

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred House Bill No. 227
3 entitled “An act relating to the Vermont Uniform Power of Attorney Act”
4 respectfully reports that it has considered the same and recommends that the
5 bill be amended by striking out all after the enacting clause and inserting in
6 lieu thereof the following:

7 Sec. 1. 14 V.S.A. chapter 127 is added to read:

8 CHAPTER 127. VERMONT UNIFORM POWER OF ATTORNEY ACT

9 Subchapter 1. General Provisions

10 § 4001. SHORT TITLE

11 This chapter may be cited as the Vermont Uniform Power of Attorney Act.

12 § 4002. DEFINITIONS

13 As used in this chapter:

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

18 (2) “Durable,” with respect to a power of attorney, means not terminated
19 by the principal’s incapacity.

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

1 (4) “Electronic signature” means an electronic sound, symbol, or
2 process attached to or logically associated with a record and executed or
3 adopted by a person with the intent to sign the record.

4 (5) “General power of attorney” means a power of attorney that is not
5 limited by its terms to a specified transaction or series of transactions, to a
6 specific purpose, or to a specific asset or set of assets, or a power of attorney
7 that grants an agent the authority to do any one or more of the acts described in
8 subsection 4031(e) of this title.

9 (6) “Good faith” means honesty in fact.

10 (7) “Incapacity” means the person is:

11 (A) impaired by reason of mental illness, mental deficiency, physical
12 illness or disability, chronic use of drugs, chronic intoxication, or other cause
13 to the extent that the person lacks sufficient understanding, capacity, or ability
14 to receive and evaluate information or make or communicate decisions
15 regarding the person’s property or business affairs; inability of an individual to
16 manage property or business affairs because the individual:

17 (A) has an impairment by reason of mental illness, physical illness or
18 disability, chronic use of drugs, chronic intoxication, or other cause in the
19 ability to receive and evaluate information or make or communicate decisions
20 even with the use of technological assistance;

21 (B) is missing;

1 (C) is detained, including incarcerated in a penal system; or

2 (D) is outside the United States and unable to return.

3 (8) “Person” means an individual; corporation; business trust; estate;

4 trust; partnership; limited liability company; association; joint venture; public

5 corporation; government or governmental subdivision, agency, or

6 instrumentality; or any other legal or commercial entity.

7 (9) “Power of attorney” means a writing or other record that grants

8 authority to an agent to act in the place of the principal, whether or not the term

9 power of attorney is used.

10 (10) “Presently exercisable general power of appointment,” with respect

11 to property or a property interest subject to a power of appointment, means

12 power exercisable at the time in question to vest absolute ownership in the

13 principal individually, the principal’s estate, the principal’s creditors, or the

14 creditors of the principal’s estate. The term includes a power of appointment

15 not exercisable until the occurrence of a specified event, the satisfaction of an

16 ascertainable standard, or the passage of a specified period only after the

17 occurrence of the specified event, the satisfaction of the ascertainable standard,

18 or the passage of the specified period. The term does not include a power

19 exercisable in a fiduciary capacity or only by will.

20 (11) “Principal” means an individual who grants authority to an agent in

21 a power of attorney.

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

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

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

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

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

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

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

17 § 4003. APPLICABILITY

18 This chapter applies to all powers of attorney except:

19 (1) a power to the extent it is coupled with an interest in the subject of
20 the power, including a power given to or for the benefit of a creditor in
21 connection with a credit transaction;

1 (2) a power to make health-care decisions;

2 (3) a proxy or other delegation to exercise voting rights or management
3 rights with respect to an entity;

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

7 (5) a power of reciprocal insurers under 8 V.S.A. § 4838.

8 § 4004. POWER OF ATTORNEY IS DURABLE

9 A power of attorney created under this chapter is durable unless it expressly
10 provides that it is terminated by the incapacity of the principal.

11 § 4005. EXECUTION OF POWER OF ATTORNEY

12 A power of attorney shall be signed by the principal or in the principal's
13 conscious presence by another individual directed by the principal to sign the
14 principal's name on the power of attorney. A signature on a power of attorney
15 is presumed to be genuine if the principal acknowledges the signature before a
16 notary public or other individual authorized by law to take acknowledgments.

17 § 4006. VALIDITY OF POWER OF ATTORNEY

18 (a) A power of attorney executed in this State on or after July 1, 2023 is
19 valid if its execution complies with section 4005 of this title.

1 (b) A power of attorney executed in this State before July 1, 2023 is valid if
2 its execution complied with the law of this State as it existed at the time of
3 execution.

4 (c) A power of attorney executed other than in this State is valid in this
5 State if, when the power of attorney was executed, the execution complied
6 with:

7 (1) the law of the jurisdiction that determines the meaning and effect of
8 the power of attorney pursuant to section 4007 of this title; or

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

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

14 (e) Except as otherwise provided by statute other than this chapter, a power
15 of attorney that complies with this chapter is valid.

16 § 4007. MEANING AND EFFECT OF POWER OF ATTORNEY

17 The meaning and effect of a power of attorney is determined by the law of
18 the jurisdiction indicated in the power of attorney and, in the absence of an
19 indication of jurisdiction, by the law of the jurisdiction in which the power of
20 attorney was executed.

1 § 4008. NOMINATION OF GUARDIAN; RELATION OF AGENT TO
2 COURT-APPOINTED FIDUCIARY

3 (a) In a power of attorney, a principal may nominate a guardian of the
4 principal's estate or a guardian of the principal's person for consideration by
5 the court if protective proceedings for the principal's estate or person are
6 begun after the principal executes the power of attorney. Except for good
7 cause shown or disqualification, the court shall make its appointment in
8 accordance with the principal's most recent nomination.

9 (b) If, after a principal executes a power of attorney, a court appoints a
10 guardian of the principal's estate or other fiduciary charged with the
11 management of some or all of the principal's property, the agent is accountable
12 to the fiduciary as well as to the principal. The power of attorney is not
13 terminated, and the agent's authority continues unless limited, suspended, or
14 terminated by the court.

