

CHAPTER 467
FORMERLY
HOUSE BILL NO. 455

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO DURABLE POWERS OF ATTORNEY AND ADDING A CHAPTER 49A THERETO RELATING TO DURABLE PERSONAL POWERS OF ATTORNEY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 49, Title 12 of the Delaware Code by substituting the word “agent” in lieu of the words “attorney-in-fact” wherever it appears throughout the Chapter and all sections thereof.

Section 2. Amend §4903(a), Title 12 of the Delaware Code by striking the semicolon “;” that appears after the word “fiduciary” and inserting a period “.” in lieu thereof and striking the remainder of the subsection.

Section 3. Amend Chapter 49, Title 12 of the Delaware Code by inserting a new “§ 4906” thereto as follows:

“§ 4906. Relation of this Chapter to Chapter 49A.

The provisions of this Chapter shall not apply to any personal power of attorney governed by Chapter 49A of this Title.”.

Section 4. Amend Title 12 of the Delaware Code by adding a new “Chapter 49A” thereto as follows:

“Chapter 49A. Durable Personal Powers of Attorney Act.

Subchapter I. General Provisions.

§4901A. Short Title.

Subchapter I. General Provisions

§ 49A-101. Short Title.

This Chapter may be cited as the Durable Personal Powers of Attorney Act.

§ 49A-102. Definitions.

In this Chapter:

(1) “Agent” means a person granted authority to act for the benefit of a principal under a durable power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, concurrent agent, joint agent, successor agent, and a person to which an agent’s authority is delegated.

(2) “Durable,” with respect to a power of attorney, means not terminated by the principal’s incapacity, and satisfying the requirements set forth in Section 104 of this Chapter.

(3) “Durable Power of Attorney” means a power of attorney that is durable, meeting the requirements of Section 104 of this Chapter.

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) “Good faith” means honesty in fact.

(6) “Incapacity” means inability of an individual to manage his or her property or business affairs.

(7) “Internal Revenue Code” refers to the Internal Revenue Code of 1986, as amended, or any corresponding federal tax statute enacted after the effective date of this Chapter. (8) “Person” means an individual, corporation, statutory trust, estate, trust, partnership (general or limited), limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity or association.

(8) “Personal Power of Attorney” means any durable power of attorney executed in this State or, if executed other than in this State, specifying that the laws of this State shall govern such power of attorney, other than those powers of attorney to which this Chapter is not applicable as set forth in Section 103(b) of this Chapter.

(9) “Power of attorney” means a grant of authority to an agent to act in the place of the principal, whether or not the term power of attorney is used, authorizing the agent to convey rights in property of the principal to the agent or any other person.

(10) “Presently exercisable general power of appointment,” with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal’s estate, the principal’s creditors, or the creditors of the principal’s estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity, only by will, or only by an instrument determining the disposition of property upon the death of the principal.

(11) “Principal” means an individual who grants authority to an agent in a power of attorney acting for himself or herself and not as a fiduciary, officer, employee, representative, agent or official of any legal, governmental, or commercial entity or association,.

(12) “Property” means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

(13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Stocks and bonds” means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

§ 49A-103. Applicability.

(a) This Chapter shall not apply to any of the following powers of attorney which, if durable, shall be governed by Chapter 49 of this Title, to the extent applicable, or by another applicable Chapter of this Code or by the common law of this State:

(1) a power of attorney given primarily for a business or commercial purpose;

(2) a power of attorney to the extent it is coupled with an interest in the subject of the power;

(3) a power of attorney given to or for the benefit of a creditor in connection with a loan or other credit transaction or a secured party in connection with a secured transaction;

(4) a power of attorney to make health-care decisions;

(5) a proxy or other delegation to exercise voting rights or management rights with respect to a corporation, partnership (general or limited), limited liability company, condominium or other legal or commercial entity or association;

(6) a power of attorney created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;

(7) a power of attorney given to facilitate a specified transfer or disposition of one or more identified stocks, bonds or other assets, whether real, personal, tangible or intangible;

(8) a power of attorney authorizing a third party to prepare, execute, deliver, submit and/or file a document or instrument with a government or governmental subdivision, agency or instrumentality or other third party;

(9) a power of attorney authorizing a financial institution or employee of a financial institution to take action relating to an account in which the financial institution holds cash, securities, commodities or other financial assets on behalf of the person giving the power;

