

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
5 by changing Section 2-8 as follows:

6 (755 ILCS 45/2-8) (from Ch. 110 1/2, par. 802-8)

7 Sec. 2-8. Reliance on document purporting to establish an
8 agency.

9 (a) Any person who acts in good faith reliance on a copy of
10 a document purporting to establish an agency will be fully
11 protected and released to the same extent as though the
12 reliant had dealt directly with the named principal as a
13 fully-competent person. The named agent shall furnish an
14 affidavit or Agent's Certification and Acceptance of Authority
15 to the reliant on demand stating that the instrument relied on
16 is a true copy of the agency and that, to the best of the named
17 agent's knowledge, the named principal is alive and the
18 relevant powers of the named agent have not been altered or
19 terminated; but good faith reliance on a document purporting
20 to establish an agency will protect the reliant without the
21 affidavit or Agent's Certification and Acceptance of
22 Authority.

23 (b) Upon request, the named agent in a power of attorney

1 shall furnish an Agent's Certification and Acceptance of
2 Authority to the reliant in substantially the following form:

3 AGENT'S CERTIFICATION AND ACCEPTANCE OF AUTHORITY

4 I, (insert name of agent), certify that the
5 attached is a true copy of a power of attorney naming the
6 undersigned as agent or successor agent for
7 (insert name of principal).

8 I certify that to the best of my knowledge the principal
9 had the capacity to execute the power of attorney, is alive,
10 and has not revoked the power of attorney; that my powers as
11 agent have not been altered or terminated; and that the power
12 of attorney remains in full force and effect.

13 I accept appointment as agent under this power of
14 attorney.

15 This certification and acceptance is made under penalty of
16 perjury.*

17 Dated:

18

19 (Agent's Signature)

20

21 (Print Agent's Name)

22

23 (Agent's Address)

24 *(NOTE: Perjury is defined in Section 32-2 of the Criminal

1 Code of 2012, and is a Class 3 felony.)

2 (c) Any person dealing with an agent named in a copy of a
3 document purporting to establish an agency may presume, in the
4 absence of actual knowledge to the contrary, that the document
5 purporting to establish the agency was validly executed, that
6 the agency was validly established, that the named principal
7 was competent at the time of execution, and that, at the time
8 of reliance, the named principal is alive, the agency was
9 validly established and has not terminated or been amended,
10 the relevant powers of the named agent were properly and
11 validly granted and have not terminated or been amended, and
12 the acts of the named agent conform to the standards of this
13 Act. No person relying on a copy of a document purporting to
14 establish an agency shall be required to see to the
15 application of any property delivered to or controlled by the
16 named agent or to question the authority of the named agent.

17 (d) Each person to whom a direction by the named agent in
18 accordance with the terms of the copy of the document
19 purporting to establish an agency is communicated shall comply
20 with that direction, and any person who fails to comply
21 arbitrarily or without reasonable cause shall be subject to
22 civil liability for any damages resulting from noncompliance.
23 A health care provider who complies with Section 4-7 shall not
24 be deemed to have acted arbitrarily or without reasonable
25 cause.

1 (e) Unreasonable cause to refuse to honor. It shall be
2 deemed unreasonable for a third party to refuse to honor an
3 Illinois statutory short form power of attorney for property
4 properly executed in accordance with the laws in effect at the
5 time of its execution, if the only reason for the refusal is
6 any of or more than one of the following: (1) the power of
7 attorney is not on a form the third party receiving such power
8 prescribes, regardless of any form the terms of any account
9 agreement between the principal and third party requires; (2)
10 there has been a lapse of time since the execution of the power
11 of attorney; (3) on the face of the statutory short form power
12 of attorney, there is a lapse of time between the date of
13 acknowledgment of the signature of the principal and the date
14 of the acceptance by the agent; (4) the document provided does
15 not bear an original signature, original witness, or original
16 notarization but is accompanied by a properly executed Agent's
17 Certification and Acceptance of Authority, Successor Agent's
18 Certification and Acceptance of Authority, or Co-Agent's
19 Certification and Acceptance of Authority bearing the original
20 signature of the named agent; or (5) the document appoints an
21 entity as the agent. Nothing in this Section shall be
22 interpreted as prohibiting or limiting a third party from
23 requiring the named agent to furnish a properly executed
24 Agent's Certification and Acceptance of Authority, Successor
25 Agent's Certification and Acceptance of Authority, or
26 Co-Agent's Certification and Acceptance of Authority under

1 this Act.

2 (f) Reasonable cause to refuse to honor. Reasons for which
3 it shall be deemed reasonable cause for a third party to refuse
4 to honor a power of attorney for property include, but are not
5 limited to, the following:

6 (1) the refusal by the agent to provide an affidavit
7 or properly executed Agent's Certification and Acceptance
8 of Authority, Successor Agent's Certification and
9 Acceptance of Authority, or Co-Agent's Certification and
10 Acceptance of Authority;

11 (2) the refusal by the agent to provide a copy of the
12 original document that is certified to be valid by an
13 attorney, a court order, or governmental entity;

14 (3) the person's good faith referral of the principal
15 and the agent or a person acting for or with the agent to
16 the local adult protective services unit;

17 (4) actual knowledge or a reasonable basis for
18 believing in the existence of a report having been made by
19 any person to the local adult protective services unit
20 alleging physical or financial abuse, neglect,
21 exploitation, or abandonment of the principal by the agent
22 or a person acting for the agent;

23 (5) actual knowledge of the principal's death or a
24 reasonable basis for believing the principal has died;

25 (6) actual knowledge of the incapacity of the
26 principal or a reasonable basis for believing the

1 principal is incapacitated if the power of attorney
2 tendered is a nondurable power of attorney;

3 (7) actual knowledge or a reasonable basis for
4 believing that the principal was incapacitated at the time
5 the power of attorney was executed;

6 (8) actual knowledge or a reasonable basis for
7 believing: (A) the power of attorney was procured through
8 fraud, duress, or undue influence, or (B) the agent is
9 engaged in fraud or abuse of the principal;

10 (9) actual notice of the termination or revocation of
11 the power of attorney or a reasonable basis for believing
12 that the power of attorney has been terminated or revoked;

13 (10) the refusal by a title insurance company to
14 underwrite title insurance for a gift of real property
15 made pursuant to a statutory short form power of attorney
16 that does not contain express instructions or purposes of
17 the principal with respect to gifts in paragraph 3 of the
18 statutory short form power of attorney;

19 (11) the refusal of the principal's attorney to
20 provide a certificate that the power of attorney is valid;

21 (12) a missing or incorrect signature, an invalid
22 notarization, or an unacceptable power of attorney
23 identification;

24 (13) the third party: (A) has filed a suspicious
25 activity report as described by 31 U.S.C. 5318(g) with
26 respect to the principal or agent; (B) believes in good

1 faith that the principal or agent has a prior criminal
2 history involving financial crimes; or (C) has had a
3 previous, unsatisfactory business relationship with the
4 agent due to or resulting in material loss to the third
5 party, financial mismanagement by the agent, or litigation
6 between the third party and the agent alleging substantial
7 damages; or

8 (14) the third party has reasonable cause to suspect
9 the abuse, abandonment, neglect, or financial exploitation
10 of the principal, if the principal is an eligible adult
11 under the Adult Protective Services Act.

12 (Source: P.A. 96-1195, eff. 7-1-11; 97-1150, eff. 1-25-13.)