

1 AN ACT relating to powers of appointment.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. KRS CHAPTER 390 IS ESTABLISHED AND A NEW
4 SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

5 *As used in this chapter:*

- 6 *(1) "Appointee" means a person to whom a powerholder makes an appointment of*
7 *appointive property;*
- 8 *(2) "Appointive property" means the property or property interest subject to a power*
9 *of appointment;*
- 10 *(3) "Blanket-exercise clause" means a clause in an instrument which exercises a*
11 *power of appointment and is not a specific-exercise clause. The term includes a*
12 *clause that:*
- 13 *(a) Expressly uses the words "any power" in exercising any power of*
14 *appointment the powerholder has;*
- 15 *(b) Expressly uses the words "any property" in appointing any property over*
16 *which the powerholder has a power of appointment; or*
- 17 *(c) Disposes of all property subject to disposition by the powerholder;*
- 18 *(4) "Donor" means a person who creates a power of appointment;*
- 19 *(5) "Exclusionary power of appointment" means a power of appointment exercisable*
20 *in favor of any one (1) or more of the permissible appointees to the exclusion of*
21 *the other permissible appointees;*
- 22 *(6) "General power of appointment" means a power of appointment exercisable in*
23 *favor of the powerholder, the powerholder's estate, a creditor of the powerholder,*
24 *or a creditor of the powerholder's estate;*
- 25 *(7) "Gift-in-default clause" means a clause identifying a taker in default of*
26 *appointment;*
- 27 *(8) "Impermissible appointee" means a person who is not a permissible appointee;*

- 1 (9) "Instrument" means a writing;
- 2 (10) "Nongeneral power of appointment" means a power of appointment that is not a
3 general power of appointment;
- 4 (11) "Permissible appointee" means a person in whose favor a powerholder may
5 exercise a power of appointment;
- 6 (12) "Person" means an individual, estate, trust, business or nonprofit entity, public
7 corporation, government or governmental subdivision, agency, or
8 instrumentality, or other legal entity;
- 9 (13) "Power of appointment" means a power that enables a powerholder acting in a
10 nonfiduciary capacity to designate a recipient of an ownership interest in or
11 another power of appointment over the appointive property. The term does not
12 include a power of attorney;
- 13 (14) "Powerholder" means a person in whom a donor creates a power of
14 appointment;
- 15 (15) "Presently exercisable power of appointment" means a power of appointment
16 exercisable by the powerholder at the time in question. The term:
- 17 (a) Includes a power of appointment not exercisable until the occurrence of a
18 specified event, the satisfaction of an ascertainable standard, or the passage
19 of a specified time only after:
- 20 1. The occurrence of the specified event;
- 21 2. The satisfaction of the ascertainable standard; or
- 22 3. The passage of the specified time; and
- 23 (b) Does not include a power exercisable only at the powerholder's death;
- 24 (16) "Specific-exercise clause" means a clause in an instrument which specifically
25 refers to and exercises a particular power of appointment;
- 26 (17) "Taker in default of appointment" means a person who takes part or all of the
27 appointive property to the extent the powerholder does not effectively exercise the

1 power of appointment; and

2 (18) "Terms of the instrument" means the manifestation of the intent of the maker of
3 the instrument regarding the instrument's provisions as expressed in the
4 instrument or as may be established by other evidence that would be admissible in
5 a legal proceeding.

6 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
7 READ AS FOLLOWS:

8 Unless the terms of the instrument creating a power of appointment manifest a
9 contrary intent:

10 (1) The creation, revocation, or amendment of the power is governed by the law of
11 the donor's domicile at the relevant time; and

12 (2) The exercise, release, or disclaimer of the power, or the revocation or amendment
13 of the exercise, release, or disclaimer, is governed by the law of the powerholder's
14 domicile at the relevant time.

15 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
16 READ AS FOLLOWS:

17 The common law principles of equity supplement this chapter, except to the extent
18 modified by this chapter or law of the Commonwealth other than this chapter.

19 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
20 READ AS FOLLOWS:

21 (1) A power of appointment is created only if:

22 (a) The instrument creating the power:

23 1. Is valid under applicable law; and

24 2. Except as otherwise provided in subsection (2) of this section,
25 transfers the appointive property; and

26 (b) The terms of the instrument creating the power manifest the donor's intent
27 to create, in a powerholder, a power of appointment over the appointive

1 property exercisable in favor of a permissible appointee.

2 (2) Subsection (1)(a)2. of this section does not apply to the creation of a power of
 3 appointment by the exercise of a power of appointment.

4 (3) A power of appointment may not be created in a deceased individual.

5 (4) Subject to an applicable rule against perpetuities, a power of appointment may be
 6 created in an unborn or unascertained powerholder.

7 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 8 READ AS FOLLOWS:

9 A powerholder may not transfer a power of appointment. If the powerholder dies
 10 without exercising or releasing the power, the power lapses.

11 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 12 READ AS FOLLOWS:

13 Subject to Section 8 of this Act, and unless the terms of the instrument creating a
 14 power of appointment manifest a contrary intent, the power is:

15 (1) Presently exercisable;

16 (2) Exclusionary; and

17 (3) Except as otherwise provided in Section 7 of this Act, general.

18 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 19 READ AS FOLLOWS:

20 Unless the terms of the instrument creating a power of appointment manifest a
 21 contrary intent, the power is nongeneral if:

22 (1) The power is exercisable only at the powerholder's death; and

23 (2) The permissible appointees of the power are a defined and limited class that does
 24 not include the powerholder's estate, the powerholder's creditors, or the creditors
 25 of the powerholder's estate.

26 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 27 READ AS FOLLOWS:

1 (1) As used in this section, "adverse party" means a person with a substantial
 2 beneficial interest in property which would be affected adversely by a
 3 powerholder's exercise or nonexercise of a power of appointment in favor of the
 4 powerholder, the powerholder's estate, a creditor of the powerholder, or a
 5 creditor of the powerholder's estate.

6 (2) If a powerholder may exercise a power of appointment only with the consent or
 7 joinder of an adverse party, the power is nongeneral.

8 (3) If the permissible appointees of a power of appointment are not defined and
 9 limited, the power is exclusionary.

10 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 11 READ AS FOLLOWS:

12 A donor may revoke or amend a power of appointment only to the extent that:

13 (1) The instrument creating the power is revocable by the donor; or

14 (2) The donor reserves a power of revocation or amendment in the instrument
 15 creating the power of appointment.

16 ➔SECTION 10. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 17 READ AS FOLLOWS:

18 A power of appointment is exercised only:

19 (1) If the instrument exercising the power is valid under applicable law;

20 (2) If the terms of the instrument exercising the power:

21 (a) Manifest the powerholder's intent to exercise the power; and

22 (b) Subject to Section 14 of this Act, satisfy the requirements of exercise, if any,
 23 imposed by the donor; and

24 (3) To the extent the appointment is a permissible exercise of power.

25 ➔SECTION 11. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 26 READ AS FOLLOWS:

27 (1) As used in this section:

1 (a) "Residuary clause" does not include a residuary clause containing a
 2 blanket-exercise clause or a specific-exercise clause; and

3 (b) "Will" includes a codicil and a testamentary instrument that revises
 4 another will.

5 (2) A residuary clause in a powerholder's will, or a comparable clause in the
 6 powerholder's revocable trust, manifests the powerholder's intent to exercise a
 7 power of appointment only if:

8 (a) The terms of the instrument containing the residuary clause do not manifest
 9 a contrary intent;

10 (b) The power is a general power exercisable in favor of the powerholder's
 11 estate;

12 (c) There is no gift-in-default clause or it is ineffective; and

13 (d) The powerholder did not release the power.

14 ➔SECTION 12. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 15 READ AS FOLLOWS:

16 Unless the terms of the instrument exercising a power of appointment manifest a
 17 contrary intent:

18 (1) Except as otherwise provided in subsection (2) of this section, a blanket-exercise
 19 clause extends to a power acquired by the powerholder after executing the
 20 instrument containing the clause; and

21 (2) If the powerholder is also the donor of the power, the clause does not extend to
 22 the power unless there is no gift-in-default clause or it is ineffective.

23 ➔SECTION 13. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 24 READ AS FOLLOWS:

25 A powerholder's substantial compliance with a formal requirement of an appointment
 26 imposed by the donor, including a requirement that the instrument exercising the
 27 power of appointment make reference or specific reference to the power, is sufficient

1 if:

2 (1) The powerholder knows of and intends to exercise the power; and

3 (2) The powerholder's manner of attempted exercise of the power does not impair a
 4 material purpose of the donor in imposing the requirement.