(10) a power of attorney given by an individual who is, or is seeking to become, a director, officer, stockholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager or agent of a corporation, partnership (general or limited), limited liability company,

condominium or other legal or commercial entity or association, in his or her capacity as such, including a power of attorney contained in a subscription agreement;

(11) a power of attorney contained in a certificate of incorporation, bylaws, general or limited partnership agreement, limited liability company agreement, declaration of trust, declaration of condominium, condominium bylaws or offering plan or other agreement or instrument governing the internal affairs of an entity or association, authorizing a director, officer, shareholder, employee, partner (general or limited), member, unit owner, equity owner, trustee, manager or other person to take lawful action relating to such entity or association;

(12) a power of attorney given to a condominium managing agent to take action in connection with the use, management and operation of a condominium unit;

(13) a power of attorney given to an agent within the scope of the agent's business to the extent such business is subject to the regulatory authority of any Delaware governmental agency, including, without limitation, a power of attorney given to a licensed real estate broker to take action in connection with a listing of real property, mortgage loan, lease or management agreement;

(14) a power of attorney authorizing acceptance of service of process on behalf of the principal; and

(15) a power of attorney created pursuant to authorization provided by a federal or state statute, other than this Chapter, that specifically contemplates creation of the power.

(c) If for any reason a durable personal power of attorney given in compliance with the requirements of this Chapter and referencing this Chapter is determined to be given primarily for a business or commercial purpose or otherwise excepted from this Chapter under Section 49A-103(b), such power of attorney shall be valid if it complies with Chapter 49 of this Title, to the extent applicable, or with another applicable Chapter of this Code or with the common law of this State.

(d) A power of attorney excepted from this Chapter pursuant to Section 49A-103(b) that was granted in compliance with the laws of the jurisdiction governing such power of attorney will be recognized and enforceable under the laws of the State of Delaware in accordance with its terms.

§ 49A-104. Power of Attorney is Durable.

A power of attorney is durable if it contains the words: "This power of attorney shall not be affected by the subsequent incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity.

§ 49A-105. Execution of Personal Power of Attorney.

(a) A personal power of attorney must be:

(1) in writing;

(2) signed by the principal or by another person subscribing the principal's name in the principal's presence and at the principal's express direction;

(3) dated;

(4) signed in the presence of a notarial officer; and

(5) signed in the presence of one adult witness who is not:

A. related to the principal by blood, marriage, or adoption; or

B. entitled to any portion of the estate of the principal under the principal's then existing will or codicil or amendment thereto or trust instrument.

(b) A personal power of attorney may be accompanied by a notice in the following form, signed by the principal and placed at the beginning of the personal power of attorney. In the absence of a signed notice, upon a challenge to the authority of an agent to act under the personal power of attorney, the agent shall have the burden of demonstrating that the personal power of attorney is valid.

'NOTICE

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your “Agent”) broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent’s authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in Delaware Code, Title 12, Chapter 49A, Section 49A-114 and Sections 49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Principal Date’

(c) The agent shall have no authority to act as agent under the personal power of attorney unless the agent has first executed and affixed to the personal power of attorney a certification in substantially the following form:

‘AGENT’S CERTIFICATION

I, _____, have read the attached durable power of attorney and I am the person identified as the Agent or ^(Name of Agent)

identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, in the absence of a specific provision to the contrary in the durable power of attorney, when I act as Agent:

I shall exercise the powers for the benefit of the Principal.

I shall keep the assets of the Principal separate from my assets.

I shall exercise reasonable caution and prudence.

I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

I shall, to the extent reasonably practicable under the circumstances, keep in regular contact with the Principal and communicate with the Principal.

Agent Date’

§ 49A-106. Execution of Personal Power of Attorney.

(a) A personal power of attorney executed on or after the effective date of this Chapter is validly executed if it complies with Section 49A-105, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complies with the laws of such other jurisdiction.

(b) A personal power of attorney executed before the effective date of this Chapter is validly executed if it complied with the laws of this State as they existed at the time of execution, unless such personal power of attorney provides that it is governed by the laws of another jurisdiction, in which case, such personal power of attorney is validly executed if such execution complied with the laws of such other jurisdiction.

(c) A durable power of attorney (other than a personal power of attorney) will be deemed to be validly executed under the laws of this State if, when the power of attorney was executed, the execution complied with:

(1) the law of the jurisdiction that determines the meaning and effect of the power of attorney; or

(2) the requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b, as amended.