15 § 4009. WHEN POWER OF ATTORNEY EFFECTIVE

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

19 (b) If a power of attorney becomes effective upon the occurrence of a
20 future event or contingency, the principal, in the power of attorney, may

1 authorize one or more persons to determine in a writing or other record that the
2 event or contingency has occurred.

3 (c) If a power of attorney becomes effective upon the principal’s incapacity
4 and the principal has not authorized a person to determine whether the
5 principal is incapacitated, or the person authorized is unable or unwilling to
6 make the determination, the power of attorney becomes effective upon a
7 determination in a writing or other record by:

8 (1) a licensed health care professional working within the professional’s
9 scope of practice, including a physician licensed pursuant to 26 V.S.A. chapter
10 23 or 33 and a psychologist licensed pursuant to 26 V.S.A. chapter 55, that the
11 principal is incapacitated within the meaning of subdivision 4002(7)(A) of this
12 chapter; or

13 (2) an attorney at law, a judge, or an appropriate governmental official
14 that the principal is incapacitated within the meaning of subdivision
15 4002(7)(B) of this chapter.

16 (d) A person authorized by the principal in the power of attorney to
17 determine that the principal is incapacitated may act as the principal’s personal
18 representative pursuant to the Health Insurance Portability and Accountability
19 Act; Sections 1171 through 1179 of the Social Security Act; 42 U.S.C.
20 § 1320d, as amended; and applicable regulations to obtain access to the

1 principal's health-care information and communicate with the principal's
2 health-care provider.

3 § 4010. TERMINATION OF POWER OF ATTORNEY OR AGENT'S

4 AUTHORITY

5 (a) A power of attorney terminates when:

6 (1) the principal dies;

7 (2) the principal becomes incapacitated, if the power of attorney is not
8 durable;

9 (3) the principal revokes the power of attorney;

10 (4) the power of attorney provides that it terminates;

11 (5) the purpose of the power of attorney is accomplished; or

12 (6) the principal revokes the agent's authority or the agent dies, becomes
13 incapacitated, or resigns, and the power of attorney does not provide for
14 another agent to act under the power of attorney.

15 (b) An agent's authority terminates when:

16 (1) the principal revokes the authority;

17 (2) the agent dies, becomes incapacitated, or resigns;

18 (3) a petition for divorce, annulment, separation, or a decree of nullity is
19 filed with respect to the agent's marriage to the principal, unless the power of
20 attorney otherwise provides; or

21 (4) the power of attorney terminates.

1 (c) Unless the power of attorney otherwise provides, an agent’s authority is
2 exercisable until the authority terminates under subsection (b) of this section,
3 notwithstanding a lapse of time since the execution of the power of attorney.

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

9 (e) Incapacity of the principal of a power of attorney that is not durable
10 does not revoke or terminate the power of attorney as to an agent or other
11 person that, without actual knowledge of the incapacity, acts in good faith
12 under the power of attorney. An act so performed, unless otherwise invalid or
13 unenforceable, binds the principal and the principal’s successors in interest.

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

18 § 4011. CO-AGENTS AND SUCCESSOR AGENTS

19 (a) A principal may designate two or more persons to act as co-agents.
20 Unless the power of attorney otherwise provides, each co-agent may exercise
21 its authority independently.

1 (b) A principal may designate one or more successor agents to act if an
2 agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines
3 to serve. A principal may grant authority to designate one or more successor
4 agents to an agent or other person designated by name, office, or function.

5 Unless the power of attorney otherwise provides, a successor agent:

6 (1) has the same authority as that granted to the original agent; and

7 (2) may not act until all predecessor agents have resigned, died, become
8 incapacitated, are no longer qualified to serve, or have declined to serve.

9 (c) Except as otherwise provided in the power of attorney and
10 subsection (d) of this section, an agent who does not participate in or conceal a
11 breach of fiduciary duty committed by another agent, including a predecessor
12 agent, is not liable for the actions of the other agent.

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

1 § 4012. REIMBURSEMENT AND COMPENSATION OF AGENT

2 Unless the power of attorney otherwise provides, an agent is entitled to
3 reimbursement of expenses reasonably incurred on behalf of the principal and
4 to compensation that is reasonable under the circumstances.

5 § 4013. AGENT’S ACCEPTANCE

6 Except as otherwise provided in the power of attorney, a person accepts
7 appointment as an agent under a power of attorney by exercising authority or
8 performing duties as an agent or by any other assertion or conduct indicating
9 acceptance.

10 § 4014. AGENT’S DUTIES

11 (a) Notwithstanding provisions in the power of attorney, an agent who has
12 accepted appointment shall:

13 (1) act in accordance with the principal’s reasonable expectations to the
14 extent actually known by the agent and otherwise in the principal’s best
15 interests;

16 (2) act in good faith; and

17 (3) act only within the scope of authority granted in the power of
18 attorney.

19 (b) Except as otherwise provided in the power of attorney or other
20 provision of this chapter, an agent that has accepted appointment shall have no

1 further obligation to act under the power of attorney. However, with respect to
2 any action taken by the agent under the power of attorney, the agent shall:

3 (1) act loyally for the principal’s benefit;

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

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

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

10 (5) cooperate with a person who has authority to make health-care
11 decisions for the principal to carry out the principal’s reasonable expectations
12 to the extent actually known by the agent and otherwise act in the principal’s
13 best interests; and

14 (6) attempt to preserve the principal’s estate plan, to the extent actually
15 known by the agent, if preserving the plan is consistent with the principal’s
16 best interests based on all relevant factors, including:

17 (A) the value and nature of the principal’s property;

18 (B) the principal’s foreseeable obligations and need for maintenance;

19 (C) minimization of taxes, including income, estate, inheritance,
20 generation-skipping transfer, and gift taxes; and

1 (D) eligibility for a benefit, a program, or assistance under a statute
2 or regulation.

3 (c) An agent who acts in good faith is not liable to any beneficiary of the
4 principal’s estate plan for failure to preserve the plan.

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

9 (e) If an agent is selected by the principal because of special skills or
10 expertise possessed by the agent or in reliance on the agent’s representation
11 that the agent has special skills or expertise, the special skills or expertise must
12 be considered in determining whether the agent has acted with care,
13 competence, and diligence under the circumstances.