5 ➔SECTION 14. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 6 READ AS FOLLOWS:

7 (1) A powerholder of a general power of appointment that permits appointment to
 8 the powerholder or the powerholder's estate may make any appointment,
 9 including an appointment in trust or creating a new power of appointment, that
 10 the powerholder could make in disposing of the powerholder's own property.

11 (2) A powerholder of a general power of appointment that permits appointment only
 12 to the creditors of the powerholder or of the powerholder's estate is restricted to
 13 appointing to those creditors.

14 (3) Unless the terms of the instrument creating a power of appointment manifest a
 15 contrary intent, the powerholder of a nongeneral power may:

16 (a) Make an appointment in any form, including an appointment in trust, in
 17 favor of a permissible appointee;

18 (b) Create a general power in a permissible appointee; or

19 (c) Create a nongeneral power in any permissible appointee to appoint to such
 20 persons as the powerholder chooses, including persons who are not
 21 permissible appointees of the original nongeneral power.

22 ➔SECTION 15. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 23 READ AS FOLLOWS:

24 (1) An appointment to a deceased appointee is ineffective.

25 (2) Unless the terms of the instrument creating a power of appointment manifest a
 26 contrary intent, a powerholder of a nongeneral power may exercise the power in
 27 favor of, or create a new power of appointment in, a descendant of a deceased

1 permissible appointee whether or not the descendant is described by the donor as
 2 a permissible appointee.

3 ➔SECTION 16. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 4 READ AS FOLLOWS:

5 (1) Except as provided in Section 15 of this Act, an exercise of a power of
 6 appointment in favor of an impermissible appointee is ineffective.

7 (2) An exercise of a power of appointment in favor of a permissible appointee is
 8 ineffective to the extent the appointment is a fraud on the power.

9 ➔SECTION 17. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 10 READ AS FOLLOWS:

11 If a powerholder exercises a power of appointment in a disposition that also disposes of
 12 property the powerholder owns, the owned and appointive property shall be allocated in
 13 the permissible manner that best carries out the powerholder's intent.

14 ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 15 READ AS FOLLOWS:

16 To the extent a powerholder of a general power of appointment, other than a power to
 17 revoke, amend, or withdraw property from a trust, makes an ineffective appointment:

18 (1) The gift-in-default clause controls the disposition of the ineffectively appointed
 19 property; or

20 (2) If there is no gift-in-default clause or to the extent the clause is ineffective, the
 21 ineffectively appointed property:

22 (a) Passes to:

23 1. The powerholder if the powerholder is a permissible appointee and
 24 living; or

25 2. If the powerholder is an impermissible appointee or not living, the
 26 powerholder's estate if the estate is a permissible appointee; or

27 (b) If there is no taker under paragraph (a) of this subsection, passes under a

1 reversionary interest to the donor or the donor's transferee or successor in
 2 interest.

3 ➔SECTION 19. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 4 READ AS FOLLOWS:

5 To the extent a powerholder releases or fails to exercise a general power of
 6 appointment other than a power to revoke, amend, or withdraw property from a trust:

7 (1) The gift-in-default clause controls the disposition of the unappointed property; or

8 (2) If there is no gift-in-default clause or to the extent the clause is ineffective:

9 (a) Except as otherwise provided in paragraph (b) of this subsection, the
 10 unappointed property passes to:

11 1. The powerholder if the powerholder is a permissible appointee and
 12 living; or

13 2. If the powerholder is an impermissible appointee or not living, the
 14 powerholder's estate if the estate is a permissible appointee; or

15 (b) To the extent the powerholder released the power, or if there is no taker
 16 under paragraph (a) of this subsection, the unappointed property passes
 17 under a reversionary interest to the donor or the donor's transferee or
 18 successor in interest.

19 ➔SECTION 20. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 20 READ AS FOLLOWS:

21 To the extent a powerholder releases, ineffectively exercises, or fails to exercise a
 22 nongeneral power of appointment:

23 (1) The gift-in-default clause controls the disposition of the unappointed property; or

24 (2) If there is no gift-in-default clause or to the extent the clause is ineffective, the
 25 unappointed property:

26 (a) Passes to the permissible appointees if:

27 1. The permissible appointees are defined and limited; and

- 1 *2. The terms of the instrument creating the power do not manifest a*
2 *contrary intent; or*
3 *(b) If there is no taker under paragraph (a) of this subsection, passes under a*
4 *reversionary interest to the donor or the donor's transferee or successor in*
5 *interest.*

6 ➔SECTION 21. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
7 READ AS FOLLOWS:

8 *Unless the terms of the instrument creating or exercising a power of appointment*
9 *manifest a contrary intent, if the powerholder makes a valid partial appointment to a*
10 *taker in default of appointment, the taker in default of appointment may share fully in*
11 *unappointed property.*

12 ➔SECTION 22. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
13 READ AS FOLLOWS:

14 *If a powerholder makes an appointment to a taker in default of appointment and the*
15 *appointee would have taken the property under a gift-in-default clause had the*
16 *property not been appointed, the power of appointment is deemed not to have been*
17 *exercised, and the appointee takes under the clause.*

18 ➔SECTION 23. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
19 READ AS FOLLOWS:

20 *A powerholder may revoke or amend an exercise of a power of appointment only to the*
21 *extent that:*

22 *(1) The powerholder reserves a power of revocation or amendment in the instrument*
23 *exercising the power of appointment and, if the power is nongeneral, the terms of*
24 *the instrument creating the power of appointment do not prohibit the reservation;*
25 *or*

26 *(2) The terms of the instrument creating the power of appointment provide that the*
27 *exercise is revocable or amendable.*

1 ➔SECTION 24. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
2 READ AS FOLLOWS:

3 *As provided in KRS 394.035 and 394.610 to 394.670:*

4 *(1) A powerholder may disclaim all or part of a power of appointment; and*

5 *(2) A permissible appointee, appointee, or taker in default of appointment may*
6 *disclaim all or part of an interest in appointive property.*

7 ➔SECTION 25. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
8 READ AS FOLLOWS:

9 *A powerholder may release a power of appointment, in whole or in part, except to the*
10 *extent the terms of the instrument creating the power prevent the release.*

11 ➔SECTION 26. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
12 READ AS FOLLOWS:

13 *A powerholder of a releasable power of appointment may release the power in whole or*
14 *in part:*

15 *(1) By substantial compliance with a method provided in the terms of the instrument*
16 *creating the power; or*

17 *(2) If the terms of the instrument creating the power do not provide a method or the*
18 *method provided in the terms of the instrument is not expressly made exclusive,*
19 *by a record manifesting the powerholder's intent by clear and convincing*
20 *evidence.*

21 ➔SECTION 27. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
22 READ AS FOLLOWS:

23 *A powerholder may revoke or amend a release of a power of appointment only to the*
24 *extent that:*

25 *(1) The instrument of release is revocable by the powerholder; or*

26 *(2) The powerholder reserves a power of revocation or amendment in the instrument*
27 *of release.*

1 ➔SECTION 28. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
2 READ AS FOLLOWS:

3 *A powerholder of a presently exercisable power of appointment may contract:*

4 *(1) Not to exercise the power; or*

5 *(2) To exercise the power if the contract when made does not confer a benefit on an*
6 *impermissible appointee.*

7 ➔SECTION 29. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
8 READ AS FOLLOWS:

9 *A powerholder of a power of appointment that is not presently exercisable may*
10 *contract to exercise or not to exercise the power only if the powerholder:*

11 *(1) Is also the donor of the power; and*

12 *(2) Has reserved the power in a revocable trust.*

13 ➔SECTION 30. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
14 READ AS FOLLOWS:

15 *The remedy for a powerholder's breach of a contract to appoint or not to appoint is*
16 *limited to damages payable out of the appointive property or, if appropriate, specific*
17 *performance of the contract.*

18 ➔SECTION 31. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
19 READ AS FOLLOWS:

20 *(1) As used in this section, "power of appointment created by the powerholder"*
21 *includes a power of appointment created in a transfer by another person to the*
22 *extent the powerholder contributed value to the transfer.*

23 *(2) Appointive property subject to a general power of appointment created by the*
24 *powerholder is subject to a claim of a creditor of the powerholder or of the*
25 *powerholder's estate to the extent provided in KRS Chapter 378A.*

26 *(3) Subject to subsection (2) of this section, appointive property subject to a general*
27 *power of appointment created by the powerholder is not subject to a claim of a*

1 creditor of the powerholder or the powerholder's estate to the extent the
 2 powerholder irrevocably appointed the property in favor of a person other than
 3 the powerholder or the powerholder's estate.