(d) Except as otherwise provided by statute other than this Chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

§49A-107. Reserved.

§ 49A-108. Nomination of Guardian of Person or Property; Relation of Agent to Court Appointed Fiduciary.

(a) The appointment by a Court of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person shall terminate all personal powers of attorney to the extent the powers held by the agent prior to the appointment of a guardian or other fiduciary are granted by such Court to the guardian or other fiduciary. The person serving as an agent of the principal pursuant to this Chapter shall, upon the request of the agent and absent cause to the contrary, be appointed the guardian or other fiduciary in a proceeding under Chapter 39 of this title.

(b) After the appointment of a guardian or other fiduciary charged with the management of the principal's property or the care of the principal's person, the agent is accountable to such guardian or other fiduciary as well as to the principal as to any personal powers of attorney which the agent continues to hold. A guardian or other fiduciary shall only have such powers to revoke or amend the powers of the agent as shall be given to such guardian or other fiduciary by the court.

§ 49A-109. When Personal Power of Attorney Effective.

(a) A personal power of attorney is effective when executed unless the principal provides in the personal power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.

(b) If a personal power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the personal power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

(c) If a personal power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person or persons to determine whether the principal is incapacitated, or the person or persons authorized is or are unable or unwilling to make the determination, the personal power of attorney becomes effective upon a determination in a writing or other record by a physician or by the Court of Chancery or other court of competent jurisdiction that the principal is incapacitated.

(d) A person authorized by the principal in the personal power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable regulations, to obtain access to the principal's health-care information and communicate with the principal's health-care provider.

§ 49A-110. Termination of Personal Power of Attorney or Agent's Authority.

(a) A personal power of attorney terminates when:

(1) the principal dies;

(2) the principal revokes the personal power of attorney;

(3) a terminating event set forth in the personal power of attorney occurs;

(4) the purpose of the personal power of attorney is accomplished; or

(5) the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the personal power of attorney does not provide for another agent to act.

(b) An agent's authority terminates when:

- (1) the principal revokes the authority;
- (2) the agent dies, becomes incapacitated, or resigns;
- (3) an action is filed for the dissolution or annulment of the agent's marriage to the principal, unless the personal power of attorney otherwise provides; or
- (4) the personal power of attorney terminates.

(c) Unless the personal power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b), notwithstanding a lapse of time since the execution of the personal power of attorney.

(d) Termination of an agent's authority or of a personal power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the personal power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) The execution of a personal power of attorney does not revoke a personal power of attorney previously executed by the principal unless the subsequent personal power of attorney provides that the previous personal power of attorney is revoked or that all other personal powers of attorney are revoked.

§ 49A-111. Concurrent Agents, Joint Agents, and Successor Agents.

(a) A principal may designate two or more persons to act as concurrent agents. Each concurrent agent may exercise its authority independently.

(b) A principal may designate two or more persons to act as joint agents. No joint agent shall have the power to act without the agreement of all other joint agents and shall have no power to act independent of the other agent(s).

(c) If the principal designates more than one agent and does not specify that they are concurrent agents or joint agents, such agents shall be considered concurrent agents.

(d) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. Unless the personal power of attorney otherwise provides, a successor agent:

- (1) has the same authority as that granted to the original agent; and
- (2) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(e) A principal may give an appointed agent or another person designated by name, office or function the authority to designate by a writing executed by such person, one or more concurrent, joint, or successor agents in addition to those designated in the personal power of attorney. Unless the personal power of attorney authorizing the appointment of such further agents otherwise provides, a concurrent, joint, or successor agent appointed by this method:

- (1) has the same authority as that granted to the original agent; and
- (2) may not act until the predecessor designee has resigned, died, become incapacitated, is no longer qualified to serve, or has declined to serve.

(f) Except as otherwise provided in the personal power of attorney and subsection (g), an acting agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

(g) An acting agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§ 49A-112. Reimbursement and Compensation of Agent.

(a) An agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal.

(b) An agent shall not be entitled to compensation unless:

- (1) the personal power of attorney so provides; and

(2) the compensation is reasonable under the circumstances.

§ 49A-113. Agent's Acceptance.

Except as otherwise provided in the personal power of attorney, a person accepts appointment as an agent under a personal power of attorney by signing the Agent's Certification (pursuant to Section 49A-105(c)) or by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

§ 49A-114. Agent's Duties.

