

**Real Estate, Probate & Trust Law Section of the State Bar of Texas**

**2021 Proposed Legislation Relating to the Durable Power of Attorney Act**

1. Section 1 of the proposed bill amends Section 751.002(5), Estates Code, to clarify that a principal who signs a durable power of attorney must be an adult “individual” rather than a “person.” This clarification is necessary because a change in the definition of “person” in Section 22.027, Estates Code, applies to Subchapter P, Estates Code, governing durable powers of attorney.
2. Section 2 of the proposed bill amends Section 751.0021, Estates Code, by adding a provision which allows the principal and the notary to sign a durable power of attorney with a digital signature that satisfies the requirements of Section 166.011, Health and Safety Code (which already allows digital signatures for advance directives, such as medical powers of attorney and directives to physicians).
3. Section 3 of the proposed bill amends Section 752.107, Estates Code, which describes the authority granted to an agent when the principal grants authority with respect to “business operation transactions.” The proposed bill makes it clear that the authority extends to actions with respect to a membership interest in a limited liability company. When this section’s predecessor was initially enacted as part of the Texas Probate Code, limited liability companies were not yet in widespread use.
4. Section 4 provides an effective date for this bill of September 1, 2021.

REPTL has received no statements of position on these proposed changes, and has submitted these proposals to all sections and committees of the State Bar of Texas, as required by its Legislative Policy. If any comments are received, they will be forwarded to the State Bar.

Real Estate, Probate, and Trust Law Section  
State Bar of Texas

By: Lauren D. Hunt  
Lauren D. Hunt, Co-Chair, Estate & Trust  
Legislative Affairs Committee

Date: June 29, 2020