4 (4) Subject to subsections (2) and (3) of this section, and notwithstanding the
 5 presence of a spendthrift provision or whether the claim arose before or after the
 6 creation of the power of appointment, appointive property subject to a general
 7 power of appointment created by the powerholder is subject to a claim of a
 8 creditor of:

9 (a) The powerholder, to the same extent as if the powerholder owned the
 10 appointive property, if the power is presently exercisable; and

11 (b) The powerholder's estate, to the extent the estate is insufficient to satisfy the
 12 claim and subject to the right of a decedent to direct the source from which
 13 liabilities are paid, if the power is exercisable at the powerholder's death.

14 ➔SECTION 32. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 15 READ AS FOLLOWS:

16 (1) Appointive property subject to a general power of appointment created by a
 17 person other than the powerholder is not subject to a claim of a creditor of the
 18 powerholder or the powerholder's estate.

19 (2) A power of appointment created by a person other than the powerholder which is
 20 subject to an ascertainable standard relating to an individual's health, education,
 21 support, or maintenance within the meaning of 26 U.S.C. sec. 2041(b)(1)(A) or
 22 2514(c)(1), as amended, is treated for purposes of this chapter as a nongeneral
 23 power.

24 ➔SECTION 33. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 25 READ AS FOLLOWS:

26 (1) Except as otherwise provided in subsection (2) of this section, appointive property
 27 subject to a nongeneral power of appointment is exempt from a claim of a

1 creditor of the powerholder or the powerholder's estate.

2 (2) Appointive property subject to a nongeneral power of appointment is subject to a
 3 claim of a creditor of the powerholder or the powerholder's estate to the extent
 4 that the powerholder owned the property and, reserving the nongeneral power,
 5 transferred the property in violation of KRS Chapter 378A.

6 ➔SECTION 34. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 7 READ AS FOLLOWS:

8 In applying and construing the Uniform Powers of Appointment Act, consideration
 9 shall be given to the need to promote uniformity of the law with respect to its subject
 10 matter among states that enact it.

11 ➔SECTION 35. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 12 READ AS FOLLOWS:

13 This chapter modifies, limits, or supersedes the Electronic Signatures in Global and
 14 National Commerce Act, 15 U.S.C. sec. 7001 et seq., but does not modify, limit, or
 15 supersede Section 101(c) of that Act, 15 U.S.C. sec. 7001(c), or authorize electronic
 16 delivery of any of the notices described in Section 103(b) of that Act, 15 U.S.C. sec.
 17 7003(b).

18 ➔SECTION 36. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) Except as otherwise provided in this chapter, on and after the effective date of
 21 this Act:

22 (a) This chapter applies to a power of appointment created before, on, or after
 23 the effective date of this Act;

24 (b) This chapter applies to a judicial proceeding concerning a power of
 25 appointment commenced on or after the effective date of this Act;

26 (c) This chapter applies to a judicial proceeding concerning a power of
 27 appointment commenced before the effective date of this Act, unless the

1 *court finds that application of a particular provision of this chapter would*
 2 *substantially interfere with the effective conduct of the judicial proceeding*
 3 *or prejudice a right of a party, in which case the particular provision of this*
 4 *chapter does not apply and the superseded law applies;*

5 *(d) A rule of construction or presumption provided in this chapter applies to an*
 6 *instrument executed before the effective date of this Act, unless there is a*
 7 *clear indication of a contrary intent in the terms of the instrument; and*

8 *(e) An act done before the effective date of this Act is not affected by this*
 9 *chapter.*

10 *(2) If a right is acquired, extinguished, or barred on the expiration of a prescribed*
 11 *period that commenced under law of the Commonwealth other than this chapter,*
 12 *before the effective date of this Act, the law continues to apply to the right.*

13 ➔SECTION 37. A NEW SECTION OF KRS CHAPTER 390 IS CREATED TO
 14 READ AS FOLLOWS:

15 *This chapter may be cited as the Uniform Powers of Appointment Act.*

16 ➔Section 38. KRS 381.225 is amended to read as follows:

17 (1) (a) A future interest or trust is void if it suspends the power of alienation for
 18 longer than the permissible period. The power of alienation is the power to
 19 convey to another an absolute fee in possession of land, or full ownership of
 20 personalty. The permissible period is within twenty-one (21) years after the
 21 death of an individual or individuals then alive.

22 (b) If the settlor of an inter vivos trust has an unlimited power to revoke, the
 23 permissible period is computed from the termination of that power.

24 (c) If a future property interest or trust is created by exercise of a power of
 25 appointment, the permissible period is computed from the time the power is
 26 exercised if the power is a general power exercisable in favor of the donee, the
 27 donee's estate, the donee's creditors, or the creditors of the donee's estate,

1 whether or not it is exercisable in favor of others, and even if the general
2 power is exercisable only by will; in the case of other powers, the permissible
3 period is computed from the time the power is created, unless the instrument
4 exercising the power provides that the period is computed from the date the
5 power is irrevocably exercised, but facts at the time the power is exercised are
6 considered in determining whether the power of alienation is suspended
7 beyond the death of an individual or individuals alive at the time of creation of
8 the power plus twenty-one (21) years.

9 (2) The power of alienation is suspended when there are no persons who, alone or in
10 combination with others, can convey an absolute fee in possession of land, or full
11 ownership of personalty.

12 (3) There is no suspension of the power of alienation by a trust or by equitable interests
13 under a trust if the trustee has power to sell, either expressed or implied, or if there
14 is a power to terminate the trust by distributing the property subject to the trust to
15 the beneficiaries in fee simple in one (1) or more persons then living.

16 (4) This section does not apply to limit any of the following:

17 (a) Transfers, outright or in trust, for charitable purposes;

18 (b) Transfers to one (1) or more charitable organizations as described in 26
19 U.S.C. secs. 170(c), 2055(a), and 2522(a), or any similar statute;

20 (c) A future interest or a power of appointment arising out of a nondonative
21 transfer, except a nonvested property interest or a power of appointment
22 arising out of:

23 1. A premarital or post-marital agreement;

24 2. A separation or divorce settlement;

25 3. An arrangement similar to subparagraph 1. or 2. of this paragraph arising
26 out of a prospective, existing, or previous marital relationship between
27 the parties;

- 1 4. A contract to make or revoke a will or trust;
- 2 5. A contract to exercise or not to exercise a power of appointment;
- 3 6. A transfer in satisfaction of a duty of support; or
- 4 7. A reciprocal transfer;
- 5 (d) A transfer to a trust or other property arrangement forming part of a pension,
- 6 profit-sharing, stock bonus, health, disability, death benefit, income deferral,
- 7 or other current or deferred benefit plan for one (1) or more employees,
- 8 independent contractors, or their beneficiaries or spouses, to which
- 9 contributions are made for the purposes of distributing to or for the benefit of
- 10 the participants or their beneficiaries or spouses the property, income, or
- 11 principal in the trust or other property arrangement; or
- 12 (e) A property interest, power of appointment, or arrangement that was not
- 13 subject to the common law rule against perpetuities or is excluded by another
- 14 statute of this Commonwealth.

15 ➔Section 39. KRS 381.226 is amended to read as follows:

- 16 (1) Except as provided in subsection (2) of this section, KRS 381.224 and 381.225 shall
- 17 apply to:
- 18 (a) A future property interest or a power of appointment that is created on or after
- 19 July 15, 2010, including a property interest or power of appointment created
- 20 pursuant to the exercise of a power of appointment under an instrument
- 21 executed prior to July 15, 2010; or
- 22 (b) A future property interest or a power of appointment:
- 23 1. That is created pursuant to the laws of any state that does not have a rule
- 24 against perpetuities in force;
- 25 2. That is not covered by any previously existing rule against perpetuities;
- 26 and
- 27 3. To which, after July 15, 2010, the laws of this state are made applicable

1 by transfer of the situs of a trust to Kentucky, by a change in the law
2 governing a trust instrument to Kentucky law, or otherwise.

3 (2) With respect to a nonvested property interest or a power of appointment created
4 either before or after July 15, 2010, which is determined in a judicial proceeding
5 commenced on or after July 15, 2010, to violate Kentucky's rule against perpetuities
6 as that rule existed at the time the interest or power was created, a court upon the
7 petition of an interested person may reform the disposition in the manner that most
8 closely approximates the transferor's manifested plan of disposition and is within
9 the limits of the rule against perpetuities applicable when the nonvested property
10 interest or power of appointment was created.

11 (3) For purposes of this section only, a future property interest or a power of
12 appointment is created when the power is irrevocably exercised or when a revocable
13 exercise becomes irrevocable.