14 (f) Absent a breach of duty to the principal, an agent is not liable if the
15 value of the principal’s property declines.

16 (g) An agent who exercises authority to delegate to another person the
17 authority granted by the principal or who engages another person on behalf of
18 the principal is not liable for an act, error of judgment, or default of that person
19 if the agent exercises care, competence, and diligence in selecting and
20 monitoring the person.

1 (h) Except as otherwise provided in the power of attorney, an agent is not
2 required to disclose receipts, disbursements, or transactions conducted on
3 behalf of the principal unless ordered by a court or requested by the principal, a
4 guardian, a conservator, another fiduciary acting for the principal, a
5 governmental agency having authority to protect the welfare of the principal,
6 or, upon the death of the principal, by the personal representative or successor
7 in interest of the principal’s estate. If so requested, within 30 days the agent
8 shall comply with the request or provide a writing or other record
9 substantiating why additional time is needed and shall comply with the request
10 within an additional 30 days.

11 § 4015. EXONERATION OF AGENT

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

15 (1) relieves the agent of liability for breach of duty committed:

16 (A) dishonestly;

17 (B) in bad faith;

18 (C) with reckless indifference to the purposes of the power of
19 attorney;

20 (D) through willful misconduct;

21 (E) through gross negligence; or

1 (F) with actual fraud; or

2 (2) was inserted as a result of an abuse of a confidential or fiduciary
3 relationship with the principal.

4 § 4016. JUDICIAL RELIEF

5 (a) The following persons may petition a court to construe a power of
6 attorney or review the agent’s conduct and grant appropriate relief:

7 (1) the principal or the agent;

8 (2) a guardian or other fiduciary acting for the principal, including an
9 executor or administrator of the estate of a deceased principal;

10 (3) a person authorized to make health-care decisions for the principal;

11 (4) the principal’s spouse, parent, or descendant;

12 (5) an individual who would qualify as an heir of the principal under the
13 laws of intestacy;

14 (6) a person named as a beneficiary to receive any property, benefit, or
15 contractual right on the principal’s death or as a beneficiary of a trust created

16 by or for the principal who has a financial interest in the principal’s estate;

17 (7) a governmental agency having regulatory authority to protect the
18 welfare of the principal;

19 (8) the principal’s caregiver or another person who demonstrates
20 sufficient interest in the principal’s welfare; and

21 (9) a person asked to accept the power of attorney.

1 (b) Upon motion by the principal, the court shall dismiss a petition filed
2 under this section, unless the court finds that the principal lacks capacity to
3 revoke the agent’s authority or the power of attorney.

4 § 4017. AGENT’S LIABILITY

5 An agent who violates this chapter is liable to the principal or the
6 principal’s successors in interest for the amount required to:

7 (1) restore the value of the principal’s property to what it would have
8 been had the violation not occurred;

9 (2) reimburse the principal or the principal’s successors in interest for
10 the attorney’s fees and costs paid on the agent’s behalf;

11 (3) reimburse the reasonable attorney’s fees and costs incurred by the
12 principal or the principal’s successor in interest in pursuing rectification of the
13 violation by the agent; and

14 (4) pay such other amounts, damages, costs, or expenses that the court
15 may award.

16 § 4018. AGENT’S RESIGNATION; NOTICE

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

20 (1) to the guardian, if one has been appointed for the principal, and a
21 coagent or successor agent; or

1 (2) if there is no person described in subdivision (1) of this section, to:

2 (A) the principal’s caregiver;

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

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

7 § 4019. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED
8 POWER OF ATTORNEY

9 (a) As used in this section and section 4020 of this title, “acknowledged”
10 means purportedly verified before a notary public or other individual
11 authorized to take acknowledgements.

12 (b) A person who in good faith accepts an acknowledged power of attorney
13 without actual knowledge that the signature is not genuine may rely upon the
14 presumption under section 4005 of this title that the signature is genuine.

15 (c) A person who effects a transaction in reliance upon an acknowledged
16 power of attorney without actual knowledge that the power of attorney is void,
17 invalid, or terminated; that the purported agent’s authority is void, invalid, or
18 terminated; or that the agent is exceeding or improperly exercising the agent’s
19 authority is fully exonerated from any liability for effecting the transaction in
20 reliance may rely upon the power of attorney as if the power of attorney were
21 genuine, valid, and still in effect; the agent’s authority were genuine, valid, and

1 still in effect; and the agent had not exceeded and has properly exercised the
2 authority.

3 (d) A person who is asked to accept an acknowledged power of attorney
4 may request and rely upon, without further investigation:

5 (1) an agent’s certification under penalty of perjury of any factual matter
6 concerning the principal, agent, or power of attorney; or

7 (2) an English translation of the power of attorney if the power of
8 attorney contains, in whole or in part, language other than English; and

9 (3) an opinion of counsel as to any matter of law concerning the power
10 of attorney if the person making the request provides in a writing or other
11 record the reason for the request.

12 (e) A certification presented pursuant to subsection (d) of this section shall
13 state that:

14 (1) the person presenting themselves as the agent and signing the
15 affidavit or declaration is the person so named in the power of attorney;

16 (2) if the agent is named in the power of attorney as a successor agent,
17 the circumstances or conditions stated in the power of attorney that would
18 cause that person to become the acting agent have occurred;

19 (3) to the best of the agent’s knowledge, the principal is still alive;

1 (4) to the best of the agent’s knowledge, at the time the power of
2 attorney was signed, the principal was competent to execute the document and
3 was not under undue influence to sign the document;

4 (5) all events necessary to making the power of attorney effective have
5 occurred;

6 (6) the agent does not have actual knowledge of the revocation,
7 termination, limitation, or modification of the power of attorney or of the
8 agent’s authority;

9 (7) if the agent was married to or in a state-registered domestic
10 partnership with the principal at the time of execution of the power of attorney,
11 then at the time of signing the affidavit or declaration, the marriage or state-
12 registered domestic partnership of the principal and the agent has not been
13 dissolved or declared invalid, and no action is pending for the dissolution of
14 the marriage or domestic partnership for legal separation; and

15 (8) the agent is acting in good faith pursuant to the authority given under
16 the power of attorney.

