

## **POWER OF ATTORNEY STATEMENT OF AGENT'S DUTIES AND RESPONSIBILITIES**

### **DUTIES OF THE AGENT**

(a) The agent shall have a fiduciary duty to the principal. The fiduciary duty of the agent requires that the agent, in the performance of his or her duties, shall:

- (1) act in good faith and in the interest of the principal;
- (2) refrain from self-dealing except as provided in the power of attorney pursuant to subsection 3504 (d) or (f) of this subchapter;
- (3) avoid conflicts of interest which would impair the ability of the agent to act in the interest of the principal;
- (4) not co-mingle the funds of the principal with his or her own funds or the funds of third parties, except in an attorney/client trust account in accordance with the rules governing such accounts;
- (5) exercise the degree of care that would be observed by a prudent person dealing with the property and affairs of another person;
- (6) if selected as agent with the expectation he or she has special skills or expertise, use those skills on behalf of the principal, provided the terms of the power of attorney specify that the agent is expected to use special skills and expertise, and provided, further, the agent acknowledges in signing the power of attorney that he or she has been so selected;
- (7) take no action beyond the scope of authority granted by the terms of the power of attorney;
- (8) take no action which violates any provision of this subchapter;
- (9) keep records of all transactions taken under the power of attorney;
- (10) provide accountings upon request of the principal or at such times or in such manner as is specified by the terms of the power of attorney;
- (11) follow the directions of the principal specifically forbidding an action, notwithstanding any provision of the power of attorney giving the agent authority to take such action; provided, however, no third party who acts in reliance on the apparent authority of the agent under the power of attorney shall be bound or limited by the directions of the principal to the agent not set forth in the power of attorney unless such third party has actual notice of the instructions;
- (12) comply with any lawful termination of the power of attorney as provided in section 3507 of this title.

Nothing here limits any other duties imposed on the agent by statute or common law.

### **SCOPE OF AUTHORITY**

The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney.

## NO AUTHORITY

- (b) No power of attorney may give an agent the authority to:
- (1) consent, refuse to consent, or withdraw consent to health care.
  - (2) execute, modify or revoke an Advance Directive for Health Care for the principal;
  - (3) execute, amend or revoke a will for the principal;
  - (4) execute, modify or revoke a living will for the principal;
  - (5) require the principal, against his or her will, to take any action or to refrain from taking any action;
  - (6) exercise, by delegation, the fiduciary responsibility of the principal as executor of a will or administrator of an estate;
  - (7) exercise, by delegation, the fiduciary responsibility of a trustee, unless the instrument creating or amending the trust specifically authorizes the delegation; or
  - (8) take any action specifically forbidden by the principal, notwithstanding any provision of the power of attorney giving the agent the authority to take such action.
- (c) No agent may convey lands belonging to the principal or an estate or interest therein unless the terms of the power of attorney explicitly provide the agent has such authority and the power of attorney meets the specific execution requirements of section 3503 of this title.
- (d) No agent may compensate him or herself for duties performed under a power of attorney with funds or property belonging to the principal unless the terms of the power of attorney explicitly provide for compensation. Reasonable reimbursement for actual out-of-pocket expenditures by the agent for the benefit of the principal shall not be considered compensation.
- (e) No agent may make a gift or a loan to a third party unless the terms of the power of attorney explicitly provide for the authority to make gifts or loans.
- (f) No agent may make a gift or a loan to him or herself of property belonging to the principal unless the terms of the power of attorney explicitly provide for the authority to make gifts or loans to the agent.
- (g) No agent may appoint another person as alternate or successor agent unless the terms of the power of attorney explicitly provide for the authority to appoint an alternate or successor agent.
- (h) A power of attorney may specify that accountings shall be made by the agent at specific times or upon the occurrence of specified events or that accountings be made to specified third parties. The authority of the principal to request accountings at any time shall not be limited or waived.

Note: The general power of attorney granted to you does specifically provide that the agent may do the things listed in (c)-(g) above, so you may disregard those restrictions.

## TERMINATION;REVOCAION

- (a) A power of attorney shall terminate upon:
- (1) the revocation by the principal, as provided in subsection (b) of this section;
  - (2) the divorce of the principal and spouse, where the spouse is the agent;
  - (3) the death of the principal;
  - (4) the disability or incapacity of the principal, except as provided in section 3508 of this title;
  - (5) the resignation or death of the agent, unless an alternate agent is named in the power of attorney or by the agent;
  - (6) a termination date specified in the power of attorney, if any;
  - (7) the occurrence of a termination event explicitly specified in the power of attorney; or
  - (8) the order of a court of competent jurisdiction.

(b) A principal who is not subject to an involuntary guardianship may revoke a power of attorney, whether durable or not, at any time by notification to the agent orally, or in writing, or by any other act evidencing a specific intent to revoke. An agent must comply with his or her principal's revocation notwithstanding the actual or perceived disability or incapacity of the principal.

(c) The occurrence of a terminating circumstance listed in subsection (a) of this section does not terminate a power of attorney, whether durable or not, as to the agent or other person, who, without actual knowledge of the terminating circumstance, acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his or her heirs, devisees, and personal representatives.

(d) When an agent has acted in good faith under a power of attorney without actual knowledge of the occurrence of a terminating circumstance, an affidavit may be executed by the agent at any time, stating at the time of doing an act pursuant to the power of attorney, he or she did not have actual knowledge of the occurrence of the terminating circumstance. The affidavit shall constitute conclusive proof of the non-termination of the power of attorney at that time, in the absence of fraud. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit may also be recorded and shall be cross-referenced to the other instrument.