(a) Notwithstanding provisions in the personal power of attorney, an agent that has accepted appointment pursuant to a personal power of attorney shall, in connection with exercising the authority granted to such agent therein:

(1) act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;

(2) act in good faith;

(3) act only within the scope of authority granted in the personal power of attorney; and

(4) to the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

(b) Except as otherwise provided in the personal power of attorney, an agent that has accepted appointment shall:

(1) act loyally for the principal's benefit;

(2) act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;

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

(5) cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, if not known, to act in the principal's best interest; and

(6) not act in a manner inconsistent with the principal's testamentary plan.

(c) An agent that acts in good faith is not liable to any beneficiary of the principal's testamentary plan for failure to act in a manner consistent with the testamentary plan.

(d) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent has special skills or expertise the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(f) An agent that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(g) Except as otherwise provided in the personal power of attorney and by Section 49A-108(b), an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested the agent shall comply with the request within a reasonable period of time.

§ 49A-115. Exoneration of Agent.

A provision in a personal power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors in interest except to the extent the provision:

- (1) relieves the agent of liability for breach of duty committed in bad faith or with reckless indifference to the purposes of the personal power of attorney or the best interest of the principal; or
- (2) was inserted as a result of undue influence upon the principal.

§ 49A-116. Judicial Relief.

- (a) A person designated in subsection (b) may petition the Court of Chancery requesting that the court:
- (1) determine whether the personal power of attorney or the authority of an agent is in effect or has terminated pursuant to Section 49A-110 or otherwise;
 - (2) compel the agent to exercise or refrain from exercising authority in a particular manner or for a particular purpose;
 - (3) compel the agent to account for transactions conducted on the principal's behalf pursuant to Section 49A-114(g);
 - (4) modify, suspend, or rescind the powers of the agent to act under a personal power of attorney, and, if the principal has designated another agent or successor agent in the personal power of attorney, appoint such other-designated agent to act in place of the agent whose powers are modified, suspended, or rescinded; or
 - (5) determine an agent's liability for violation of this Chapter pursuant to Section 49A-111;
- or
- (6) compel a person to accept a personal power of attorney if required by to Section 49A-120.

(b) Any of the following persons may file a petition seeking appropriate relief under this section:

- (1) the principal or the agent;
- (2) the spouse, child, or parent of the principal;
- (2) a guardian, trustee, or other fiduciary acting for the principal;
- (3) the personal representative, trustee, or a beneficiary of the principal's estate;
- (4) any other interested person, as long as the person demonstrates to the court's satisfaction that the person is interested in the welfare of the principal and has a good faith belief that (i) the court's intervention is necessary, and (ii) the principal is incapacitated at the time of filing the petition or otherwise unable to protect his or her own interests; or
- (5) a person asked to accept a personal power of attorney.

(c) Upon motion by the principal, who shall be presumed to have legal capacity, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the personal power of attorney.

(d) Nothing in this section shall preclude or diminish the court's authority to appoint a guardian or other fiduciary pursuant to Chapter 39 of this title, or to order other judicial relief, in order to grant appropriate relief upon review of a personal power of attorney or an agent's conduct with respect to a personal power of attorney.

(e) Nothing in this section shall preclude the Department of Health and Social Services, the Public Guardian, or other governmental agency having authority to protect the welfare of the principal from petitioning the court for access to the principal or to records necessary to determine, or terminate, possible abuse, neglect, exploitation or abandonment of the principal.

49A-117. Reserved.

49A-118. Agent's Resignation; Notice.

Unless the personal power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice to the principal and, if the principal is incapacitated:

- (1) to the guardian, if one has been appointed for the principal, and a concurrent agent or successor agent; or
- (2) if there is no person described in paragraph (1), to:
 - (A) the principal's caregiver;

(B) another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

(C) a governmental agency having authority to protect the welfare of the principal.

§ 49A-119. Acceptance of and Reliance Upon Acknowledged Personal Power of Attorney.

(a) For purposes of this section and Section 49A-120, "acknowledged" means purportedly verified before a notarial officer.

(b) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under Section 49A-105 that the signature is genuine.

(c) A person that in good faith accepts an acknowledged personal power of attorney without actual knowledge that the personal power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the personal power of attorney as if the personal power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority.

(d) A person that is asked to accept an acknowledged personal power of attorney may request, and rely upon, without further investigation, an English translation of the personal power of attorney if it contains, in whole or in part, language other than English.