17 (f) An English translation or an opinion of counsel requested under this
18 section must be provided at the principal’s expense unless the request is made
19 more than seven business days after the power of attorney is presented for
20 acceptance.

1 (g) For purposes of this section and section 4020 of this title, a person who
2 conducts activities through employees is without actual knowledge of a fact
3 relating to a power of attorney, a principal, or an agent if the employee
4 conducting the transaction involving the power of attorney is without actual
5 knowledge of the fact.

6 § 4020. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED

7 STATUTORY FORM POWER OF ATTORNEY

8 (a) As used in this section, “statutory form power of attorney” means a
9 power of attorney substantially in the form provided in section 4051 of this
10 title or that meets the requirements for a military power of attorney pursuant to
11 10 U.S.C. § 1044b, as amended.

12 (b) Except as otherwise provided in subsection (c) of this section:

13 (1) a person shall either accept an acknowledged statutory form power
14 of attorney or request a certification, a translation, or an opinion of counsel
15 under subsection 4019(d) of this title not later than seven business days after
16 presentation of the power of attorney for acceptance;

17 (2) if a person requests a certification, a translation, or an opinion of
18 counsel under subsection 4019(d) of this title, the person shall accept the
19 statutory form power of attorney not later than five business days after receipt
20 of the certification, translation, or opinion of counsel; and

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

4 (c) A person is not required to accept an acknowledged statutory form
5 power of attorney if:

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

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

10 (3) the person has actual knowledge of the termination of the agent’s
11 authority or of the power of attorney before exercise of the power;

12 (4) a request for a certification, a translation, or an opinion of counsel
13 under subsection 4019(d) of this title is refused;

14 (5) the person in good faith believes that the power is not valid or that
15 the agent does not have the authority to perform the act requested, whether or
16 not a certification, a translation, or an opinion of counsel under subsection
17 4019(d) of this title has been requested or provided; or

18 (6) the person makes, or has actual knowledge that another person has
19 made, a report to the Adult Protective Services program or other appropriate
20 entity within the Department of Disabilities, Aging, and Independent Living or
21 to a law enforcement agency stating a good faith belief that the principal may

1 be subject to physical or financial abuse, neglect, exploitation, or abandonment
2 by the agent or a person acting for or with the agent.

3 (d) A person who refuses in violation of this section to accept an
4 acknowledged statutory form power of attorney is subject to:

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

6 (2) liability for reasonable attorney’s fees and costs incurred in any
7 action or proceeding that confirms the validity of the power of attorney or
8 mandates acceptance of the power of attorney.

9 § 4021. PRINCIPLES OF LAW AND EQUITY

10 Unless displaced by a provision of this chapter, the principles of law and
11 equity supplement this chapter.

12 § 4022. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND
13 ENTITIES

14 This chapter does not supersede any other law applicable to financial
15 institutions or other entities, and the other law controls if inconsistent with this
16 chapter.

17 § 4023. REMEDIES UNDER OTHER LAW

18 The remedies under this chapter are not exclusive and do not abrogate any
19 right or remedy under the law of this State other than this chapter.

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Subchapter 2. Authority

§ 4031. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF
GENERAL AUTHORITY

(a) An agent under a power of attorney may do the following on behalf of
the principal or with the principal’s property only if the 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;

(2) make a gift;

(3) create or change rights of survivorship;

(4) create or change a beneficiary designation;

(5) delegate authority granted under the power of attorney;

(6) waive the principal’s right to be a beneficiary of a joint and survivor
annuity, including a survivor benefit under a retirement plan;

~~(7) exercise fiduciary powers that the principal has authority to delegate;~~

~~(7) authorize another person to exercise the authority granted under the
power of attorney;~~

(8) exercise authority over the content of an electronic communication
of the principal in accordance with chapter 125 of this title (Vermont Revised
Uniform Fiduciary Access to Digital Assets Act);

1 (9) disclaim property, including a power of appointment;

2 (10) exercise a written waiver of spousal rights under section 323 of this
3 title; or

4 (11) exercise authority with respect to intellectual property, including
5 copyrights, contracts for payment of royalties, and trademarks.

6 (b) Notwithstanding a grant of authority to do an act described in
7 subsection (a) of this section, unless the power of attorney otherwise provides,
8 an agent that is not an ancestor, spouse, or descendant of the principal may not
9 exercise authority under a power of attorney to create in the agent, or in an
10 individual to whom the agent owes a legal obligation of support, an interest in
11 the principal’s property, whether by gift, right of survivorship, beneficiary
12 designation, disclaimer, or otherwise.

13 (c) Subject to subsections (a), (b), (d), and (e) of this section, if a power of
14 attorney grants to an agent authority to do all acts that a principal could do, the
15 agent has the general authority described in sections 4034–4046 of this title.

16 (d) Unless the power of attorney otherwise provides, a grant of authority to
17 make a gift is subject to section 4047 of this title.

18 (e) Subject to subsections (a), (b), and (d) of this section, if the subjects
19 over which authority is granted in a power of attorney are similar or overlap,
20 the broadest authority controls.

1 (f) Authority granted in a power of attorney is exercisable with respect to
2 property that the principal has when the power of attorney is executed or
3 acquires later, whether or not the property is located in this State and whether
4 or not the authority is exercised or the power of attorney is executed in this
5 State.

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

9 § 4032. INCORPORATION OF AUTHORITY

10 (a) An agent has authority described in this chapter if the power of attorney
11 refers to general authority with respect to the descriptive term for the subjects
12 stated in sections 4034–4047 of this title or cites the section in which the
13 authority is described.

14 (b) A reference in a power of attorney to general authority with respect to
15 the descriptive term for a subject in sections 4034–4047 of this title or a
16 citation to a section of sections 4034–4047 of this title incorporates the entire
17 section as if it were set out in full in the power of attorney.

18 (c) A principal may modify authority or a writing or other record
19 incorporated by reference.