14 (4) An instrument which contains a provision requiring the vesting of all interests
15 created by the instrument within the period provided by the common law rule
16 against perpetuities shall be construed as requiring the interests to vest within the
17 period specified by this section and KRS 381.224 and 381.225, unless the provision
18 is determined by a court to have been included in the instrument for reasons other
19 than protecting the interest against a violation of the common law rule against
20 perpetuities. For purposes of this subsection, the term "common law rule against
21 perpetuities" shall include KRS 381.215, 381.216, and 381.217 prior to their repeal
22 on July 15, 2010. **This subsection does not apply to any interest in property
23 created by the exercise of the special power of appointment granted by an
24 instrument that was irrevocable on September 25, 1985.**

25 ➔Section 40. The following KRS sections are repealed:

26 386.095 Execution and delivery of releases of powers exercisable by deed, will or
27 otherwise.

1 394.060 Devise or bequest extends to an execution of power.

2 394.070 Appointment by will in exercise of a power -- When valid.

3 →Section 41. KRS 457.030 is amended to read as follows:

4 This chapter applies to all powers of attorney except:

- 5 (1) A power to the extent it is coupled with an interest in the subject of the power,
6 including a power given to or for the benefit of a creditor in connection with a credit
7 transaction;
- 8 (2) A power to make health-care decisions including but not limited to health-care
9 decisions outlined in KRS 311.621 to 311.643, unless the power of attorney
10 otherwise provides;
- 11 (3) Proxy or other delegation to exercise voting rights or management rights with
12 respect to an entity, unless the power of attorney otherwise provides;
- 13 (4) A power created on a form prescribed by a government or governmental
14 subdivision, agency, or instrumentality for a governmental purpose, unless the
15 power of attorney otherwise provides;
- 16 (5) A power for reciprocal insurers as detailed in Subtitle 27 of KRS Chapter 304;
- 17 (6) A power given by a member of the United States Armed Forces, a person serving as
18 a merchant seaman, or a person outside the United States in connection with war
19 activities as detailed in KRS Chapter 384; ~~and~~
- 20 (7) A power for the temporary delegation of parental rights as detailed in KRS 403.352
21 and 403.353; and
- 22 **(8) A power granted to a motor vehicle dealer licensed pursuant to KRS 190.030, or**
23 **an authorized insurer in this state, or the insurer's agent, for the purpose of**
24 **facilitating the transfer of ownership or title to a motor vehicle, regardless of**
25 **whether such power is an original, photocopy, or facsimile.**

26 →Section 42. KRS 457.050 is amended to read as follows:

- 27 (1) A power of attorney shall ~~must~~ be signed ~~in the presence of two (2) disinterested~~

1 ~~witnesses]~~ by the principal or in the principal's conscious presence by another
 2 individual directed by the principal to sign the principal's name on the power of
 3 attorney. If signed in the principal's conscious presence by another individual, the
 4 reason for this method of signing shall be stated in the power of attorney.

5 (2) A signature on a power of attorney is presumed to be genuine if the principal
 6 acknowledges the signature before a notary public or other individual authorized by
 7 law to take acknowledgments.

8 ➔SECTION 43. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 9 READ AS FOLLOWS:

10 *(1) An agent under a power of attorney may do the following on behalf of the*
 11 *principal or with the principal's property only if the power of attorney expressly*
 12 *grants the agent the authority and exercise of the authority is not otherwise*
 13 *prohibited by another agreement or instrument to which the authority or property*
 14 *is subject:*

15 *(a) Create, amend, revoke, or terminate an inter vivos trust;*

16 *(b) Make a gift;*

17 *(c) Create or change rights of survivorship;*

18 *(d) Create or change a beneficiary designation;*

19 *(e) Delegate authority granted under the power of attorney;*

20 *(f) Waive the principal's right to be a beneficiary of a joint and survivor*
 21 *annuity, including a survivor benefit under a retirement plan;*

22 *(g) Exercise fiduciary powers that the principal has authority to delegate; or*

23 *(h) Exercise authority over the content of electronic communications, as*
 24 *defined in 18 U.S.C. Section 2510(12), as amended, sent or received by the*
 25 *principal.*

26 *(2) Notwithstanding a grant of authority to do an act described in subsection (1) of*
 27 *this section, unless the power of attorney otherwise provides, an agent that is not*

1 an ancestor, spouse, or descendant of the principal, may not exercise authority
2 under a power of attorney to create in the agent, or in an individual to whom the
3 agent owes a legal obligation of support, an interest in the principal's property,
4 whether by gift, right of survivorship, beneficiary designation, disclaimer, or
5 otherwise.

6 (3) Subject to subsections (1), (2), (4), and (5) of this section, if a power of attorney
7 grants to an agent authority to do all acts that a principal could do, the agent has
8 the general authority described in Sections 46 to 58 of this Act.

9 (4) Unless the power of attorney otherwise provides, a grant of authority to make a
10 gift is subject to Section 59 of this Act.

11 (5) Subject to subsections (1), (2), and (4) of this section, if the subjects over which
12 authority is granted in a power of attorney are similar or overlap, the broadest
13 authority controls.

14 (6) Authority granted in a power of attorney is exercisable with respect to property
15 that the principal has when the power of attorney is executed or acquires later,
16 whether or not the property is located in this state and whether or not the
17 authority is exercised or the power of attorney is executed in this state.

18 (7) An act performed by an agent pursuant to a power of attorney has the same effect
19 and inures to the benefit of and binds the principal and the principal's successors
20 in interest as if the principal had performed the act.

21 ➔SECTION 44. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) An agent has authority described in Sections 43 to 59 of this Act if the power of
24 attorney refers to general authority with respect to the descriptive term for the
25 subjects stated in Sections 46 to 58 of this Act or cites the section in which the
26 authority is described.

27 (2) A reference in a power of attorney to general authority with respect to the

1 descriptive term for a subject in Sections 46 to 58 of this Act or a citation to a
2 section of Sections 46 to 58 of this Act incorporates the entire section as if it were
3 set out in full in the power of attorney.

4 (3) A principal may modify authority incorporated by reference.

5 ➔SECTION 45. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
6 READ AS FOLLOWS:

7 Except as otherwise provided in the power of attorney, by executing a power of attorney
8 that incorporates by reference a subject described in Sections 46 to 58 of this Act or
9 that grants to an agent authority to do all acts that a principal could do pursuant to
10 subsection (3) of Section 43(3) of this Act, a principal authorizes the agent, with
11 respect to that subject, to:

12 (1) Demand, receive, and obtain by litigation or otherwise, money or another thing of
13 value to which the principal is, may become, or claims to be entitled, and
14 conserve, invest, disburse, or use anything so received or obtained for the
15 purposes intended;

16 (2) Contract in any manner with any person, on terms agreeable to the agent, to
17 accomplish a purpose of a transaction and perform, rescind, cancel, terminate,
18 reform, restate, release, or modify the contract or another contract made by or on
19 behalf of the principal;

20 (3) Execute, acknowledge, seal, deliver, file, or record any instrument or
21 communication the agent considers desirable to accomplish a purpose of a
22 transaction, including creating at any time a schedule listing some or all of the
23 principal's property and attaching it to the power of attorney;

24 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
25 propose or accept a compromise with respect to a claim existing in favor of or
26 against the principal or intervene in litigation relating to the claim;

27 (5) Seek on the principal's behalf the assistance of a court or other governmental

- 1 agency to carry out an act authorized in the power of attorney;
 2 (6) Engage, compensate, and discharge an attorney, accountant, discretionary
 3 investment manager, expert witness, or other advisor;
 4 (7) Prepare, execute, and file a record, report, or other document to safeguard or
 5 promote the principal's interest under a statute or regulation;
 6 (8) Communicate with any representative or employee of a government or
 7 governmental subdivision, agency, or instrumentality, on behalf of the principal;
 8 (9) Access communications intended for, and communicate on behalf of the
 9 principal, whether by mail, electronic transmission, telephone, or other means;
 10 and
 11 (10) Do any lawful act with respect to the subject and all property related to the
 12 subject.