(e) For purposes of this section and Section 49A-120, a person that conducts activities through employees is without actual knowledge of a fact relating to a personal power of attorney, a principal, or an agent if the employee conducting the transaction involving the personal power of attorney is without actual knowledge of the fact. Notification of revocation of a personal power of attorney by a principal or agent to an officer of a bank or other financial institution shall constitute actual notice to all employees.

§ 49A-120. Liability for Refusal to Accept Acknowledged Personal Power of Attorney.

(a) Except as otherwise provided in subsection (b):

(1) A person shall accept an acknowledged personal power of attorney that is originally written in English or is translated into English; and

(2) a person may not require an additional or different form of personal power of attorney for authority granted in the personal power of attorney presented.

(b) A person is not required to accept an acknowledged personal power of attorney if:

(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;

(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with state or federal law;

(3) the person has actual knowledge of the termination of the agent's authority or of the personal power of attorney before exercise of the power;

(4) the person has actual knowledge that the personal power of attorney is not valid or that the agent does not have the authority to perform the act requested; or

(5) the person promptly makes, has made, or has actual knowledge that another person has made, a report to the appropriate law enforcement or social service agency 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 for or with the agent.

(c) A person that refuses in violation of this section to accept an acknowledged personal power of attorney is subject to:

(1) a court order mandating acceptance of the personal power of attorney; and

(2) liability for damages, including reasonable attorney's fees and costs, incurred in any action or proceeding that confirms the validity of the personal power of attorney or mandates acceptance of the personal power of attorney.

Subchapter 2. Authority

§ 49A-201. Grant of General Authority; Authority that Requires Specific Grant.

(a) Subject to subsections (b), (c), and (d), if a personal power of attorney grants to an agent authority to do all acts that a principal could do, and refers to general authority with respect to the descriptive term for the subjects stated in Sections 49A-204 through 49A-217 or cites the section in which the authority is described, the agent has that general authority.

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

(1) create, amend, revoke, or terminate an inter vivos trust, to the extent the principal has the authority to do so;

(2) make a gift;

(3) create or change rights of survivorship;

(4) create or change a beneficiary designation;

(5) delegate authority granted under the personal power of attorney when all successor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve;

(6) exercise fiduciary powers that the principal has authority to delegate; or

(7) reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

(c) Unless the personal power of attorney otherwise provides, a grant of authority to make a gift is subject to Section 49A-217.

(d) Subject to subsections (b) and (c), if the subjects over which authority is granted in a personal power of attorney are similar or overlap, the broadest authority controls.

(e) Authority granted in a personal power of attorney is exercisable with respect to property that the principal has when the personal power of attorney is executed or is acquired later, whether or not the property is located in this State and whether or not the authority is exercised or the personal power of attorney is executed in this State.

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

§ 49A-202. Incorporation of Authority.

(a) A reference in a personal power of attorney to general authority with respect to the descriptive term for a subject in Sections 49A-204 through 49A-217 or a citation to a section of Sections 49A-204 through 49A-217 incorporates the entire section as if it were set out in full in the personal power of attorney.

(b) A principal may modify authority incorporated by reference.

§ 49A-203. Construction of Authority Generally.

Except as otherwise provided in the personal power of attorney, by executing a personal power of attorney that incorporates by reference a subject described in Sections 49A-204 through 49A-217 or that grants to an agent authority to do all acts that a principal could do pursuant to Section 49A-201(a), a principal authorizes the agent, with respect to that subject, to:

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

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

(3) execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction;

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

(5) seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the personal power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, advisor, service provider, or other professional;

(7) prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

(8) communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

(9) access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

(10) do any lawful act with respect to the subject and all property related to the subject.

§ 49A-204. Real Property.

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

(1) demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

(2) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;

(5) manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(A) insuring against liability or casualty or other loss;

(B) obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(C) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(D) purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

(6) use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) selling or otherwise disposing of them;

(B) exercising or selling an option, right of conversion, or similar right with respect to them; and

(C) exercising any voting rights in person or by proxy;

(8) change the form of title of an interest in or right incident to real property; and

(9) dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

§ 49A-205. Tangible Personal Property.

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

(1) demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

(5) manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) insuring against liability or casualty or other loss;

(B) obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

(C) paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) moving the property from place to place;

(E) storing the property for hire or on a gratuitous bailment; and

(F) using and making repairs, alterations, or improvements to the property; and

(6) change the form of title of an interest in tangible personal property.