20 § 4033. CONSTRUCTION OF AUTHORITY GENERALLY

1 Except as otherwise provided in the power of attorney, by executing a
2 power of attorney that incorporates by reference a subject described in sections
3 4034–4047 of this title or that grants to an agent authority to do all acts that a
4 principal could do pursuant to subsection 4031(c) of this title, a principal
5 authorizes the agent, with respect to that subject, to:

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

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

14 (3) execute, acknowledge, seal, deliver, file, or record any instrument or
15 communication the agent considers desirable to accomplish a purpose of a
16 transaction, including creating at any time a schedule listing some or all of the
17 principal’s property and attaching it to the power of attorney;

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

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

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

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

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

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

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

15 § 4034. REAL PROPERTY

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

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

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

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

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

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

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

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

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

21 and

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

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

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

10 (A) selling or otherwise disposing of them;

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

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

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

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

18 and

19 (10) relinquish any and all of the principal's rights of homestead under
20 27 V.S.A. § 105 and elective share under section 323 of this title.

1 § 4035. TANGIBLE PERSONAL PROPERTY

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

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

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

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

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

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

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

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

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

6 (D) moving the property from place to place;

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

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

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

11 § 4036. STOCKS AND BONDS

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

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

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

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

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

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

4 § 4037. COMMODITIES AND OPTIONS

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

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

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

12 § 4038. BANKS AND OTHER FINANCIAL INSTITUTIONS

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

16 (1) continue, modify, and terminate an account or other banking
17 arrangement made by or on behalf of the principal;

18 (2) establish, modify, and terminate an account or other banking
19 arrangement with a bank, trust company, savings and loan association, credit
20 union, thrift company, brokerage firm, or other financial institution selected by
21 the agent;

1 (3) contract for services available from a financial institution, including
2 renting a safe deposit box or space in a vault;

3 (4) withdraw, by check, order, electronic funds transfer, or otherwise,
4 money or property of the principal deposited with or left in the custody of a
5 financial institution;

6 (5) receive statements of account, vouchers, notices, and similar
7 documents from a financial institution and act with respect to them;

8 (6) enter a safe deposit box or vault and withdraw or add to the contents;

9 (7) borrow money and pledge as security personal property of the
10 principal necessary to borrow money or pay, renew, or extend the time of
11 payment of a debt of the principal or a debt guaranteed by the principal;

12 (8) make, assign, draw, endorse, discount, guarantee, and negotiate
13 promissory notes, checks, drafts, and other negotiable or nonnegotiable paper
14 of the principal or payable to the principal or the principal's order; transfer
15 money; receive the cash or other proceeds of those transactions; and accept a
16 draft drawn by a person upon the principal and pay it when due;

17 (9) receive for the principal and act upon a sight draft, warehouse
18 receipt, or other document of title whether tangible or electronic, or other
19 negotiable or nonnegotiable instrument;

20 (10) apply for, receive, and use letters of credit, credit and debit cards,
21 electronic transaction authorizations, and traveler's checks from a financial

1 institution and give an indemnity or other agreement in connection with letters
2 of credit; and

3 (11) consent to an extension of the time of payment with respect to
4 commercial paper or a financial transaction with a financial institution.

5 § 4039. OPERATION OF ENTITY OR BUSINESS

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

10 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership
11 interest;

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

15 (3) enforce the terms of an ownership agreement;

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

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

1 (6) initiate, participate in, submit to alternative dispute resolution, settle,
2 oppose, or propose or accept a compromise with respect to litigation to which
3 the principal is a party concerning stocks and bonds;

4 (7) with respect to an entity or business owned solely by the principal:

5 (A) continue, modify, renegotiate, extend, and terminate a contract
6 made by or on behalf of the principal with respect to the entity or business
7 before execution of the power of attorney;

8 (B) determine:

9 (i) the location of its operation;

10 (ii) the nature and extent of its business;

11 (iii) the methods of manufacturing, selling, merchandising,
12 financing, accounting, and advertising employed in its operation;

13 (iv) the amount and types of insurance carried; and

14 (v) the mode of engaging, compensating, and dealing with its
15 employees and accountants, attorneys, or other advisors;

16 (C) change the name or form of organization under which the entity
17 or business is operated and enter into an ownership agreement with other
18 persons to take over all or part of the operation of the entity or business; and

19 (D) demand and receive money due or claimed by the principal or on
20 the principal's behalf in the operation of the entity or business and control and
21 disburse the money in the operation of the entity or business;

1 (8) put additional capital into an entity or business in which the principal
2 has an interest;

3 (9) join in a plan of reorganization, consolidation, conversion,
4 domestication, or merger of the entity or business;

5 (10) sell or liquidate all or part of an entity or business;

6 (11) establish the value of an entity or business under a buy-out
7 agreement to which the principal is a party;

8 (12) prepare, sign, file, and deliver reports, compilations of information,
9 returns, or other papers with respect to an entity or business and make related
10 payments; and

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

16 § 4040. INSURANCE AND ANNUITIES

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

20 (1) continue, pay the premium or make a contribution on, modify,
21 exchange, rescind, release, or terminate a contract procured by or on behalf of

1 the principal that insures or provides an annuity to either the principal or
2 another person, whether or not the principal is a beneficiary under the contract;

3 (2) procure new, different, and additional contracts of insurance and
4 annuities for the principal and the principal's spouse, children, and other
5 dependents and select the amount, type of insurance or annuity, and mode of
6 payment;

7 (3) pay the premium or make a contribution on, modify, exchange,
8 rescind, release, or terminate a contract of insurance or annuity procured by the
9 agent;

10 (4) apply for and receive a loan secured by a contract of insurance or
11 annuity;

12 (5) surrender and receive the cash surrender value on a contract of
13 insurance or annuity;

14 (6) exercise an election;

15 (7) exercise investment powers available under a contract of insurance
16 or annuity;

17 (8) change the manner of paying premiums on a contract of insurance or
18 annuity;

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

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

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

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

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

12 § 4041. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS

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

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

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

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

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

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

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

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

15 (7) transfer an interest of the principal in real property, stocks and
16 bonds, accounts with financial institutions or securities intermediaries,
17 insurance, annuities, and other property to the trustee of a revocable trust
18 created by the principal as settlor.

