

# Texas Statutory Durable Powers of Attorney

## Effective January 1, 2014

### Old Opt-Out

Previously, the Durable Power of Attorney Form in Texas was an “opt-out” form because the person signing the form (the “Principal”) must strike out the specific statutory provided powers the Principal does not want to grant to the person being given the power of attorney over the Principal (the “Agent” or the “Attorney-in-Fact”).

### New Opt-In

As of January 1, 2014, this form was replaced with an entirely new form. The new Durable Power of Attorney Form is an “opt-in” form where the Principal must affirmatively initial next to each of the powers to be granted to the Agent.

Additionally, and something that should be carefully considered by one named as Agent for a Principal, is the new law requires the Durable Power of Attorney to have additional language notifying the Agent that when he or she accepts the authority granted under the Durable Power of Attorney, a “fiduciary” relationship is established between the Agent and the Principal. As we will see below, a fiduciary relationship puts materially more personal liability on the Agent acting on behalf of the Principal. The Agent has duties to the Principal to:

- Act in good faith,
- Do nothing beyond the authority granted in the Durable Power of Attorney,
- Act loyally for the benefit of the Principal,
- Avoid conflicts that would impair the Agent’s ability to act in the best interest of the Principal, and
- Disclose the Agent’s identity as an Agent or Attorney-in-Fact when acting for the Principal by writing or printing the name of the Principal and signing the Agent’s name as “Agent” or “Attorney-in-Fact”.

### Stop Acting

Further, the Bill (ultimately the statute) sets out a list of what the Durable Power of Attorney Act requires of agents and instructs the Agent to STOP ACTING on behalf of the Principal IF the Agent learns of any of the following events:

- The Principal’s death;
- The Principal’s revocation of the power of attorney or the Agent’s authority;
- The occurrence of a “termination event”;
- The appointment and qualification of a Permanent Guardian of the Estate of the Principal or,
- If ordered by a court of competent jurisdiction, the suspension of the power of attorney on the appointment and qualification of a Temporary Guardian.

### Violated Powers

The statutory language now advises the Agent that if he or she violates the Durable Power of Attorney Act or “acts beyond the authority granted”, the Agent may be personally liable for any damages caused by the violation. Additionally, the Agent could be subject to criminal prosecution for misapplication of property (Fraud) by a fiduciary under the Texas Penal Code.

**IMPORTANT:** This publication is designed to provide general information about planning ideas and strategies. Always consult with your legal, tax, investment, and insurance advisors about your unique circumstances before changing or implementing any financial, tax, or estate planning strategy.

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