§ 49A-206. Stocks and Bonds.

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

(1) buy, sell, and exchange stocks and bonds;

(2) establish, continue, modify, or terminate an account with respect to stocks and bonds;

(3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;

(4) receive certificates and other evidences of ownership with respect to stocks and bonds; and

(5) exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

§ 49A-207. Commodities and Options.

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

(1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(2) establish, continue, modify, and terminate option accounts.

§ 49A-208. Banks and Other Financial Institutions.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

- (1) continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
- (2) establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
- (3) contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
- (4) withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
- (5) receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
- (6) enter a safe deposit box or vault and withdraw or add to the contents;
- (7) borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- (8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
- (9) receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
- (10) apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
- (11) consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

§ 49A-209. Operation of Entity or Business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest (a "Governing Document") and to applicable laws governing such entity or entity ownership interest, and unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

- (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- (2) perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;
- (3) enforce the terms of, and exercise rights of the principal pursuant to, the Governing Document;
- (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;
- (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;
- (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds or other entity ownership interests;
- (7) with respect to an entity or business owned solely by the principal:
 - (A) continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the personal power of attorney;
 - (B) determine:

- (i) the location of its operation;
 - (ii) the nature and extent of its business;
 - (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
 - (iv) the amount and types of insurance carried; and
 - (v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;
- (C) change the name or form of organization under which the entity or business is operated and enter into a Governing Document with other persons to take over all or part of the operation of the entity or business; and
- (D) demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;
- (8) put additional capital into an entity or business in which the principal has an interest;
 - (9) join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;
 - (10) sell or liquidate all or part of an entity or business;
 - (11) establish the value of an entity or business under a buy-out agreement to which the principal is a party;
 - (12) prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and
 - (13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the personal power of attorney.

§ 49A-210. Insurance and Annuities.

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

- (1) continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
- (2) procure new, different, and additional contracts of insurance and annuities for the principal and select the amount, type of insurance or annuity, and mode of payment;
- (3) pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;
- (4) apply for and receive a loan secured by a contract of insurance or annuity;
- (5) surrender and receive the cash surrender value on a contract of insurance or annuity;
- (6) exercise an election;
- (7) exercise investment powers available under a contract of insurance or annuity;
- (8) change the manner of paying premiums on a contract of insurance or annuity;
- (9) change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;
- (10) apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;
- (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;
- (12) select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

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

§ 49A-211. Estates, Trusts, and Other Beneficial Interests.

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

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

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

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

(3) exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

(5) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

(6) conserve, invest, disburse, or use anything received for an authorized purpose;

(7) transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of an existing trust created by the principal as settlor for the benefit of the principal; and

(8) renounce or resign from any fiduciary position held by the principal.

§ 49A-212. Claims and Litigation.

Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;

(2) bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

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

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

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

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

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

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

§ 49A-213. Personal and Family Maintenance.

(a) Unless the personal power of attorney otherwise provides, taking into consideration the principal's resources, language in a personal power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

(1) perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, minor children, disabled adult children, children who are full time students under the age of 25, and dependents as defined under Internal Revenue Code § 152.

(2) provide living quarters for the individuals described in paragraph (1) by:

(A) purchase, lease, or other contract; or

(B) paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

(3) provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (1);

(4) pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (1);

(5) act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, as amended, and applicable regulations, to obtain information to make decisions relating to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this State to consent to health care on behalf of the principal;

(6) continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (1);

(7) maintain credit and debit accounts for the convenience of the individuals described in paragraph (1) and open new accounts; and

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

(b) The agent shall make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party.

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

§ 49A-214. Benefits from Governmental Programs or Civil or Military Service.

(a) In this section, "benefits from governmental programs or civil or military service" means any benefit, program or assistance provided under a statute or regulation including, but not limited to, Social Security, Medicare, and Medicaid.

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

(1) execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in Section 49A-213(a)(1), and for shipment of their household effects;

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

(3) enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

(4) prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

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

(6) receive the financial proceeds of a claim described in paragraph (4) and conserve, invest, disburse, or use for a lawful purpose anything so received.

§ 49A-215. Retirement Plans.