1 § 4042. CLAIMS AND LITIGATION

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

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

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

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

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

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

20 (6) waive the issuance and service of process upon the principal; accept
21 service of process; appear for the principal; designate persons upon which

1 process directed to the principal may be served; execute and file or deliver
2 stipulations on the principal’s behalf; verify pleadings; seek appellate review;
3 procure and give surety and indemnity bonds; contract and pay for the
4 preparation and printing of records and briefs; and receive, execute, and file or
5 deliver a consent, waiver, release, confession of judgment, satisfaction of
6 judgment, notice, agreement, or other instrument in connection with the
7 prosecution, settlement, or defense of a claim or litigation;

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

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

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

17 § 4043. PERSONAL AND FAMILY MAINTENANCE

18 (a) Unless the power of attorney otherwise provides, language in a power
19 of attorney granting general authority with respect to personal and family
20 maintenance authorizes the agent to:

1 (1) perform the acts necessary to maintain the customary standard of
2 living of the principal, the principal's spouse, and the following individuals,
3 whether living when the power of attorney is executed or later born:

4 (A) other individuals legally entitled to be supported by the principal;
5 and

6 (B) the individuals whom the principal has customarily supported or
7 indicated the intent to support;

8 (2) make periodic payments of child support and other family
9 maintenance required by a court or governmental agency or an agreement to
10 which the principal is a party;

11 (3) provide living quarters for the individuals described in
12 subdivision (1) of this subsection by:

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

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

17 (4) provide normal domestic help, usual vacations and travel expenses,
18 and funds for shelter, clothing, food, appropriate education, including
19 postsecondary and vocational education, and other current living costs for the
20 individuals described in subdivision (1) of this subsection;

1 (5) pay expenses for necessary health care and custodial care on behalf
2 of the individuals described in subdivision (1) of this subsection;

3 (6) act as the principal’s personal representative pursuant to the Health
4 Insurance Portability and Accountability Act; Sections 1171–1179 of the
5 Social Security Act; 42 U.S.C. § 1320d, as amended; and applicable
6 regulations in making decisions related to the past, present, or future payment
7 for the provision of health care consented to by the principal or anyone
8 authorized under the law of this State to consent to health care on behalf of the
9 principal;

10 (7) continue any provision made by the principal for automobiles or
11 other means of transportation, including registering, licensing, insuring, and
12 replacing them, for the individuals described in subdivision (1) of this
13 subsection;

14 (8) maintain credit and debit accounts for the convenience of the
15 individuals described in subdivision (1) of this subsection and open new
16 accounts; and

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

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

4 § 4044. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR
5 MILITARY SERVICE

6 (a) As used in this section, “benefits from governmental programs or civil
7 or military service” means any benefit, program, or assistance provided under a
8 statute or regulation, including Social Security, Medicare, Medicaid, and the
9 Department of Veterans Affairs.

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

13 (1) execute vouchers in the name of the principal for allowances and
14 reimbursements payable by the United States or a foreign government or by a
15 state or subdivision of a state to the principal, including allowances and
16 reimbursements for transportation of the individuals described in subdivision
17 4043(a)(1) of this title and for shipment of their household effects;

18 (2) take possession and order the removal and shipment of property of
19 the principal from a post, warehouse, depot, dock, or other place of storage or
20 safekeeping, either governmental or private, and execute and deliver a release,

1 voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument
2 for that purpose;

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

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

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

12 (6) receive the financial proceeds of a claim described in subdivision (4)
13 of this subsection and conserve, invest, disburse, or use for a lawful purpose
14 anything so received.

15 § 4045. RETIREMENT PLANS

16 (a) As used in this section, “retirement plan” means a plan or account
17 created by an employer, the principal, or another individual to provide
18 retirement benefits or deferred compensation of which the principal is a
19 participant, beneficiary, or owner, including a plan or account under the
20 following sections of the Internal Revenue Code:

1 (1) an individual retirement account under Internal Revenue Code § 408,
2 26 U.S.C. § 408, as amended;

3 (2) a Roth individual retirement account under Internal Revenue Code
4 § 408A, 26 U.S.C. § 408A, as amended;

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

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

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

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

14 (7) a nonqualified deferred compensation plan under Internal Revenue
15 Code § 409A, 26 U.S.C. § 409A, as amended.

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

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

- 1 (2) make a rollover, including a direct trustee-to-trustee rollover, of
2 benefits from one retirement plan to another;
3 (3) establish a retirement plan in the principal’s name;
4 (4) make contributions to a retirement plan;
5 (5) exercise investment powers available under a retirement plan; and
6 (6) borrow from, sell assets to, or purchase assets from a retirement
7 plan.

8 § 4046. TAXES

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

- 12 (1) prepare, sign, and file federal, state, local, and foreign income, gift,
13 payroll, property, Federal Insurance Contributions Act, and other tax returns;
14 claims for refunds; requests for extension of time; petitions regarding tax
15 matters; and any other tax-related documents, including receipts; offers;
16 waivers; consents, including consents and agreements under Internal Revenue
17 Code § 2032A, 26 U.S.C. § 2032A, as amended; closing agreements; and any
18 power of attorney required by the Internal Revenue Service or other taxing
19 authority, including an internal revenue service form 2848 in favor of any third
20 party with respect to a tax year upon which the statute of limitations has not
21 run and the following 25 tax years;

1 (2) pay taxes due, collect refunds, post bonds, receive confidential
2 information, and contest deficiencies determined by the Internal Revenue
3 Service or other taxing authority;

4 (3) exercise any election available to the principal under federal, state,
5 local, or foreign tax law; and

6 (4) act for the principal in all tax matters for all periods before the
7 Internal Revenue Service, or other taxing authority.

8 § 4047. GIFTS

9 (a) For purposes of this section, “gift” includes a gift for the benefit of a
10 person, including a gift to a trust, an account under chapter 115 of this title
11 (Vermont Uniform Transfers to Minors Act), and a tuition savings account or
12 prepaid tuition plan as defined under Internal Revenue Code § 529, 26 U.S.C.
13 § 529, as amended.

