must not transfer title to any of the
211 Principal's funds or other assets into my name alone. My name must not be added to
212 the title of any funds or other assets of the Principal, unless I am specifically designated
213 as Agent for the Principal in the title.

214 I must protect, conserve, and exercise prudence and caution in my dealings with the
215 Principal's funds and other assets.

216 I must keep a full and accurate record of my acts, receipts, and disbursements on behalf
217 of the Principal, and be ready to account to the Principal for such acts, receipts, and
218 disbursements at all times. I must provide an annual accounting to the Principal of my
219 acts, receipts, and disbursements, and must furnish an accounting of such acts, receipts,
220 and disbursements to the personal representative of the Principal's estate within 90 days
221 after the date of death of the Principal. If the Principal is appointed a guardian or
222 determined to be mentally incompetent by a court of this state, I must provide an annual
223 accounting to such court of my acts, receipts, and disbursements, and must furnish an
224 accounting of such acts, receipts, and disbursements to such court.

225 I have read the Compensation of Agent paragraph in the Power of Attorney and agree
226 to abide by it.

227 I acknowledge my authority to act on behalf of the Principal ceases at the death of the
228 Principal or upon the occurrence of any terminating event or contingency contemplated
229 herein.

230 I hereby accept the foregoing appointment as Agent for the Principal with full knowledge
231 of the responsibilities imposed on me, and I will faithfully carry out my duties to the best
232 of my ability.

233 Dated: _____, ____.

234 (Signature) _____

235 (Address) _____

236 Note: A notarized signature is not required unless the Principal initialed paragraph 3 or
237 paragraph 4 regarding property transactions.

238 I, _____, a Notary Public, do hereby certify that
239 _____ personally appeared before me this date and acknowledge
240 the due execution of the foregoing Acceptance of Appointment.

241 _____
242 Notary Public"

243 **SECTION 2.**

244 All laws and parts of laws in conflict with this Act are repealed.