(a) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide qualified or non-qualified retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including, but not limited to, a plan or account under the following sections of the Internal Revenue Code:

(1) an individual retirement account under Internal Revenue Code Section 408, 26 U.S.C. Section 408, as amended;

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

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

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

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

(6) a plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section 457(b), as amended;

(7) a nonqualified deferred compensation plan under Internal Revenue Code Section 409A, 26 U.S.C. Section 409A, as amended; and

(8) a plan under an Internal Revenue Code Section which did not exist at the time the personal power of attorney was executed.

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

(1) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) establish a retirement plan in the principal's name;

(4) make contributions to a retirement plan;

(5) exercise investment powers available under a retirement plan; and

(6) borrow from, sell assets to, or purchase assets from a retirement plan.

§ 49A-216. Taxes.

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

- (1) prepare, sign, and file federal, state, local, and foreign income, gift, generation skipping transfer, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code Section 2032A, 26 U.S.C. Section 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
- (2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- (3) exercise any election available to the principal under federal, state, local, or foreign tax law; and
- (4) act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

§ 49A-217. Gifts.

(a) In this section, a gift “for the benefit of” a person includes a gift to a trust, an account or an interest in property held under the Delaware Uniform Transfers to Minors Act or similar statute of any other state or jurisdiction, and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529, as amended, or similar plan.

(b) Unless the personal power of attorney otherwise provides, language in a personal power of attorney granting general authority with respect to gifts authorizes the agent only to:

- (1) make outright to, or for the benefit of, a person, a gift of any of the principal’s property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal’s spouse agrees to consent to a split gift pursuant to Internal Revenue Code Section 2513, 26 U.S.C. 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and
- (2) consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513, as amended, to the splitting of a gift made by the principal’s spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

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

- (1) the value and nature of the principal’s property;
- (2) the principal’s foreseeable obligations and need for maintenance;
- (3) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (4) eligibility for a benefit, a program, or assistance under a statute or regulation; and
- (5) the principal’s personal history of making or joining in making gifts.

Subchapter 3. Statutory Forms

§ 49A-301. Statutory Form Durable Personal Power of Attorney; Agent’s Certification

DURABLE

PERSONAL POWER OF ATTORNEY FORM

NOTICE

As the person signing this durable power of attorney you are the Principal.

The purpose of this power of attorney is to give the person you designate (your “Agent”) broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you. Unless you specify otherwise, your Agent’s authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent's funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in Delaware Code, Title 12, Chapter 49A, Section 49A-114 and Sections 49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Date Principal

**DURABLE
PERSONAL POWER OF ATTORNEY FORM
INSTRUCTIONS**

As the person completing this form, you are the Principal. This form gives another person the power to act on your behalf. The other person is your Agent.

This form allows you to designate: (1) one Agent at a time and up to two Agents in succession; (2) two or more Agents who may act independently of each other (Concurrent Agents); or (3) two or more Agents who must act together (Joint Agents).

If your Agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor Agent(s).

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE COMPLETING AND SIGNING THIS FORM.

DESIGNATION OF AGENT

I, _____, name the following person(s)
as my

(Name of Principal)

Agent(s):

Name of Agent: _____

Agent’s Address: _____

Agent’s Telephone Number: _____

DESIGNATION OF ADDITIONAL OR SUCCESSOR AGENTS

(OPTIONAL)

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

Name of Agent: _____

Agent's Address: _____

Agent's Telephone Number: _____

If I have named more than one Agent above, I intend for those Agents to:

_____ Act successively, one after the other

_____ Act concurrently, independent of each other

_____ Act jointly, not independent of each other

EFFECTIVE DATE

You must sign ONE of these two choices:

_____ This power of attorney is effective immediately, and shall not be effected by

(Sign here if this is your choice) my subsequent incapacity.

_____ This power of attorney is effective only if and while I am incapacitated as determined

(Sign here if this is your choice) under 12 Del.C. § 49A-109(c).

GRANT OF GENERAL AUTHORITY

I grant my Agent and any successor Agent general authority to act for me with respect to the following powers described in more detail as defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A.

You should READ the terms of each category of power or authority before granting any of them to your Agent. A full explanation of each power or authority is in the Delaware Code. The Delaware Code is available online. Search: Delaware Code, Title 12, Chapter 49A, and then go to the number next to the category. Example: Real Property, Section (§) 49A-204. The Delaware Code may also be available at your local library.

INITIAL each category you want to include in the Agent's general authority.

CROSS OUT each category you do not want to include in the Agent's general authority.

If you do not initial a category listed below, powers associated with that category will NOT be included as part of your Agent's general authority.