14 (b) An agent may make a gift of the principal’s property only as the agent
15 determines is consistent with the principal’s objectives if actually known by
16 the agent or, if unknown, as the agent determines is consistent with the
17 principal’s best interests based on all relevant factors, including:

18 (1) evidence of the principal’s intent;

19 (2) the principal’s personal history of making or joining in the making
20 of lifetime gifts;

21 (3) the principal’s estate plan;

1 (4) the principal’s foreseeable obligations and maintenance needs and
2 the impact of the proposed gift on the principal’s housing options, access to
3 care and services, and general welfare;

4 (5) the income, gift, estate, or inheritance tax consequences of the
5 transaction; and

6 (6) whether the proposed gift creates a foreseeable risk that the principal
7 will be deprived of sufficient assets to cover the principal’s needs during any
8 period of Medicaid ineligibility that would result from the proposed gift.

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

13 (1) the value and nature of the principal’s property;

14 (2) the principal’s foreseeable obligations and need for maintenance;

15 (3) minimization of taxes, including income, estate, inheritance,
16 generation-skipping transfer, and gift taxes;

17 (4) eligibility for a benefit, a program, or assistance under a statute or
18 regulation; and

19 (5) the principal’s personal history of making or joining in making gifts.

1 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

3 Name of Successor Agent: _____

4 Successor Agent’s Address: _____

5 Successor Agent’s Telephone Number: _____

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

7 second successor agent:

8 Name of Second Successor Agent: _____

9 Second Successor Agent’s Address: _____

10 Second Successor Agent’s Telephone Number: _____

11 GRANT OF GENERAL AUTHORITY

12 I grant my agent and any successor agent general authority to act for me

13 with respect to the following subjects as defined in the Vermont Uniform

14 Power of Attorney Act, 14 V.S.A. chapter 127.

15 (INITIAL each subject you want to include in the agent’s general authority. If

16 you wish to grant general authority over all of the subjects, you may initial

17 “All Preceding Subjects” instead of initialing each subject.)

18 () Real Property

19 () Tangible Personal Property

20 () Stocks and Bonds

21 () Commodities and Options

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

11 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

12 My agent MAY NOT do any of the following specific acts for me UNLESS

13 I have INITIALED the specific authority listed below:

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

18 An agent who is not an ancestor, spouse, or descendant may exercise
19 authority under this power of attorney to create in the agent or in an individual
20 to whom the agent owes a legal obligation of support an interest in my

- 1 property whether by gift, rights of survivorship, beneficiary designation,
2 disclaimer, or otherwise
- 3 () Create, amend, revoke, or terminate an inter vivos, family, living,
4 irrevocable, or revocable trust
- 5 () Consent to the modification or termination of a noncharitable
6 irrevocable trust under 14A V.S.A. § 411
- 7 () Make a gift, subject to the limitations of 14 V.S.A. § 4047 (gifts) and
8 any special instructions in this power of attorney
- 9 () Create, amend, or change rights of survivorship
- 10 () Create, amend, or change a beneficiary designation
- 11 () Waive the principal’s right to be a beneficiary of a joint and survivor
12 annuity, including a survivor benefit under a retirement plan
- 13 () Exercise fiduciary powers that the principal has authority to delegate
- 14 () Authorize another person to exercise the authority granted under this
15 power of attorney
- 16 () Disclaim or refuse an interest in property, including a power of
17 appointment
- 18 () Exercise authority with respect to elective share under 14 V.S.A. § 319
- 19 () Exercise waiver rights under 14 V.S.A. § 323

1 Exercise authority over the content and catalogue of electronic
2 communications and digital assets under 14 V.S.A. chapter 125 (Vermont
3 Revised Uniform Fiduciary Access to Digital Assets Act)

4 Exercise authority with respect to intellectual property, including,
5 without limitation, copyrights, contracts for payment of royalties, and
6 trademarks

7 LIMITATION ON AGENT’S AUTHORITY

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

11 SPECIAL INSTRUCTIONS (OPTIONAL)

12 Initial:

13 This power of attorney is effective immediately and shall not be
14 affected by disability of the principal.

15 OR

16 My agent(s) shall only have the authority to act upon my later
17 incapacity.

18 You may give special instructions on the following lines:

19 _____

20 _____

21 _____

1 _____
2 _____
3 _____
4 _____
5 _____

6 EFFECTIVE DATE

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

9 NOMINATION OF GUARDIAN (OPTIONAL)

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

12 Name of Nominee for [conservator or guardian] of my estate:

13 _____

14 Nominee's Address: _____

15 Nominee's Telephone Number: _____

16 Name of Nominee for guardian of my person: _____

17 Nominee's Address: _____

18 Nominee's Telephone Number: _____

19 RELIANCE ON THIS POWER OF ATTORNEY

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

1 Unless expressly stated otherwise, this power of attorney is durable and shall
2 remain valid if I become incapacitated.

3 SIGNATURE AND ACKNOWLEDGMENT

4

5

6

Your Name Printed

7

8

Your Address

9

10

Your Telephone Number

11

12

State of _____

13

County of _____

14

This document was acknowledged before me on _____ (Date)

15

by _____.

16

(Name of Principal)

17

_____ (Seal, if any)

18

Signature of Notary _____

19

My commission expires: _____

1
2
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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 interests;

(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.

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

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

(2) avoid conflicts that would impair your ability to act in the principal’s best interest;

1 (3) act with care, competence, and diligence;

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

4 (5) cooperate with any person that has authority to make health-care
5 decisions for the principal to do what you know the principal reasonably
6 expects or, if you do not know the principal’s expectations, to act in the
7 principal’s best interests; and

8 (6) attempt to preserve the principal’s estate plan if you know the plan
9 and preserving the plan is consistent with the principal’s best interests.

10 Termination of Agent’s Authority

11 You must stop acting on behalf of the principal if you learn of any event
12 that terminates this power of attorney or your authority under this power of
13 attorney. Events that terminate a power of attorney or your authority to act
14 under a power of attorney include:

15 (1) death of the principal;

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

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

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

19 (5) if you are married to the principal, a legal action is filed with a court

20 to end your marriage, or for your legal separation, unless the Special

1 Instructions in this power of attorney state that such an action will not
2 terminate your authority.

3 Liability of Agent

4 The meaning of the authority granted to you is defined in the Vermont
5 Uniform Power of Attorney Act, 14 V.S.A. chapter 127. If you violate the
6 Vermont Uniform Power of Attorney Act, or act outside the authority granted,
7 you may be liable for any damages caused by your violation. In addition to
8 civil liability, failure to comply with your duties and authority granted under
9 this document could subject you to criminal prosecution.