13 ➔SECTION 46. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 14 READ AS FOLLOWS:

15 Unless the power of attorney otherwise provides, language in a power of attorney
 16 granting general authority with respect to real property authorizes the agent to:

- 17 (1) Demand, buy, lease, receive, accept as a gift or as security for an extension of
 18 credit, or otherwise acquire or reject an interest in real property or a right
 19 incident to real property;
 20 (2) Sell; exchange; convey with or without covenants, representations, or warranties;
 21 quitclaim; release; surrender; retain title for security; encumber; partition;
 22 consent to partitioning; subject to an easement or covenant; subdivide; apply for
 23 zoning or other governmental permits; plat or consent to platting; develop; grant
 24 an option concerning; lease; sublease; contribute to an entity in exchange for an
 25 interest in that entity; or otherwise grant or dispose of an interest in real property
 26 or a right incident to real property;
 27 (3) Pledge or mortgage an interest in real property or right incident to real property

- 1 as security to borrow money or pay, renew, or extend the time of payment of a
2 debt of the principal or a debt guaranteed by the principal;
- 3 (4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of
4 trust, conditional sale contract, encumbrance, lien, or other claim to real property
5 which exists or is asserted;
- 6 (5) Manage or conserve an interest in real property or a right incident to real
7 property owned or claimed to be owned by the principal, including:
- 8 (a) Insuring against liability or casualty or other loss;
9 (b) Obtaining or regaining possession of or protecting the interest or right by
10 litigation or otherwise;
- 11 (c) Paying, assessing, compromising, or contesting taxes or assessments or
12 applying for and receiving refunds in connection with them; and
- 13 (d) Purchasing supplies, hiring assistance or labor, and making repairs or
14 alterations to the real property;
- 15 (6) Use, develop, alter, replace, remove, erect, or install structures or other
16 improvements upon real property in or incident to which the principal has, or
17 claims to have, an interest or right;
- 18 (7) Participate in a reorganization with respect to real property or an entity that owns
19 an interest in or right incident to real property and receive, and hold, and act with
20 respect to stocks and bonds or other property received in a plan of reorganization,
21 including:
- 22 (a) Selling or otherwise disposing of them;
23 (b) Exercising or selling an option, right of conversion, or similar right with
24 respect to them; and
- 25 (c) Exercising any voting rights in person or by proxy;
- 26 (8) Change the form of title of an interest in or right incident to real property; and
27 (9) Dedicate to public use, with or without consideration, easements or other real

1 property in which the principal has, or claims to have, an interest.

2 ➔SECTION 47. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
3 READ AS FOLLOWS:

4 Unless the power of attorney otherwise provides, language in a power of attorney
5 granting general authority with respect to tangible personal property authorizes the
6 agent to:

- 7 (1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or
8 otherwise acquire or reject ownership or possession of tangible personal property
9 or an interest in tangible personal property;
- 10 (2) Sell; exchange; convey with or without covenants, representations, or warranties;
11 quitclaim; release; surrender; create a security interest in; grant options
12 concerning; lease; sublease; or, otherwise dispose of tangible personal property
13 or an interest in tangible personal property;
- 14 (3) Grant a security interest in tangible personal property or an interest in tangible
15 personal property as security to borrow money or pay, renew, or extend the time
16 of payment of a debt of the principal or a debt guaranteed by the principal;
- 17 (4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest,
18 lien, or other claim on behalf of the principal, with respect to tangible personal
19 property or an interest in tangible personal property;
- 20 (5) Manage or conserve tangible personal property or an interest in tangible personal
21 property on behalf of the principal, including:
- 22 (a) Insuring against liability or casualty or other loss;
- 23 (b) Obtaining or regaining possession of or protecting the property or interest,
24 by litigation or otherwise;
- 25 (c) Paying, assessing, compromising, or contesting taxes or assessments or
26 applying for and receiving refunds in connection with taxes or assessments;
- 27 (d) Moving the property from place to place;

- 1 (e) Storing the property for hire or on a gratuitous bailment; and
 2 (f) Using and making repairs, alterations, or improvements to the property;
 3 and
 4 (6) Change the form of title of an interest in tangible personal property.

5 ➔SECTION 48. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 6 READ AS FOLLOWS:

7 Unless the power of attorney otherwise provides, language in a power of attorney
 8 granting general authority with respect to stocks and bonds authorizes the agent to:

- 9 (1) Buy, sell, and exchange stocks and bonds;
 10 (2) Establish, continue, modify, or terminate an account with respect to stocks and
 11 bonds;
 12 (3) Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of
 13 payment of a debt of the principal;
 14 (4) Receive certificates and other evidences of ownership with respect to stocks and
 15 bonds; and
 16 (5) Exercise voting rights with respect to stocks and bonds in person or by proxy,
 17 enter into voting trusts, and consent to limitations on the right to vote.

18 ➔SECTION 49. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 19 READ AS FOLLOWS:

20 Unless the power of attorney otherwise provides, language in a power of attorney
 21 granting general authority with respect to commodities and options authorizes the
 22 agent to:

- 23 (1) Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and
 24 call or put options on stocks or stock indexes traded on a regulated option
 25 exchange; and
 26 (2) Establish, continue, modify, and terminate option accounts.

27 ➔SECTION 50. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO

1 READ AS FOLLOWS:

- 2 Unless the power of attorney otherwise provides, language in a power of attorney
3 granting general authority with respect to banks and other financial institutions
4 authorizes the agent to:
- 5 (1) Continue, modify, and terminate an account or other banking arrangement made
6 by or on behalf of the principal;
- 7 (2) Establish, modify, and terminate an account or other banking arrangement with
8 a bank, trust company, savings and loan association, credit union, thrift
9 company, brokerage firm, or other financial institution selected by the agent;
- 10 (3) Contract for services available from a financial institution, including renting a
11 safe deposit box or space in a vault;
- 12 (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or
13 property of the principal deposited with or left in the custody of a financial
14 institution;
- 15 (5) Receive statements of account, vouchers, notices, and similar documents from a
16 financial institution and act with respect to them;
- 17 (6) Enter a safe deposit box or vault and withdraw or add to the contents;
- 18 (7) Borrow money and pledge as security personal property of the principal
19 necessary to borrow money or pay, renew, or extend the time of payment of a debt
20 of the principal or a debt guaranteed by the principal;
- 21 (8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory
22 notes, checks, drafts, and other negotiable or nonnegotiable paper of the
23 principal or payable to the principal or the principal's order, transfer money,
24 receive the cash or other proceeds of those transactions, and accept a draft drawn
25 by a person upon the principal and pay it when due;
- 26 (9) Receive for the principal and act upon a sight draft, warehouse receipt, or other
27 document of title whether tangible or electronic, or other negotiable or

1 nonnegotiable instrument;

2 (10) Apply for, receive, and use letters of credit, credit and debit cards, electronic
3 transaction authorizations, and traveler's checks from a financial institution and
4 give an indemnity or other agreement in connection with letters of credit; and

5 (11) Consent to an extension of the time of payment with respect to commercial paper
6 or a financial transaction with a financial institution.

7 ➔SECTION 51. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
8 READ AS FOLLOWS:

9 Subject to the terms of a document or an agreement governing an entity or an entity
10 ownership interest, and unless the power of attorney otherwise provides, language in a
11 power of attorney granting general authority with respect to operation of an entity or
12 business authorizes the agent to:

13 (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

14 (2) Perform a duty or discharge a liability and exercise in person or by proxy a right,
15 power, privilege, or option that the principal has, may have, or claims to have;

16 (3) Enforce the terms of an ownership agreement;

17 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
18 propose or accept a compromise with respect to litigation to which the principal is
19 a party because of an ownership interest;

20 (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right,
21 power, privilege, or option the principal has or claims to have as the holder of
22 stocks and bonds;

23 (6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or
24 propose or accept a compromise with respect to litigation to which the principal is
25 a party concerning stocks and bonds;

26 (7) With respect to an entity or business owned solely by the principal:

27 (a) Continue, modify, renegotiate, extend, and terminate a contract made by or

- 1 on behalf of the principal with respect to the entity or business before
2 execution of the power of attorney;
- 3 **(b) Determine:**
- 4 1. The location of its operation;
5 2. The nature and extent of its business;
6 3. The methods of manufacturing, selling, merchandising, financing,
7 accounting, and advertising employed in its operation;
8 4. The amount and types of insurance carried; and
9 5. The mode of engaging, compensating, and dealing with its employees
10 and accountants, attorneys, or other advisors;
- 11 **(c) Change the name or form of organization under which the entity or**
12 business is operated and enter into an ownership agreement with other
13 persons to take over all or part of the operation of the entity or business;
14 and
- 15 **(d) Demand and receive money due or claimed by the principal or on the**
16 principal's behalf in the operation of the entity or business and control and
17 disburse the money in the operation of the entity or business;
- 18 **(8) Put additional capital into an entity or business in which the principal has an**
19 interest;
- 20 **(9) Join in a plan of reorganization, consolidation, conversion, domestication, or**
21 merger of the entity or business;
- 22 **(10) Sell or liquidate all or part of an entity or business;**
- 23 **(11) Establish the value of an entity or business under a buy-out agreement to which**
24 the principal is a party;
- 25 **(12) Prepare, sign, file, and deliver reports, compilations of information, returns, or**
26 other papers with respect to an entity or business and make related payments;
27 and

1 (13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform
2 any other act to protect the principal from illegal or unnecessary taxation,
3 assessments, fines, or penalties, with respect to an entity or business, including
4 attempts to recover, in any manner permitted by law, money paid before or after
5 the execution of the power of attorney.