_____ Real Property § 49A-204

_____ Tangible Personal Property § 49A-205

_____ Stocks and Bonds § 49A-206

_____ Commodities and Options § 49A-207

_____ Banks and Other Financial Institutions § 49A-208

_____ Operation of Entity or Business § 49A-209

_____ Insurance and Annuities § 49A-210

_____ Estates, Trusts, and Other Beneficial Interests § 49A-211

_____ Claims and Litigation § 49A-212

_____ Personal and Family Maintenance § 49A-213

_____ Benefits from Governmental Programs or Civil or Military Service § 49A-214

_____ Retirement Plans § 49A-215

_____ Taxes § 49A-216

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

PROCEED WITH CAUTION

Giving your Agent any of the following powers will give your Agent the authority to take actions that could significantly reduce your property or change how and to whom your property is distributed at your death.

You should READ the terms describing each power before granting any of them to your Agent.

INITIAL each power you want to include in the Agent's authority.

CROSS OUT each power you do not want to include in the Agent's authority.

If you do not initial a power listed below, it will NOT be included as part of your Agent's specific authority.

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

_____ Make a gift in excess of the limitations in the Durable Personal Power of Attorney Act, 12 Del.C. § 49A-217

_____ Create or change rights of survivorship

_____ Create or change a beneficiary designation

_____ Delegate authority granted under the power of attorney when all successor Agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve

_____ Exercise fiduciary powers that the Principal has authority to delegate

_____ Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from estate, trust, or other beneficial interest

RELIANCE ON THIS POWER OF ATTORNEY

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

SIGNATURE AND ACKNOWLEDGMENT

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE SIGNING THIS FORM.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this ___ day of _____, 20__.

_____ (SEAL)

Witness Signature

Your Signature

Print Your Name

Print Your Name

I, the witness, swear that I am not related to the Principal by blood, marriage, or adoption; and that I am not entitled to any portion of the estate of the Principal under the Principal's current will or codicil, or under any current trust instrument of the Principal

STATE OF DELAWARE :

: SS.

COUNTY OF _____ :

This Durable Power of Attorney was acknowledged before me by _____ this _____ day of _____ 20__.

Notarial Office

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the Principal. This relationship imposes upon you legal duties that

continue until you resign or the power of attorney is terminated or revoked. You must:

- (1)do what you know the Principal reasonably expects you to do with the Principal’s property or, if you do not know the Principal’s expectations, act in the Principal’s best interest;
- (2)act in good faith;
- (3)do nothing beyond the authority granted in this power of attorney; and
- (4)disclose your identity as an Agent whenever you act for the Principal by writing or printing the name of the Principal and signing your own name as “Agent” in the following manner:

(Principal’s Name) by (Your Signature) as Agent

Except as otherwise provided in the power of attorney, you must also:

- (1) not act for your own benefit;
- (2)avoid conflicts that would impair your ability to act in the Principal’s best interest;
- (3) act with care, competence, and diligence;
- (4) keep a record of all receipts, disbursements, and transactions made on behalf of the Principal;
- (5)cooperate with any person who has authority to make health-care decisions for the Principal; and
- (6)not act in a manner inconsistent with the Principal’s testamentary plan.

Termination of Agent’s Authority

You must stop acting on behalf of the Principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate this power of attorney or your authority to act under it include:

- (1)death of the Principal;
- (2)the Principal’s revocation of the power of attorney or your authority;
- (3)the occurrence of a termination event stated in the power of attorney;
- (4)the purpose of the power of attorney is fully accomplished; or
- (5)an action is filed with a court for your separation, annulment, or divorce from the Principal, unless the Principal otherwise provided in the power of attorney that such action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A. If you violate the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your powers, authority, or duties as Agent that you do not understand, you should seek legal advice.

AGENT’S CERTIFICATION

I, _____, have read the attached durable power of attorney and I am (Name of Agent) the person identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, in the absence of a specific provision to the contrary in the durable power of attorney, when I act as Agent:

- I shall exercise the powers for the benefit of the Principal.
- I shall keep the assets of the Principal separate from my assets.
- I shall exercise reasonable caution and prudence.

I shall keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

I shall, to the extent reasonably practicable under the circumstances, keep in regular contact with the Principal and communicate with the Principal.

_____ _____
Agent Date”.

Section 5. This Act shall take effect on October 1, 2010.

Approved August 19, 2010