

1 TO THE HONORABLE SENATE:

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 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in 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 or unavailability.

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)(A) “Incapacity” means the inability of an individual to manage
11 property or business affairs because the individual has an impairment in the
12 ability to receive and evaluate information or make or communicate decisions
13 even with the use of technological assistance.

14 (B) “Unavailability” means the inability of an individual to manage
15 property or business affairs because the individual is:

16 (i) missing;

17 (ii) detained, including incarcerated in a penal system; or

18 (iii) outside the United States and unable to return.

19 (8) “Person” means an individual; corporation; business trust; estate;
20 trust; partnership; limited liability company; association; joint venture; public

1 corporation; government or governmental subdivision, agency, or
2 instrumentality; or any other legal or commercial entity.

3 (9) “Power of attorney” means a writing or other record that grants
4 authority to an agent to act in the place of the principal, whether or not the term
5 power of attorney is used.

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

16 (11) “Principal” means an individual who grants authority to an agent in
17 a power of attorney.

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

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

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

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

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

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

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

15 § 4003. APPLICABILITY

16 This chapter applies to all powers of attorney except:

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

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

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

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

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

7 § 4004. POWER OF ATTORNEY IS DURABLE

8 A power of attorney created under this chapter is durable unless it expressly
9 provides that it is terminated by the incapacity or unavailability of the
10 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 or unavailability and the principal has not authorized a person to determine
5 whether the principal is incapacitated or unavailable, or the person authorized
6 is unable or unwilling to make the determination, the power of attorney
7 becomes effective upon a 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 unavailable within the meaning of 4002(7)(B) of this
15 chapter.

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

1 access to the principal’s health-care information and communicate with the
2 principal’s 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 or unavailable, if the power of
8 attorney is not 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 unavailable, or resigns, and the power of attorney does not
14 provide for 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 unavailable, 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 or unavailability of the principal of a power of attorney that
10 is not durable does not revoke or terminate the power of attorney as to an agent
11 or other person that, without actual knowledge of the incapacity or
12 unavailability, acts in good faith under the power of attorney. An act so
13 performed, unless otherwise invalid or unenforceable, binds the principal and
14 the principal’s successors in interest.

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

19 (g) The principal of a power of attorney may not revoke the power of
20 attorney if the principal has been determined to be incapacitated.

21 § 4011. CO-AGENTS AND SUCCESSOR AGENTS

1 (a) A principal may designate two or more persons to act as co-agents.

2 Unless the power of attorney otherwise provides, each co-agent may exercise
3 its authority independently.

4 (b) A principal may designate one or more successor agents to act if an
5 agent resigns, dies, becomes incapacitated or unavailable, is not qualified to
6 serve, or declines to serve. A principal may grant authority to designate one or
7 more successor agents to an agent or other person designated by name, office,
8 or function. Unless the power of attorney otherwise provides, a successor
9 agent:

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

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

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

18 (d) An agent who has actual knowledge of a breach or imminent breach of
19 fiduciary duty by another agent shall notify the principal and, if the principal is
20 incapacitated or unavailable, take any action reasonably appropriate in the
21 circumstances to safeguard the principal's best interests. An agent who fails to

1 notify the principal or take action as required by this subsection is liable for the
2 reasonably foreseeable damages that could have been avoided if the agent had
3 notified the principal or taken such action.

4 § 4012. REIMBURSEMENT AND COMPENSATION OF AGENT

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

8 § 4013. AGENT’S ACCEPTANCE

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

13 § 4014. AGENT’S DUTIES

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

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

19 (2) act in good faith; and

20 (3) act only within the scope of authority granted in the power of
21 attorney.

1 (b) Except as otherwise provided in the power of attorney or other
2 provision of this chapter, an agent that has accepted appointment shall have no
3 further obligation to act under the power of attorney. However, with respect to
4 any action taken by the agent under the power of attorney, the agent shall:

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

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

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

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

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

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

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

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

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

3 (D) eligibility for a benefit, a program, or assistance under a statute
4 or regulation.

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

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

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

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

18 (g) An agent who exercises authority to delegate to another person the
19 authority granted by the principal or who engages another person on behalf of
20 the principal is not liable for an act, error of judgment, or default of that person

1 if the agent exercises care, competence, and diligence in selecting and
2 monitoring the person.