6 ➔SECTION 52. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
7 READ AS FOLLOWS:

8 Unless the power of attorney otherwise provides, language in a power of attorney
9 granting general authority with respect to insurance and annuities authorizes the
10 agent to:

11 (1) Continue, pay the premium or make a contribution on, modify, exchange,
12 rescind, release, or terminate a contract procured by or on behalf of the principal
13 which insures or provides an annuity to either the principal or another person,
14 whether or not the principal is a beneficiary under the contract;

15 (2) Procure new, different, and additional contracts of insurance and annuities for
16 the principal and the principal's spouse, children, and other dependents, and
17 select the amount, type of insurance or annuity, and mode of payment;

18 (3) Pay the premium or make a contribution on, modify, exchange, rescind, release,
19 or terminate a contract of insurance or annuity procured by the agent;

20 (4) Apply for and receive a loan secured by a contract of insurance or annuity;

21 (5) Surrender and receive the cash surrender value on a contract of insurance or
22 annuity;

23 (6) Exercise an election;

24 (7) Exercise investment powers available under a contract of insurance or annuity;

25 (8) Change the manner of paying premiums on a contract of insurance or annuity;

26 (9) Change or convert the type of insurance or annuity with respect to which the
27 principal has or claims to have authority described in this section;

1 (10) Apply for and procure a benefit or assistance under a statute or regulation to
 2 guarantee or pay premiums of a contract of insurance on the life of the principal;

3 (11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the
 4 principal in a contract of insurance or annuity;

5 (12) Elect the form and timing of the payment of proceeds from a contract of
 6 insurance or annuity; and

7 (13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in
 8 connection with, a tax or assessment levied by a taxing authority with respect to a
 9 contract of insurance or annuity or its proceeds or liability accruing by reason of
 10 the tax or assessment.

11 ➔SECTION 53. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 12 READ AS FOLLOWS:

13 (1) In this section, "estate, trust, or other beneficial interest" means a trust, probate
 14 estate, guardianship, conservatorship, escrow, or custodianship or a fund from
 15 which the principal is, may become, or claims to be, entitled to a share or
 16 payment.

17 (2) Unless the power of attorney otherwise provides, language in a power of attorney
 18 granting general authority with respect to estates, trusts, and other beneficial
 19 interests authorizes the agent to:

20 (a) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or
 21 payment from an estate, trust, or other beneficial interest;

22 (b) Demand or obtain money or another thing of value to which the principal
 23 is, may become, or claims to be, entitled by reason of an estate, trust, or
 24 other beneficial interest, by litigation or otherwise;

25 (c) Exercise for the benefit of the principal a presently exercisable general
 26 power of appointment held by the principal;

27 (d) Initiate, participate in, submit to alternative dispute resolution, settle,

- 1 oppose, or propose or accept a compromise with respect to litigation to
2 ascertain the meaning, validity, or effect of a deed, will, declaration of trust,
3 or other instrument or transaction affecting the interest of the principal;
4 (e) Initiate, participate in, submit to alternative dispute resolution, settle,
5 oppose, or propose or accept a compromise with respect to litigation to
6 remove, substitute, or surcharge a fiduciary;
7 (f) Conserve, invest, disburse, or use anything received for an authorized
8 purpose;
9 (g) Transfer an interest of the principal in real property, stocks and bonds,
10 accounts with financial institutions or securities intermediaries, insurance,
11 annuities, and other property to the trustee of a revocable trust created by
12 the principal as settlor; and
13 (h) Reject, renounce, disclaim, release, or consent to a reduction in or
14 modification of a share in or payment from an estate, trust, or other
15 beneficial interest.

16 ➔SECTION 54. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
17 READ AS FOLLOWS:

- 18 Unless the power of attorney otherwise provides, language in a power of attorney
19 granting general authority with respect to claims and litigation authorizes the agent to:
20 (1) Assert and maintain before a court or administrative agency a claim, claim for
21 relief, cause of action, counterclaim, offset, recoupment, or defense, including an
22 action to recover property or other thing of value, recover damages sustained by
23 the principal, eliminate or modify tax liability, or seek an injunction, specific
24 performance, or other relief;
25 (2) Bring an action to determine adverse claims or intervene or otherwise participate
26 in litigation;
27 (3) Seek an attachment, garnishment, order of arrest, or other preliminary,

1 provisional, or intermediate relief and use an available procedure to effect or
2 satisfy a judgment, order, or decree;

3 (4) Make or accept a tender, offer of judgment, or admission of facts, submit a
4 controversy on an agreed statement of facts, consent to examination, and bind the
5 principal in litigation;

6 (5) Submit to alternative dispute resolution, settle, and propose or accept a
7 compromise;

8 (6) Waive the issuance and service of process upon the principal, accept service of
9 process, appear for the principal, designate persons upon which process directed
10 to the principal may be served, execute and file or deliver stipulations on the
11 principal's behalf, verify pleadings, seek appellate review, procure and give surety
12 and indemnity bonds, contract and pay for the preparation and printing of
13 records and briefs, receive, execute, and file or deliver a consent, waiver, release,
14 confession of judgment, satisfaction of judgment, notice, agreement, or other
15 instrument in connection with the prosecution, settlement, or defense of a claim
16 or litigation;

17 (7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary
18 or involuntary, concerning the principal or some other person, or with respect to
19 a reorganization, receivership, or application for the appointment of a receiver
20 or trustee which affects an interest of the principal in property or other thing of
21 value;

22 (8) Pay a judgment, award, or order against the principal or a settlement made in
23 connection with a claim or litigation; and

24 (9) Receive money or other thing of value paid in settlement of or as proceeds of a
25 claim or litigation.

26 ➔SECTION 55. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
27 READ AS FOLLOWS:

- 1 (1) Unless the power of attorney otherwise provides, language in a power of attorney
2 granting general authority with respect to personal and family maintenance
3 authorizes the agent to:
- 4 (a) Perform the acts necessary to maintain the customary standard of living of
5 the principal, the principal's spouse, and the following individuals, whether
6 living when the power of attorney is executed or later born:
- 7 1. The principal's children;
8 2. Other individuals legally entitled to be supported by the principal; and
9 3. The individuals whom the principal has customarily supported or
10 indicated the intent to support;
- 11 (b) Make periodic payments of child support and other family maintenance
12 required by a court or governmental agency or an agreement to which the
13 principal is a party;
- 14 (c) Provide living quarters for the individuals described in paragraph (a) of this
15 subsection by:
- 16 1. Purchase, lease, or other contract; or
17 2. Paying the operating costs, including interest, amortization payments,
18 repairs, improvements, and taxes, for premises owned by the principal
19 or occupied by those individuals;
- 20 (d) Provide normal domestic help, usual vacations and travel expenses, and
21 funds for shelter, clothing, food, appropriate education, including
22 postsecondary and vocational education, and other current living costs for
23 the individuals described in paragraph (a) of this subsection;
- 24 (e) Pay expenses for necessary health care and custodial care on behalf of the
25 individuals described in paragraph (a) of this subsection;
- 26 (f) Act as the principal's personal representative pursuant to the Health
27 Insurance Portability and Accountability Act, Sections 1171 through 1179

1 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and
 2 applicable regulations, in making decisions related to the past, present, or
 3 future payment for the provision of health care consented to by the
 4 principal or anyone authorized under the law of this state to consent to
 5 health care on behalf of the principal;

6 (g) Continue any provision made by the principal for automobiles or other
 7 means of transportation, including registering, licensing, insuring, and
 8 replacing them, for the individuals described in paragraph (a) of this
 9 subsection;

10 (h) Maintain credit and debit accounts for the convenience of the individuals
 11 described in paragraph (a) of this subsection and open new accounts; and

12 (i) Continue payments incidental to the membership or affiliation of the
 13 principal in a religious institution, club, society, order, or other
 14 organization or to continue contributions to those organizations.

15 (2) Authority with respect to personal and family maintenance is neither dependent
 16 upon, nor limited by, authority that an agent may or may not have with respect to
 17 gifts under this chapter.

18 ➔SECTION 56. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 19 READ AS FOLLOWS:

20 (1) In this section, "benefits from governmental programs or civil or military
 21 service" means any benefit, program or assistance provided under a statute or
 22 regulation including Social Security, Medicare, and Medicaid.

