

PERMISSIBLE REASONS FOR REJECTING A DURABLE POWER OF ATTORNEY

Texas Estates Code Sec. 751.206

1. Sec. 751.206(2)

Company (referred to as “the person”) engaging in the transaction with the agent or with the principal under the same circumstances would be inconsistent with:

- (A) another law of this state or a federal statute, rule, or regulation;
- (B) a request from a law enforcement agency; or
- (C) a policy adopted by Company in good faith that is necessary to comply with another law of this state or a federal statute, rule, regulation, regulatory directive, guidance, or executive order applicable to Company.

2. Sec. 751.206(3)

The person would not engage in a similar transaction with the agent, because the person or an affiliate of the person:

- (A) has filed a suspicious activity report as described by 31 U.S.C. Section 5318(g) with respect to Principal or Agent;
- (B) believes in good faith that the principal or the agent has a prior criminal history involving financial crimes; or
- (C) has had a previous, unsatisfactory business relationship with the agent due to or resulting in:
 - (i) material loss to the person;
 - (ii) financial mismanagement by the agent;
 - (iii) litigation between the person and the agent alleging substantial damages; or
 - (iv) multiple nuisance lawsuits filed by the agent.

3. Other subsections of 751.206:

Sec. 751.206 (1) the person would not otherwise be required to engage in a transaction with the principal under the same circumstances, including a circumstance in which the agent seeks to:

- (A) establish a customer relationship with the person under the power of attorney when the principal is not already a customer of the person or expand an existing customer relationship with the person under the power of attorney; or
- (B) acquire a product or service under the power of attorney that the person does not offer;

Sec. 751.206 (4) the person has actual knowledge of the termination of the agent's authority or of the power of attorney before an agent's exercise of authority under the power of attorney;

Sec. 751.206 (5) the agent refuses to comply with a request for a certification, opinion of counsel, or translation under Section 751.201 or, if the agent complies with one or more of those requests, the requestor in good faith is unable to determine the validity of the power of attorney or the agent's authority to act under the power of attorney because the certification, opinion, or translation is incorrect,

incomplete, unclear, limited, qualified, or otherwise deficient in a manner that makes the certification, opinion, or translation ineffective for its intended purpose, as determined in good faith by the requestor;

Sec. 751.206 (6) regardless of whether an agent's certification, opinion of counsel, or translation has been requested or received by the person under this subchapter, the person believes in good faith that:

- (A) the power of attorney is not valid;
- (B) the agent does not have the authority to act as attempted; or
- (C) the performance of the requested act would violate the terms of:
 - (i) a business entity's governing documents; or
 - (ii) an agreement affecting a business entity, including how the entity's

business is conducted;

Sec. 751.206 (7) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding to construe the power of attorney or review the agent's conduct and that proceeding is pending;

Sec. 751.206 (8) the person commenced, or has actual knowledge that another person commenced, a judicial proceeding for which a final determination was made that found:

(A) the power of attorney invalid with respect to a purpose for which the power of attorney is being presented for acceptance; or

(B) the agent lacked the authority to act in the same manner in which the agent is attempting to act under the power of attorney;

Sec. 751.206 (9) the person makes, has made, or has actual knowledge that another person has made a report to a law enforcement agency or other federal or state agency, including the Department of Family and Protective Services, stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting with or on behalf of the agent;

Sec. 751.206 (10) the person receives conflicting instructions or communications with regard to a matter from co-agents acting under the same power of attorney or from agents acting under different powers of attorney signed by the same principal or another adult acting for the principal as authorized by Section 751.0021, provided that the person may refuse to accept the power of attorney only with respect to that matter;

Sec. 751.206 (11) the person is not required to accept the durable power of attorney by the law of the jurisdiction that applies in determining the power of attorney's meaning and effect, or the powers conferred under the durable power of attorney that the agent is attempting to exercise are not included within the scope of activities to which the law of that jurisdiction applies.