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

13 § 4015. EXONERATION OF AGENT

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

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

18 (A) dishonestly;

19 (B) in bad faith;

20 (C) with reckless indifference to the purposes of the power of
21 attorney;

1 (D) through willful misconduct;

2 (E) through gross negligence; or

3 (F) with actual fraud; or

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

6 § 4016. JUDICIAL RELIEF

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

9 (1) the principal or the agent;

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

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

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

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

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

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

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

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

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

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

7 § 4017. AGENT’S LIABILITY

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

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

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

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

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

1 § 4018. AGENT’S RESIGNATION; NOTICE

2 Unless the power of attorney provides a different method for an agent’s
3 resignation, an agent may resign by giving written notice to the principal and,
4 if the principal is incapacitated or unavailable:

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

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

8 (A) the principal’s caregiver;

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

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

13 § 4019. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED

14 POWER OF ATTORNEY

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

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

1 (c) A person who effects a transaction in reliance upon an acknowledged
2 power of attorney without actual knowledge that the power of attorney is void,
3 invalid, or terminated; that the purported agent’s authority is void, invalid, or
4 terminated; or that the agent is exceeding or improperly exercising the agent’s
5 authority may rely upon the power of attorney as if the power of attorney were
6 genuine, valid, and still in effect; the agent’s authority were genuine, valid, and
7 still in effect; and the agent had not exceeded and has properly exercised the
8 authority.

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

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

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

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

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

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

- 1 (2) if the agent is named in the power of attorney as a successor agent,
2 the circumstances or conditions stated in the power of attorney that would
3 cause that person to become the acting agent have occurred;
- 4 (3) to the best of the agent’s knowledge, the principal is still alive;
- 5 (4) to the best of the agent’s knowledge, at the time the power of
6 attorney was signed, the principal was competent to execute the document and
7 was not under undue influence to sign the document;
- 8 (5) all events necessary to making the power of attorney effective have
9 occurred;
- 10 (6) the agent does not have actual knowledge of the revocation,
11 termination, limitation, or modification of the power of attorney or of the
12 agent’s authority;
- 13 (7) if the agent was married to or in a state-registered domestic
14 partnership with the principal at the time of execution of the power of attorney,
15 then at the time of signing the affidavit or declaration, the marriage or state-
16 registered domestic partnership of the principal and the agent has not been
17 dissolved or declared invalid, and no action is pending for the dissolution of
18 the marriage or domestic partnership for legal separation; and
- 19 (8) the agent is acting in good faith pursuant to the authority given under
20 the power of attorney.

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

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

10 § 4020. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED

11 STATUTORY FORM POWER OF ATTORNEY

12 (a) As used in this section, “statutory form power of attorney” means a
13 power of attorney substantially in the form provided in section 4051 or 4052 of
14 this title or that meets the requirements for a military power of attorney
15 pursuant to 10 U.S.C. § 1044b, as amended.

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

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

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

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

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

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

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

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

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

18 (5) the person in good faith believes that the power is not valid or that
19 the agent does not have the authority to perform the act requested, whether or
20 not a certification, a translation, or an opinion of counsel under subsection
21 4019(d) of this title has been requested or provided; or

1 (6) the person makes, or has actual knowledge that another person has
2 made, a report to the Adult Protective Services program or other appropriate
3 entity within the Department of Disabilities, Aging, and Independent Living or
4 to a law enforcement agency stating a good faith belief that the principal may
5 be subject to physical or financial abuse, neglect, exploitation, or abandonment
6 by the agent or a person acting for or with the agent.

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

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

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

13 § 4021. PRINCIPLES OF LAW AND EQUITY

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

16 § 4022. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND
17 ENTITIES

18 This chapter does not supersede any other law applicable to financial
19 institutions or other entities, and the other law controls if inconsistent with this
20 chapter.

21 § 4023. REMEDIES UNDER OTHER LAW

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

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

5 (10) exercise a written waiver of spousal rights under section 323 of this
6 title;

7 (11) exercise authority with respect to intellectual property, including
8 copyrights, contracts for payment of royalties, and trademarks; or

9 (12) convey, or revoke or revise a grantee designation, by enhanced life
10 estate deed pursuant to chapter 6 of Title 27 or under common law.

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

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

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

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

6 (f) Authority granted in a power of attorney is exercisable with respect to
7 property that the principal has when the power of attorney is executed or
8 acquires later, whether or not the property is located in this State and whether
9 or not the authority is exercised or the power of attorney is executed in this
10 State.

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

14 § 4032. INCORPORATION OF AUTHORITY

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

19 (b) A reference in a power of attorney to general authority with respect to
20 the descriptive term for a subject in sections 4034–4047 of this title or a

1 citation to a section of sections 4034–4047 of this title incorporates the entire
2 section as if it were set out in full in the power of attorney.