23 (2) Unless the power of attorney otherwise provides, language in a power of attorney
 24 granting general authority with respect to benefits from governmental programs
 25 or civil or military service authorizes the agent to:

26 (a) Execute vouchers in the name of the principal for allowances and
 27 reimbursements payable by the United States or a foreign government or by

1 a state or subdivision of a state to the principal, including allowances and
 2 reimbursements for transportation of the individuals described in
 3 subsection (1)(a) of Section 55 of this Act, and for shipment of their
 4 household effects;

5 (b) Take possession and order the removal and shipment of property of the
 6 principal from a post, warehouse, depot, dock, or other place of storage or
 7 safekeeping, either governmental or private, and execute and deliver a
 8 release, voucher, receipt, bill of lading, shipping ticket, certificate, or other
 9 instrument for that purpose;

10 (c) Enroll in, apply for, select, reject, change, amend, or discontinue, on the
 11 principal's behalf, a benefit or program;

12 (d) Prepare, file, and maintain a claim of the principal for a benefit or
 13 assistance, financial or otherwise, to which the principal may be entitled
 14 under a statute or regulation;

15 (e) Initiate, participate in, submit to alternative dispute resolution, settle,
 16 oppose, or propose or accept a compromise with respect to litigation
 17 concerning any benefit or assistance the principal may be entitled to receive
 18 under a statute or regulation; and

19 (f) Receive the financial proceeds of a claim described in paragraph (d) of this
 20 subsection and conserve, invest, disburse, or use for a lawful purpose
 21 anything so received.

22 ➔SECTION 57. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
 23 READ AS FOLLOWS:

24 (1) In this section, "retirement plan" means a plan or account created by an
 25 employer, the principal, or another individual to provide retirement benefits or
 26 deferred compensation of which the principal is a participant, beneficiary, or
 27 owner, including a plan or account under the following sections of the Internal

1 Revenue Code:

2 (a) An individual retirement account under Internal Revenue Code Section
3 408, 26 U.S.C. Section 408, as amended;

4 (b) A Roth individual retirement account under Internal Revenue Code Section
5 408A, 26 U.S.C. Section 408A, as amended;

6 (c) A deemed individual retirement account under Internal Revenue Code
7 Section 408(q), 26 U.S.C. Section 408(q), as amended;

8 (d) An annuity or mutual fund custodial account under Internal Revenue Code
9 Section 403(b), 26 U.S.C. Section 403(b), as amended;

10 (e) A pension, profit-sharing, stock bonus, or other retirement plan qualified
11 under Internal Revenue Code Section 401(a), 26 U.S.C. Section 401(a), as
12 amended;

13 (f) A plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section
14 457(b), as amended; and

15 (g) A nonqualified deferred compensation plan under Internal Revenue Code
16 Section 409A, 26 U.S.C. Section 409A, as amended.

17 (2) Unless the power of attorney otherwise provides, language in a power of attorney
18 granting general authority with respect to retirement plans authorizes the agent
19 to:

20 (a) Select the form and timing of payments under a retirement plan and
21 withdraw benefits from a plan;

22 (b) Make a rollover, including a direct trustee-to-trustee rollover, of benefits
23 from one (1) retirement plan to another;

24 (c) Establish a retirement plan in the principal's name;

25 (d) Make contributions to a retirement plan;

26 (e) Exercise investment powers available under a retirement plan; and

27 (f) Borrow from, sell assets to, or purchase assets from a retirement plan.

1 ➔SECTION 58. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
2 READ AS FOLLOWS:

3 Unless the power of attorney otherwise provides, language in a power of attorney
4 granting general authority with respect to taxes authorizes the agent to:

5 (1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll,
6 property, Federal Insurance Contributions Act, and other tax returns, claims for
7 refunds, requests for extension of time, petitions regarding tax matters, and any
8 other tax-related documents, including receipts, offers, waivers, consents,
9 including consents and agreements under Internal Revenue Code Section 2032A,
10 26 U.S.C. Section 2032A, as amended, closing agreements, and any power of
11 attorney required by the Internal Revenue Service or other taxing authority with
12 respect to a tax year upon which the statute of limitations has not run and the
13 following twenty five (25) tax years;

14 (2) Pay taxes due, collect refunds, post bonds, receive confidential information, and
15 contest deficiencies determined by the Internal Revenue Service or other taxing
16 authority;

17 (3) Exercise any election available to the principal under federal, state, local, or
18 foreign tax law; and

19 (4) Act for the principal in all tax matters for all periods before the Internal Revenue
20 Service, or other taxing authority.

21 ➔SECTION 59. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
22 READ AS FOLLOWS:

23 (1) In this section, a gift "for the benefit of" a person includes a gift to a trust, an
24 account under the Uniform Transfers to Minors Act (1983/1986), and a tuition
25 savings account or prepaid tuition plan as defined under Internal Revenue Code
26 Section 529, 26 U.S.C. Section 529, as amended.

27 (2) Unless the power of attorney otherwise provides, language in a power of attorney

1 granting general authority with respect to gifts authorizes the agent only to:

2 (a) Make outright to, or for the benefit of, a person, a gift of any of the
3 principal's property, including by the exercise of a presently exercisable
4 general power of appointment held by the principal, in an amount per
5 donee not to exceed the annual dollar limits of the federal gift tax exclusion
6 under Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b),
7 as amended, without regard to whether the federal gift tax exclusion applies
8 to the gift, or if the principal's spouse agrees to consent to a split gift
9 pursuant to Internal Revenue Code Section 2513, 26 U.S.C. 2513, as
10 amended, in an amount per donee not to exceed twice the annual federal
11 gift tax exclusion limit; and

12 (b) Consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C.
13 Section 2513, as amended, to the splitting of a gift made by the principal's
14 spouse in an amount per donee not to exceed the aggregate annual gift tax
15 exclusions for both spouses.

16 (3) An agent may make a gift of the principal's property only as the agent determines
17 is consistent with the principal's objectives if actually known by the agent and, if
18 unknown, as the agent determines is consistent with the principal's best interest
19 based on all relevant factors, including:

20 (a) The value and nature of the principal's property;

21 (b) The principal's foreseeable obligations and need for maintenance;

22 (c) Minimization of taxes, including income, estate, inheritance, generation-
23 skipping transfer, and gift taxes;

24 (d) Eligibility for a benefit, a program, or assistance under a statute or
25 regulation; and

26 (e) The principal's personal history of making or joining in making gifts.

27 ➔SECTION 60. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO

1 READ AS FOLLOWS:

2 *A document substantially in the following form may be used to create a statutory form*
3 *power of attorney that has the meaning and effect prescribed by this chapter:*

4 **KENTUCKY**

5 **STATUTORY FORM POWER OF ATTORNEY**

6 **IMPORTANT INFORMATION**

7 *This power of attorney authorizes another person (your agent) to make decisions*
8 *concerning your property for you (the principal). Your agent will be able to make*
9 *decisions and act with respect to your property (including your money) whether or not*
10 *you are able to act for yourself. The meaning of authority over subjects listed on this*
11 *form is explained in the Uniform Power of Attorney Act in KRS Chapter 457.*

12 *This power of attorney does not authorize the agent to make health-care decisions for*
13 *you.*

14 *You should select someone you trust to serve as your agent. Unless you specify*
15 *otherwise, generally the agent's authority will continue until you die or revoke the*
16 *power of attorney or the agent resigns or is unable to act for you.*

17 *Your agent is entitled to reasonable compensation unless you state otherwise in the*
18 *Special Instructions.*

19 *This form provides for designation of one (1) agent. If you wish to name more than*
20 *one (1) agent you may name a coagent in the Special Instructions. Coagents are not*
21 *required to act together unless you include that requirement in the Special*
22 *Instructions.*

23 *If your agent is unable or unwilling to act for you, your power of attorney will end*
24 *unless you have named a successor agent. You may also name a second successor*
25 *agent.*

26 *This power of attorney becomes effective immediately unless you state otherwise in the*
27 *Special Instructions.*

1 *If you have questions about the power of attorney or the authority you are granting to*
2 *your agent, you should seek legal advice before signing this form.*

3 **DESIGNATION OF AGENT**

4 *I* _____ *name the following person as my agent:*

5 *(Name of Principal)*

6 *Name of Agent:* _____

7 *Agent's Address:* _____

8 *Agent's Telephone Number* _____

9 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

10 *If my agent is unable or unwilling to act for me, I name as my successor agent:*

11 *Name of Successor Agent:* _____

12 *Successor Agent's Address:* _____

13 *Successor Agent's Telephone Number:* _____

14 *If my successor agent is unwilling or unable to act for me, I name as my second*
15 *successor agent:*

