



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB4908

Introduced 1/19/2006, by Rep. Elaine Nekritz

SYNOPSIS AS INTRODUCED:

755 ILCS 45/3-4

from Ch. 110 1/2, par. 803-4

Amends the Illinois Power of Attorney Act. Provides that the Section that explains the powers granted in the statutory short form power of attorney for property is expanded so that the financial transaction subsection states that an agent may open, close, or control a Totten Trust, a Payable on Death Account, or a similar arrangement with a financial institution, but the agent's authority does not include any powers over accounts titled in the name of a trust pursuant to the Trust and Trustees Act, unless specifically authorized by a person's power of attorney for property. Effective immediately.

LRB094 18386 AJ0 53697 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Power of Attorney Act is amended by
5 changing Section 3-4 as follows:

6 (755 ILCS 45/3-4) (from Ch. 110 1/2, par. 803-4)

7 Sec. 3-4. Explanation of powers granted in the statutory
8 short form power of attorney for property. This Section defines
9 each category of powers listed in the statutory short form
10 power of attorney for property and the effect of granting
11 powers to an agent. When the title of any of the following
12 categories is retained (not struck out) in a statutory property
13 power form, the effect will be to grant the agent all of the
14 principal's rights, powers and discretions with respect to the
15 types of property and transactions covered by the retained
16 category, subject to any limitations on the granted powers that
17 appear on the face of the form. The agent will have authority
18 to exercise each granted power for and in the name of the
19 principal with respect to all of the principal's interests in
20 every type of property or transaction covered by the granted
21 power at the time of exercise, whether the principal's
22 interests are direct or indirect, whole or fractional, legal,
23 equitable or contractual, as a joint tenant or tenant in common
24 or held in any other form; but the agent will not have power
25 under any of the statutory categories (a) through (o) to make
26 gifts of the principal's property, to exercise powers to
27 appoint to others or to change any beneficiary whom the
28 principal has designated to take the principal's interests at
29 death under any will, trust, joint tenancy, beneficiary form or
30 contractual arrangement. The agent will be under no duty to
31 exercise granted powers or to assume control of or
32 responsibility for the principal's property or affairs; but

1 when granted powers are exercised, the agent will be required
2 to use due care to act for the benefit of the principal in
3 accordance with the terms of the statutory property power and
4 will be liable for negligent exercise. The agent may act in
5 person or through others reasonably employed by the agent for
6 that purpose and will have authority to sign and deliver all
7 instruments, negotiate and enter into all agreements and do all
8 other acts reasonably necessary to implement the exercise of
9 the powers granted to the agent.

10 (a) Real estate transactions. The agent is authorized to:
11 buy, sell, exchange, rent and lease real estate (which term
12 includes, without limitation, real estate subject to a land
13 trust and all beneficial interests in and powers of direction
14 under any land trust); collect all rent, sale proceeds and
15 earnings from real estate; convey, assign and accept title to
16 real estate; grant easements, create conditions and release
17 rights of homestead with respect to real estate; create land
18 trusts and exercise all powers under land trusts; hold,
19 possess, maintain, repair, improve, subdivide, manage, operate
20 and insure real estate; pay, contest, protest and compromise
21 real estate taxes and assessments; and, in general, exercise
22 all powers with respect to real estate which the principal
23 could if present and under no disability.

24 (b) Financial institution transactions. The agent is
25 authorized to: open, close, continue and control all accounts
26 and deposits in any type of financial institution (which term
27 includes, without limitation, banks, trust companies, savings
28 and building and loan associations, credit unions and brokerage
29 firms), including any Totten Trust, Payable on Death Account,
30 or comparable trust account arrangement where the terms of such
31 trust are contained entirely on the financial institution's
32 signature card, and excluding accounts titled in the name of
33 any trust subject to the provisions of the Trusts and Trustees
34 Act, for which specific reference to the trust and a specific
35 grant of authority to the agent to withdraw income or principal
36 from such trust is required in the statutory property power of

1 attorney form pursuant to Section 2-9 of the Illinois Power of
2 Attorney Act and subsection (n) of this Section; deposit in and
3 withdraw from and write checks on any financial institution
4 account or deposit; and, in general, exercise all powers with
5 respect to financial institution transactions which the
6 principal could if present and under no disability.

7 (c) Stock and bond transactions. The agent is authorized
8 to: buy and sell all types of securities (which term includes,
9 without limitation, stocks, bonds, mutual funds and all other
10 types of investment securities and financial instruments);
11 collect, hold and safekeep all dividends, interest, earnings,
12 proceeds of sale, distributions, shares, certificates and
13 other evidences of ownership paid or distributed with respect
14 to securities; exercise all voting rights with respect to
15 securities in person or by proxy, enter into voting trusts and
16 consent to limitations on the right to vote; and, in general,
17 exercise all powers with respect to securities which the
18 principal could if present and under no disability.

19 (d) Tangible personal property transactions. The agent is
20 authorized to: buy and sell, lease, exchange, collect, possess
21 and take title to all tangible personal property; move, store,
22 ship, restore, maintain, repair, improve, manage, preserve,
23 insure and safekeep tangible personal property; and, in
24 general, exercise all powers with respect to tangible personal
25 property which the principal could if present and under no
26 disability.

27 (e) Safe deposit box transactions. The agent is authorized
28 to: open, continue and have access to all safe deposit boxes;
29 sign, renew, release or terminate any safe deposit contract;
30 drill or surrender any safe deposit box; and, in general,
31 exercise all powers with respect to safe deposit matters which
32 the principal could if present and under no disability.