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

5 § 4033. CONSTRUCTION OF AUTHORITY GENERALLY

6 Except as otherwise provided in the power of attorney, by executing a
7 power of attorney that incorporates by reference a subject described in sections
8 4034–4047 of this title or that grants to an agent authority to do all acts that a
9 principal could do pursuant to subsection 4031(c) of this title, a principal
10 authorizes the agent, with respect to that subject, to:

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

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

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

1 transaction, including creating at any time a schedule listing some or all of the
2 principal's property and attaching it to the power of attorney;

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

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

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

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

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

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

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

20 § 4034. REAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

16 (A) selling or otherwise disposing of them;

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

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

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

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

4 (10) relinquish any and all of the principal’s rights of homestead under
5 27 V.S.A. § 105 and elective share under section 323 of this title.

6 § 4035. TANGIBLE PERSONAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

17 § 4036. STOCKS AND BONDS

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

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

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

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

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

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

10 § 4037. COMMODITIES AND OPTIONS

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

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

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

18 § 4038. BANKS AND OTHER FINANCIAL INSTITUTIONS

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

- 1 (1) continue, modify, and terminate an account or other banking
2 arrangement made by or on behalf of the principal;
- 3 (2) establish, modify, and terminate an account or other banking
4 arrangement with a bank, trust company, savings and loan association, credit
5 union, thrift company, brokerage firm, or other financial institution selected by
6 the agent;
- 7 (3) contract for services available from a financial institution, including
8 renting a safe deposit box or space in a vault;
- 9 (4) withdraw, by check, order, electronic funds transfer, or otherwise,
10 money or property of the principal deposited with or left in the custody of a
11 financial institution;
- 12 (5) receive statements of account, vouchers, notices, and similar
13 documents from a financial institution and act with respect to them;
- 14 (6) enter a safe deposit box or vault and withdraw or add to the contents;
- 15 (7) borrow money and pledge as security personal property of the
16 principal necessary to borrow money or pay, renew, or extend the time of
17 payment of a debt of the principal or a debt guaranteed by the principal;
- 18 (8) make, assign, draw, endorse, discount, guarantee, and negotiate
19 promissory notes, checks, drafts, and other negotiable or nonnegotiable paper
20 of the principal or payable to the principal or the principal's order; transfer

1 money; receive the cash or other proceeds of those transactions; and accept a
2 draft drawn by a person upon the principal and pay it when due;

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

6 (10) apply for, receive, and use letters of credit, credit and debit cards,
7 electronic transaction authorizations, and traveler's checks from a financial
8 institution and give an indemnity or other agreement in connection with letters
9 of credit; and

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

12 § 4039. OPERATION OF ENTITY OR BUSINESS

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

17 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership
18 interest;

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

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

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

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

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

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

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

15 (B) determine:

16 (i) the location of its operation;

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

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

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

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

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

6 (D) demand and receive money due or claimed by the principal or on
7 the principal’s behalf in the operation of the entity or business and control and
8 disburse the money in the operation of the entity or business;

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

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

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

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

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

19 (13) pay, compromise, or contest taxes, assessments, fines, or penalties
20 and perform any other act to protect the principal from illegal or unnecessary
21 taxation, assessments, fines, or penalties, with respect to an entity or business,

1 including attempts to recover, in any manner permitted by law, money paid
2 before or after the execution of the power of attorney.

3 § 4040. INSURANCE AND ANNUITIES

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

7 (1) continue, pay the premium or make a contribution on, modify,
8 exchange, rescind, release, or terminate a contract procured by or on behalf of
9 the principal that insures or provides an annuity to either the principal or
10 another person, whether or not the principal is a beneficiary under the contract;

11 (2) procure new, different, and additional contracts of insurance and
12 annuities for the principal and the principal's spouse, children, and other
13 dependents and select the amount, type of insurance or annuity, and mode of
14 payment;

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

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

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

1 (6) exercise an election;

2 (7) exercise investment powers available under a contract of insurance
3 or annuity;

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

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

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

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

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

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

19 § 4041. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS

20 (a) As used in this section, “estate, trust, or other beneficial interest” means
21 a trust, probate estate, guardianship, conservatorship, escrow, or custodianship

1 or a fund from which the principal is, may become, or claims to be entitled to a
2 share or payment.

