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Subject: Statutory Short Form Power of Attorney

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Overview

This bill amends the statutory short form power of attorney. The bill expands the notice section to the principal and adds a notice to the attorney-in-fact. It amends and changes what constitutes a gift to the attorney-in-fact. It expands judicial relief to request for an accounting.

Section

- 1 Party refusing authority.** Includes the acknowledgement of the notice for the attorney-in-fact, as added by section 4 of this bill, is needed to properly executed a power of attorney and a party refusing to accept it is liable if this and other requirements are met.
- 2 Short form.** The short form is amended in the following ways:
 - *Notice.* Requires a notice to the principal and a notice to the attorney-in-fact be included with the form. The old notice that appeared at the top of the form is removed. The form indicates that the principal must initial the new notice and the attorney-in-fact acknowledges the notice by signing the power of attorney form.
 - *Gifts.* Sets a default that attorney-in-fact may not make gifts unless the power of attorney directly indicates the attorney-in-fact is authorized to make gifts to themselves and adds that this includes gifts to individuals the attorney-in-fact is legally obligated to support. It requires them to write in the name(s) of the attorney(s)-in-fact and check that they may make gifts to themselves and persons they are legally obligated to support.

Section

- *Acknowledgement.* Requires the attorney-in-fact to sign an acknowledgement indicating they have read the document and understand the attached notice.

- 3** **Notice to principal.** Requires a notice to the principal be included in the document and provides information about what an attorney-in-fact can do with a power of attorney and how to terminate a power of attorney. It requires the principal to initial that they have read the notice. Clarifies in all capital letters that the power of attorney does not grant powers to make medical decisions; a health care directive must be used for that purpose.
- 4** **Notice to attorney-in-fact.** Provides a notice to the attorney-in-fact to outline their fiduciary duties to the principal, including the standards they would be held to in acting as the attorney-in-fact. It provides notice to the attorney-in-fact that they are liable if they act in bad faith or fail to account as required.
- 5** **Gifts.** Changes the cap for gifts to an attorney in fact in a calendar year from \$10,000 to the federal annual gift exclusion amount in the year of the gift, which is \$14,000 for 2013.
- 6** **Other matters.** Clarifies that this section is intended to allow the attorney-in-fact to act on any matters that are “affecting the affairs of the principal,” but this does not include medical decisions.
- 7** **Judicial relief.** Provides for a process to seek judicial relief, including a protective order, and to request an accounting as allowed by the law and as indicated in the power of attorney short form. The principal or another person to whom the attorney-in-fact was supposed to account to is entitled to recover reasonable attorney’s fees and costs.
- 8** **Effective date.** Sections 1 through 6 are effective after August 1, 2013, and apply to powers of attorney executed on or after January 1, 2014. Section 7 is effective August 1, 2013, and applies to powers of attorney executed before, on, or after that date. Adds that nothing will invalidate or impair any power of attorney done before August 1, 2013.