33 (f) Insurance and annuity transactions. The agent is
34 authorized to: procure, acquire, continue, renew, terminate or
35 otherwise deal with any type of insurance or annuity contract
36 (which terms include, without limitation, life, accident,

1 health, disability, automobile casualty, property or liability
2 insurance); pay premiums or assessments on or surrender and
3 collect all distributions, proceeds or benefits payable under
4 any insurance or annuity contract; and, in general, exercise
5 all powers with respect to insurance and annuity contracts
6 which the principal could if present and under no disability.

7 (g) Retirement plan transactions. The agent is authorized
8 to: contribute to, withdraw from and deposit funds in any type
9 of retirement plan (which term includes, without limitation,
10 any tax qualified or nonqualified pension, profit sharing,
11 stock bonus, employee savings and other retirement plan,
12 individual retirement account, deferred compensation plan and
13 any other type of employee benefit plan); select and change
14 payment options for the principal under any retirement plan;
15 make rollover contributions from any retirement plan to other
16 retirement plans or individual retirement accounts; exercise
17 all investment powers available under any type of self-directed
18 retirement plan; and, in general, exercise all powers with
19 respect to retirement plans and retirement plan account
20 balances which the principal could if present and under no
21 disability.

22 (h) Social Security, unemployment and military service
23 benefits. The agent is authorized to: prepare, sign and file
24 any claim or application for Social Security, unemployment or
25 military service benefits; sue for, settle or abandon any
26 claims to any benefit or assistance under any federal, state,
27 local or foreign statute or regulation; control, deposit to any
28 account, collect, receipt for, and take title to and hold all
29 benefits under any Social Security, unemployment, military
30 service or other state, federal, local or foreign statute or
31 regulation; and, in general, exercise all powers with respect
32 to Social Security, unemployment, military service and
33 governmental benefits which the principal could if present and
34 under no disability.

35 (i) Tax matters. The agent is authorized to: sign, verify
36 and file all the principal's federal, state and local income,

1 gift, estate, property and other tax returns, including joint
2 returns and declarations of estimated tax; pay all taxes;
3 claim, sue for and receive all tax refunds; examine and copy
4 all the principal's tax returns and records; represent the
5 principal before any federal, state or local revenue agency or
6 taxing body and sign and deliver all tax powers of attorney on
7 behalf of the principal that may be necessary for such
8 purposes; waive rights and sign all documents on behalf of the
9 principal as required to settle, pay and determine all tax
10 liabilities; and, in general, exercise all powers with respect
11 to tax matters which the principal could if present and under
12 no disability.

13 (j) Claims and litigation. The agent is authorized to:
14 institute, prosecute, defend, abandon, compromise, arbitrate,
15 settle and dispose of any claim in favor of or against the
16 principal or any property interests of the principal; collect
17 and receipt for any claim or settlement proceeds and waive or
18 release all rights of the principal; employ attorneys and
19 others and enter into contingency agreements and other
20 contracts as necessary in connection with litigation; and, in
21 general, exercise all powers with respect to claims and
22 litigation which the principal could if present and under no
23 disability.

24 (k) Commodity and option transactions. The agent is
25 authorized to: buy, sell, exchange, assign, convey, settle and
26 exercise commodities futures contracts and call and put options
27 on stocks and stock indices traded on a regulated options
28 exchange and collect and receipt for all proceeds of any such
29 transactions; establish or continue option accounts for the
30 principal with any securities or futures broker; and, in
31 general, exercise all powers with respect to commodities and
32 options which the principal could if present and under no
33 disability.

34 (l) Business operations. The agent is authorized to:
35 organize or continue and conduct any business (which term
36 includes, without limitation, any farming, manufacturing,

1 service, mining, retailing or other type of business operation)
2 in any form, whether as a proprietorship, joint venture,
3 partnership, corporation, trust or other legal entity;
4 operate, buy, sell, expand, contract, terminate or liquidate
5 any business; direct, control, supervise, manage or
6 participate in the operation of any business and engage,
7 compensate and discharge business managers, employees, agents,
8 attorneys, accountants and consultants; and, in general,
9 exercise all powers with respect to business interests and
10 operations which the principal could if present and under no
11 disability.

12 (m) Borrowing transactions. The agent is authorized to:
13 borrow money; mortgage or pledge any real estate or tangible or
14 intangible personal property as security for such purposes;
15 sign, renew, extend, pay and satisfy any notes or other forms
16 of obligation; and, in general, exercise all powers with
17 respect to secured and unsecured borrowing which the principal
18 could if present and under no disability.

19 (n) Estate transactions. The agent is authorized to:
20 accept, receipt for, exercise, release, reject, renounce,
21 assign, disclaim, demand, sue for, claim and recover any
22 legacy, bequest, devise, gift or other property interest or
23 payment due or payable to or for the principal; assert any
24 interest in and exercise any power over any trust, estate or
25 property subject to fiduciary control; establish a revocable
26 trust solely for the benefit of the principal that terminates
27 at the death of the principal and is then distributable to the
28 legal representative of the estate of the principal; and, in
29 general, exercise all powers with respect to estates and trusts
30 which the principal could if present and under no disability;
31 provided, however, that the agent may not make or change a will
32 and may not revoke or amend a trust revocable or amendable by
33 the principal or require the trustee of any trust for the
34 benefit of the principal to pay income or principal to the
35 agent unless specific authority to that end is given, and
36 specific reference to the trust is made, in the statutory

1 property power form.

2 (o) All other property powers and transactions. The agent
3 is authorized to: exercise all possible powers of the principal
4 with respect to all possible types of property and interests in
5 property, except to the extent the principal limits the
6 generality of this category (o) by striking out one or more of
7 categories (a) through (n) or by specifying other limitations
8 in the statutory property power form.

9 (Source: P.A. 85-701.)

10 Section 99. Effective date. This Act takes effect upon
11 becoming law.