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

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

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

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

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

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

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

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

5 § 4042. CLAIMS AND LITIGATION

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

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

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

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

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

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

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

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

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

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

21 § 4043. PERSONAL AND FAMILY MAINTENANCE

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

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

7 (A) other individuals legally entitled to be supported by the principal;
8 and

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

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

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

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

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

20 (4) provide normal domestic help, usual vacations and travel expenses,
21 and funds for shelter, clothing, food, appropriate education, including

1 postsecondary and vocational education, and other current living costs for the
2 individuals described in subdivision (1) of this subsection;

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

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

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

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

19 (9) continue payments incidental to the membership or affiliation of the
20 principal in a religious institution, club, society, order, or other organization or
21 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 Subchapter 3. Statutory Forms

2 § 4051. STATUTORY FORM POWER OF ATTORNEY

3 A document substantially in the following form may be used to create a
4 statutory form power of attorney that has the meaning and effect prescribed by
5 this chapter.

6 VERMONT STATUTORY FORM POWER OF ATTORNEY

7 IMPORTANT INFORMATION

8 This power of attorney authorizes another person (your agent) to make
9 decisions concerning your property for you (the principal). Your agent will be
10 able to make decisions and act with respect to your property (including your
11 money) whether or not you are able to act for yourself. The meaning of
12 authority over subjects listed on this form is explained in the Vermont Uniform
13 Power of Attorney Act, 14 V.S.A. chapter 127.

14 This power of attorney does not authorize the agent to make health-care
15 decisions for you.

16 You should select someone you trust to serve as your agent. Unless you
17 specify otherwise, generally the agent’s authority will continue until you die or
18 revoke the power of attorney or the agent resigns or is unable to act for you.
19 Your agent is entitled to reasonable compensation unless you state otherwise in
20 the Special Instructions.

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 () Convey, or revoke or revise a grantee designation, by enhanced life
8 estate deed pursuant to chapter 6 of Title 27 or under common law.

9 LIMITATION ON AGENT’S AUTHORITY

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

13 WHEN POWER OF ATTORNEY EFFECTIVE

14 This power of attorney becomes effective when executed unless the principal
15 has initialed one of the following:

16 () This power of attorney is effective only upon my later incapacity.

17 OR

18 () This power of attorney is effective only upon my later incapacity
19 or unavailability.

20 OR

1 _____

2 Your Address

3 _____

4 Your Telephone Number

5 _____

6 State of _____

7 County of _____

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

9 by _____.

10 (Name of Principal)

11 _____ (Seal, if any)

12 Signature of Notary _____

13 My commission expires: _____

14 IMPORTANT INFORMATION FOR AGENT

15 Agent's Duties

16 When you accept the authority granted under this power of attorney, a
17 special legal relationship is created between you and the principal. This
18 relationship imposes upon you legal duties that continue until you resign or the
19 power of attorney is terminated or revoked. You must:

1 (1) do what you know the principal reasonably expects you to do with
2 the principal’s property or, if you do not know the principal’s expectations, act
3 in the principal’s best interests;

4 (2) act in good faith;

5 (3) do nothing beyond the authority granted in this power of attorney;

6 and

7 (4) disclose your identity as an agent whenever you act for the principal
8 by writing or printing the name of the principal and signing your own name as
9 “agent” in the following manner: (Principal’s Name) by (Your Signature) as
10 Agent.

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

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

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

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

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

19 (5) cooperate with any person that has authority to make health-care
20 decisions for the principal to do what you know the principal reasonably

1 expects or, if you do not know the principal's expectations, to act in the
2 principal's best interests; and

3 (6) attempt to preserve the principal's estate plan if you know the plan
4 and preserving the plan is consistent with the principal's best interests.

5 Termination of Agent's Authority

6 You must stop acting on behalf of the principal if you learn of any event
7 that terminates this power of attorney or your authority under this power of
8 attorney. Events that terminate a power of attorney or your authority to act
9 under a power of attorney include:

10 (1) death of the principal;

11 (2) the principal's revocation of the power of attorney or your authority;

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

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

14 (5) if you are married to the principal, a legal action is filed with a court
15 to end your marriage, or for your legal separation, unless the Special
16 Instructions in this power of attorney state that such an action will not
17 terminate your authority.

18 Liability of Agent

19 The meaning of the authority granted to you is defined in the Vermont
20 Uniform Power of Attorney Act, 14 V.S.A. chapter 127. If you violate the
21 Vermont Uniform Power of Attorney Act, or act outside the authority granted,

1 you may be liable for any damages caused by your violation. In addition to
2 civil liability, failure to comply with your duties and authority granted under
3 this document could subject you to criminal prosecution.

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

6 § 4052. STATUTORY SHORT FORM POWER OF ATTORNEY FOR
7 REAL ESTATE TRANSACTIONS

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

11 VERMONT SHORT FORM POWER OF ATTORNEY FOR REAL ESTATE
12 TRANSACTIONS

13 This power of attorney authorizes another person (your agent) to take
14 actions for you (the principal) in connection with a real estate transaction (sale,
15 purchase, mortgage, or gift). Your agent will be able to make decisions and act
16 with respect to a specific parcel of land whether or not you are able to act for
17 yourself. The meaning of authority over subjects listed on this form is
18 explained in the Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter
19 127.