16 *Name of Second Successor Agent:* _____

17 *Second Successor Agent's Address:* _____

18 *Second Successor Agent's Telephone Number:* _____

19 **GRANT OF GENERAL AUTHORITY**

20 *I grant my agent and any successor agent general authority to act for me with respect*
21 *to the following subjects as defined in the Uniform Power of Attorney Act in KRS*

22 *Chapter 457:*

23 *(INITIAL each subject you want to include in the agent's general authority. If you*
24 *wish to grant general authority over all of the subjects you may initial "All Preceding*
25 *Subjects" instead of initialing each subject.)*

26 *() Real Property*

27 *() Tangible Personal Property*

- 1 Stocks and Bonds
- 2 Commodities and Options
- 3 Banks and Other Financial Institutions
- 4 Operation of Entity or Business
- 5 Insurance and Annuities
- 6 Estates, Trusts, and Other Beneficial Interests
- 7 Claims and Litigation
- 8 Personal and Family Maintenance
- 9 Benefits from Governmental Programs or Civil or Military Service
- 10 Retirement Plans
- 11 Taxes
- 12 All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

Create, amend, revoke, or terminate an inter vivos trust

Make a gift, subject to the limitations of the Uniform Power of Attorney Act in Section 59 of this Act and any special instructions in this power of attorney

Create or change rights of survivorship

Create or change a beneficiary designation

Authorize another person to exercise the authority granted under this power of attorney

Waive the principal's right to be a beneficiary of a joint and survivor annuity,

1 including a survivor benefit under a retirement plan

2 () Exercise fiduciary powers that the principal has authority to delegate

3 () Access the content of electronic communications

4 **LIMITATION ON AGENT'S AUTHORITY**

5 An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to
6 benefit the agent or a person to whom the agent owes an obligation of support unless I
7 have included that authority in the Special Instructions.

8 **SPECIAL INSTRUCTIONS (OPTIONAL)**

9 You may give special instructions on the following lines:

10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____

18 **EFFECTIVE DATE**

19 This power of attorney is effective immediately unless I have stated otherwise in the
20 Special Instructions.

21 **NOMINATION OF CONSERVATOR OR GUARDIAN (OPTIONAL)**

22 If it becomes necessary for a court to appoint a conservator of my estate or guardian of
23 my person, I nominate the following person(s) for appointment:

24 Name of Nominee for conservator of my estate: _____

25 Nominee's Address: _____

26 Nominee's Telephone Number: _____

27 Name of Nominee for guardian of my person: _____

1 Nominee's Address: _____

2 Nominee's Telephone Number: _____

3 **RELIANCE ON THIS POWER OF ATTORNEY**

4 Any person, including my agent, may rely upon the validity of this power of attorney or
5 a copy of it unless that person knows it has terminated or is invalid.

6 **SIGNATURE AND ACKNOWLEDGMENT**

7 Your Signature _____ Date

8 Your Name Printed

9 Your Address

10 Your Telephone Number

11 State of _____

12 County of _____

13 This document was acknowledged before me on _____

14 _____ (Date)

15 by _____.

16 (Name of Principal)

17 _____ (Seal, if any)

18 Signature of Notary

19 My commission expires: _____

20 This document prepared by:

21 _____

22 _____

23 **IMPORTANT INFORMATION FOR AGENT**

24 Agent's Duties

25 When you accept the authority granted under this power of attorney, a special legal
26 relationship is created between you and the principal. This relationship imposes upon
27 you legal duties that continue until you resign or the power of attorney is terminated or

1 revoked. You must:

2 (1) Do what you know the principal reasonably expects you to do with the principal's
3 property or, if you do not know the principal's expectations, act in the principal's
4 best interest;

5 (2) Act in good faith;

6 (3) Do nothing beyond the authority granted in this power of attorney; and

7 (4) Disclose your identity as an agent whenever you act for the principal by writing
8 or printing the name of the principal and signing your own name as "agent" in
9 the following manner:

10 (Principal's Name) by (Your Signature) as Agent

11 Unless the Special Instructions in this power of attorney state otherwise, you must
12 also:

13 (1) Act loyally for the principal's benefit;

14 (2) Avoid conflicts that would impair your ability to act in the principal's best
15 interest;

16 (3) Act with care, competence, and diligence;

17 (4) Keep a record of all receipts, disbursements, and transactions made on behalf of
18 the principal;

19 (5) Cooperate with any person that has authority to make health-care decisions for
20 the principal to do what you know the principal reasonably expects or, if you do
21 not know the principal's expectations, to act in the principal's best interest; and

22 (6) Attempt to preserve the principal's estate plan if you know the plan and
23 preserving the plan is consistent with the principal's best interest.

24 TERMINATION OF AGENT'S AUTHORITY

25 You must stop acting on behalf of the principal if you learn of any event that
26 terminates this power of attorney or your authority under this power of attorney.

27 Events that terminate a power of attorney or your authority to act under a power of

1 attorney include:

2 (1) Death of the principal;

3 (2) The principal’s revocation of the power of attorney or your authority;

4 (3) The occurrence of a termination event stated in the power of attorney;

5 (4) The purpose of the power of attorney is fully accomplished; or

6 (5) If you are married to the principal, a legal action is filed with a court to end your
7 marriage, or for your legal separation, unless the Special Instructions in this
8 power of attorney state that such an action will not terminate your authority.

9 LIABILITY OF AGENT

10 The meaning of the authority granted to you is defined in the Uniform Power of
11 Attorney Act in KRS Chapter 457. If you violate the Uniform Power of Attorney Act
12 under KRS Chapter 457 or act outside the authority granted, you may be liable for any
13 damages caused by your violation.

14 ➔SECTION 61. A NEW SECTION OF KRS CHAPTER 457 IS CREATED TO
15 READ AS FOLLOWS:

16 The following optional form may be used by an agent to certify facts concerning a
17 power of attorney:

18 AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY

19 AND AGENT’S AUTHORITY

20 State of _____

21 County of _____

22 I, _____ (Name of Agent), certify

23 under penalty of perjury that _____ (Name

24 of Principal) granted me authority as an agent or successor agent in a power of

25 attorney dated _____.

26 I further certify that to my knowledge:

27 (1) The Principal is alive and has not revoked the Power of Attorney or my authority

1 to act under the Power of Attorney and the Power of Attorney and my authority to
2 act under the Power of Attorney have not terminated;

3 (2) If the Power of Attorney was drafted to become effective upon the happening of
4 an event or contingency, the event or contingency has occurred;

5 (3) If I was named as a successor agent, the prior agent is no longer able or willing
6 to serve; and

7 (4)
8 _____
9 _____
10 _____
11 _____

12 (Insert other relevant statements)

13 SIGNATURE AND ACKNOWLEDGMENT

14 _____
15 Agent's Signature _____ Date

16 _____
17 Agent's Name Printed

18 _____

19 _____

20 Agent's Address

21 _____

22 Agent's Telephone Number

23 This document was acknowledged before me on _____,

24 (Date)

25 by _____,

26 (Name of Agent)

27 _____ (Seal, if any)

1 Signature of Notary

2 My commission expires:

3 This document prepared by:
4 _____

5 ➔SECTION 62. KRS 457.240 IS REPEALED AND REENACTED AS A NEW
6 SECTION OF KRS CHAPTER 457 TO READ AS FOLLOWS:

7 In applying and construing this uniform act, consideration must be given to the need to
8 promote uniformity of the law with respect to its subject matter among the states that
9 enact it.

10 ➔SECTION 63. KRS 457.250 IS REPEALED AND REENACTED AS A NEW
11 SECTION OF KRS CHAPTER 457 TO READ AS FOLLOWS:

12 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
13 Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify,
14 limit, or supersede sec. 101(c) of that act, 15 U.S.C. sec. 7001(c), or authorize
15 electronic delivery of any of the notices described in sec. 103(b) of that act, 15 U.S.C.
16 sec. 7003(b).

17 ➔SECTION 64. KRS 457.260 IS REPEALED AND REENACTED AS A NEW
18 SECTION OF KRS CHAPTER 457 TO READ AS FOLLOWS:

19 Except as otherwise provided in this chapter, on the effective date of this Act:

20 (1) This chapter applies to a power of attorney created before, on, or after the
21 effective date of this Act;

22 (2) This chapter applies to a judicial proceeding concerning a power of attorney
23 commenced on or after the effective date of this Act;

24 (3) This chapter applies to a judicial proceeding concerning a power of attorney
25 commenced before the effective date of this Act, unless the court finds that
26 application of a provision of this chapter would substantially interfere with the
27 effective conduct of the judicial proceeding or prejudice the rights of a party, in

- 1 *which case that provision does not apply and the superseded law applies; and*
- 2 *(4) An act done before the effective date of this Act, is not affected by this chapter.*