10 If there is anything about this document or your duties that you do not
11 understand, you should seek legal advice.

12 § 4052. STATUTORY SHORT FORM POWER OF ATTORNEY FOR
13 REAL ESTATE TRANSACTIONS

14 (a) A document substantially in the following form may be used to create a
15 statutory form power of attorney for a real estate transaction that has the
16 meaning and effect prescribed by this chapter.

17 VERMONT SHORT FORM POWER OF ATTORNEY FOR REAL ESTATE
18 TRANSACTIONS

19 This power of attorney authorizes another person (your agent) to take
20 actions for you (the principal) in connection with a real estate transaction (sale,
21 purchase, or mortgage). Your agent will be able to make decisions and act

1 with respect to a specific parcel of land whether or not you are able to act for
2 yourself. The meaning of authority over subjects listed on this form is
3 explained in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter
4 127.

5 DESIGNATION OF AGENT

6 I/we _____ and _____

7 (Name(s) of Principal) appoint the following person as my (our) agent:

8 Name of Agent: _____

9 Name of Alternate Agent: _____

10 Address of Property that is the subject of this power of attorney

11 (Street): _____, (Municipality)

12 _____, Vermont.

13 Transaction for which the power of attorney is given:

14 Sale

15 Purchase

16 Refinance

17 GRANT OF AUTHORITY

18 I/we grant my (our) agent and any alternate agent authority named in this

19 power of attorney to act for me/us with respect to a real estate transaction

20 involving the property with the address stated above, including, but not limited

1 to, the powers described in 14 V.S.A. § 4034(2), (3), and (4) as provided in the
2 Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

3 POWER TO DELEGATE

4 Each agent appointed in this power of attorney may delegate the authority
5 to act to another person. Any delegation shall be in writing and executed in the
6 same manner as this power of attorney.

7 TERM

8 This power of attorney commences when fully executed and continues until
9 the real estate transaction for which it was given is complete.

10 SELF DEALING

11 [] If this box is checked, the agent named in this power of attorney may
12 convey the subject real estate to the agent, individually, in trust, or to one or
13 more persons as co-tenants with the agent.

14 CHOICE OF LAW

15 This power of attorney and the effect hereof shall be determined by the
16 application of Vermont law and the Vermont Uniform Power of Attorney Act.

17 SIGNATURE AND ACKNOWLEDGMENT

18
19 _____

20 Your Name Printed

21 _____

1 Your Address
2 _____

3 Your Telephone Number
4 _____

5 State of _____

6 County of _____

7 This document was acknowledged before me on _____ (Date)

8 by _____.

9 (Name of Principal)

10 _____ (Seal, if any)

11 Signature of Notary _____

12 My commission expires: _____

13 (b) A power of attorney in the form above confers on the agent the powers
14 provided in subdivisions 4034 (2), (3) and (4) of this Chapter.

15 (c) Unless the language of the power of attorney expressly forbids
16 delegation of the authority, the agent may delegate the authority granted in the
17 power of attorney created under this provision to another person.

18 § 4053. AGENT’S CERTIFICATION

19 The following optional form may be used by an agent to certify facts
20 concerning a power of attorney.

1 AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF
2 ATTORNEY AND AGENT’S AUTHORITY

3 State of _____

4 [County] of _____]

5 I, _____ (Name of Agent), certify under
6 penalty of perjury that _____ (Name of Principal)
7 granted me authority as an agent or successor agent in a power of attorney
8 dated _____.

9 I further certify that to my knowledge:

10 (1) the Principal is alive and has not revoked the Power of Attorney or
11 my authority to act under the Power of Attorney and the Power of Attorney
12 and my authority to act under the Power of Attorney have not terminated;

13 (2) if the Power of Attorney was drafted to become effective upon the
14 happening of an event or contingency, the event or contingency has occurred;

15 (3) if I was named as a successor agent, the prior agent is no longer able
16 or willing to serve; and

17 (4) (Insert other relevant statements below)

18 _____
19 _____
20 _____
21 _____

1 _____

2 _____

3 SIGNATURE AND ACKNOWLEDGMENT

4 _____

5
6 _____

7 Agent's Name Printed

8 _____

9 Agent's Address

10 _____

11 Agent's Telephone Number

12 This document was acknowledged before me on _____,

13 _____ (Date)

14 by _____

15 (Name of Agent)

16 _____ (Seal, if any)

17 Signature of Notary

18 My commission expires: _____

1 Subchapter 4. Miscellaneous Provisions

2 § 4061. UNIFORMITY OF APPLICATION AND CONSTRUCTION

3 In applying and construing this uniform act, consideration shall be given to
4 the need to promote uniformity of the law with respect to its subject matter
5 among the states that enact it.

6 § 4062. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
7 NATIONAL COMMERCE ACT

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

13 § 4063. EFFECT ON EXISTING POWERS OF ATTORNEY

14 Except as otherwise provided in this chapter, on July 1, 2023:

15 (1) this chapter applies to a power of attorney created before, on, or after
16 July 1, 2023;

17 (2) this chapter applies to a judicial proceeding concerning a power of
18 attorney commenced on or after July 1, 2023;

19 (3) this chapter applies to a judicial proceeding concerning a power of
20 attorney commenced before July 1, 2023 unless the court finds that application
21 of a provision of this chapter would substantially interfere with the effective

1 conduct of the judicial proceeding or prejudice the rights of a party, in which
2 case that provision does not apply and the superseded law applies; and

3 (4) an act done before July 1, 2023 is not affected by this chapter.

4 Sec. 2. REPEAL

5 14 V.S.A. chapter 123 (powers of attorney) is repealed.

6 Sec. 3. EFFECTIVE DATE

7 This act shall take effect on July 1, 2023.

8

9

10

11

12

13

14

15 (Committee vote: _____)

16

17

Representative _____

18

FOR THE COMMITTEE