20 DESIGNATION OF AGENT

1 If this box is checked, each agent appointed in this power of attorney
2 may delegate the authority to act to another person. Any delegation shall be in
3 writing and executed in the same manner as this power of attorney.

4 TERM

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

7 SELF DEALING

8 If this box is checked, the agent named in this power of attorney may
9 convey the subject real estate with or without consideration to the agent,
10 individually, in trust, or to one or more persons ~~as co-tenants~~ with the agent.

11 CHOICE OF LAW

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

14 SIGNATURE AND ACKNOWLEDGMENT

15

16

17

Your Name Printed

18

19

Your Address

20

21

Your Telephone Number

1 _____

2 State of _____

3 County of _____

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

5 by _____.

6 (Name of Principal)

7 _____ (Seal, if any)

8 Signature of Notary _____

9 My commission expires: _____

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

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

15 § 4053. AGENT’S CERTIFICATION

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

18 AGENT’S CERTIFICATION AS TO THE VALIDITY OF POWER OF

19 ATTORNEY AND AGENT’S AUTHORITY

20 State of _____

21 [County] of _____]

1 I, _____ (Name of Agent), certify under
2 penalty of perjury that _____ (Name of Principal)
3 granted me authority as an agent or successor agent in a power of attorney
4 dated _____.

5 I further certify that to my knowledge:

6 (1) the Principal is alive and has not revoked the Power of Attorney or
7 my authority to act under the Power of Attorney and the Power of Attorney
8 and my authority to act under the Power of Attorney have not terminated;

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

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

13 (4) (Insert other relevant statements below)

14 _____
15 _____
16 _____
17 _____
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20 SIGNATURE AND ACKNOWLEDGMENT

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Agent's Name Printed

Agent's Address

Agent's Telephone Number

This document was acknowledged before me on _____,

_____ (Date)

by _____

(Name of Agent)

_____ (Seal, if any)

Signature of Notary

My commission expires: _____

Subchapter 4. Miscellaneous Provisions

§ 4061. UNIFORMITY OF APPLICATION AND CONSTRUCTION

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

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

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

6 § 4063. EFFECT ON EXISTING POWERS OF ATTORNEY

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

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

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

12 (3) this chapter applies to a judicial proceeding concerning a power of
13 attorney commenced before July 1, 2023 unless the court finds that application
14 of a provision of this chapter would substantially interfere with the effective
15 conduct of the judicial proceeding or prejudice the rights of a party, in which
16 case that provision does not apply and the superseded law applies; and

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

18 Sec. 2. REPEAL

19 14 V.S.A. chapter 123 (powers of attorney) is repealed.

20 **Sec. 3. 14A V.S.A. § 401 is amended to read:**

21 **§ 401. METHODS OF CREATING TRUST**

1 A trust may be created:

2 (1) by transfer of property to another person as trustee or to the trust in
3 the trust's name during the settlor's lifetime or by will or other disposition
4 taking effect upon the settlor's death;

5 (2) by declaration by the owner of property that the owner holds
6 identifiable property as trustee;

7 (3) by exercise of a power of appointment in favor of a trustee;

8 (4) pursuant to a statute or judgment or decree that requires property to
9 be administered in the manner of an express trust; or

10 (5)(A) by an agent or attorney-in-fact under a power of attorney that
11 expressly grants authority to create the trust; ~~or~~

12 ~~(B) by an agent or attorney in fact under a power of attorney that~~
13 ~~grants the agent or attorney in fact the authority to act in the management and~~
14 ~~disposition of the principal's property that is as broad or comprehensive as the~~
15 ~~principal could exercise for himself or herself and that does not expressly~~
16 ~~exclude the authority to create a trust, provided that any trust so created does~~
17 ~~not include any authority or powers that are otherwise prohibited by 14 V.S.A.~~
18 ~~§ 3504. An agent or attorney in fact may petition the Probate Division of the~~
19 ~~Superior Court to determine whether a power of attorney described in this~~
20 ~~subdivision grants the agent or attorney in fact authority that is as broad or~~

1 ~~comprehensive as that which the principal could exercise for himself or~~
2 ~~herself.~~

3 Sec. 4. EFFECTIVE DATE

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

5

6

7

8

9 (Committee vote: _____)

10

11

Senator _____

12

FOR THE COMMITTEE