## VALIDITY

Any power of attorney executed as provided shall be presumed valid. No third party with whom an agent seeks to act shall require an additional or different form of power of attorney. A photocopy or electronically transmitted facsimile of a duly executed original power of attorney may be relied upon to the same extent as the original.

## NO DUTY TO EXERCISE AUTHORITY UNLESS SPECIFICALLY PROVIDED

(a) Except for the duties imposed on agents by law, an agent has no duty to exercise any authority granted in a power of attorney, regardless of whether the principal is disabled or incapacitated or otherwise unable to act.

(b) Acting for the principal in one or more transactions does not obligate an agent to act for the principal in a subsequent transaction, but the agent has a duty to the principal to complete any transaction the agent has commenced.

(c) If the power of attorney explicitly provides that the agent has a duty to act for the principal as to specified transactions or types of transactions and the agent has specifically acknowledged and accepted such duty to act in signing the power of attorney, the agreement to act on behalf of the principal is enforceable against the agent regardless of whether there is any consideration to support a contractual obligation.

#### ACCOUNTINGS; DECLARATORY RELIEF; TERMINATION OF POWER OF ATTORNEY

(a) A principal may file a petition in superior court to compel the agent to submit an accounting or report his or her acts as agent to the principal or for the purposes listed in subdivisions (c)(1)-(3) of this section.

(b) The commissioner of aging and disabilities, or designee, acting pursuant to chapter 69 of Title 33, may also file a petition in superior court for the purposes listed in subsection (c) of this section. If, upon motion of the principal, the court determines that the principal is capable of expressing his or her opinion and does not wish the commissioner, or designee to pursue the petition, the court shall dismiss the petition unless the court finds the opinion is the product of duress or undue influence.

(c) A petition may be filed for the following purposes:

(1) To determine whether a power of attorney is in effect or has been terminated or revoked.

(2) To determine the legality of acts, proposed acts, or omissions of an agent.

(3) To enjoin the agent from taking unauthorized or illegal acts or to compel the agent to act, if the terms of the power of attorney provide that the agent has a duty to act, pursuant to section 3506 of this title.

(4) To compel the agent to submit an accounting or to report his or her acts as agent to the commissioner of aging and disabilities, acting pursuant to subsection (b) of this section, upon a showing that there is good cause to believe:

(A) the agent has violated the provisions of this chapter or the terms of the power of attorney, has breached his or her fiduciary duty to the principal, or is unfit to perform his or her duties under the power of attorney; and

(B) that, at the time of the petition, the principal lacked the capacity to request an accounting.

(5) To declare that the power of attorney shall be terminated upon determination by the court that the power of attorney was improperly executed, the principal executed the power of attorney as the result of duress, fraud or undue influence, the principal lacked the capacity to create the power of attorney at the time of execution, the agent has violated the provisions of this chapter or the terms of the power of attorney, has breached his or her fiduciary duty to the principal, or is unfit to perform his or her duties under the power of attorney.

(d) (1) In a proceeding under this section, commenced by the filing of a petition by a principal or the principal's legal representative, the court may order an agent to pay reasonable attorney's fees to the principal if the court determines that the agent has clearly violated the

provisions of this chapter or the terms of the power of attorney, his or her fiduciary duties under the power of attorney, or has failed without any reasonable cause or justification to submit accountings or reports after written request.

(2) In a proceeding under this section, commenced by the filing of a petition by the commissioner of aging and disabilities, or designee, the court may order the commissioner to pay reasonable attorney's fees to the agent if the court finds that the petition was filed without a substantial basis in law or fact.

(e) The principal and the agent shall be parties to any petition brought under this section.

## REMEDIES FOR VIOLATION BY AGENT

Any principal who sustains damages or injury as a result of an agent's action or inaction in violation of this subchapter, the terms of a power of attorney, or the agent's fiduciary duties under a power of attorney may sue for appropriate equitable relief, and may sue and recover from the agent the amount of his or her damages, costs, and reasonable attorney's fees. There may be other causes of action, statutes or remedies available to the principal who sustains damages as well.

## DEFINITIONS OF TERMS

(1) "Accounting" means a written statement itemizing transactions taken by an agent pursuant to authority granted by a principal under a power of attorney.

(2) "Agent" means a person named by a principal in a written power of attorney to act on the principal's behalf, and is synonymous with the term "attorney-in-fact".

(3) "Commercial transaction" means any transaction entered into on behalf of the principal for commercial or business purposes and not primarily for person, family, or household purposes.

(4) "Compensation" means payment to the agent from assets of the principal for services rendered by the agent.

(5) "Disability or incapacity of the principal" means a physical or mental condition which prevents the principal from directing the actions of the agent and would, under common law principles of agency, cause a power of attorney previously executed by the principal to terminate.

(6) "Durable power of attorney" means a written power of attorney in which the authority of the agent does not terminate in the event of the disability or incapacity of the principal.

(7) "Gift" means any transfer of anything of value for which consideration of less than fair market value is received.

(8) "Power of attorney" means a written document by which a principal designates an agent to act in his or her behalf.

(9) "Principal" means a person who executes a power of attorney designating one or more agents to act on his or her behalf.

(10) "Revocation" means the cancellation by a principal of the authority previously given by the principal to an agent.

(11) "Self-dealing" means any transaction, including transfer of property of a principal to an agent, that directly or indirectly benefits the agent or the immediate family of the agent, regardless of whether the agent has provided consideration for the transaction.

(12) "Termination" means any occurrence or event, including revocation, which, under

this subchapter, causes the authority previously given by a principal to an agent to cease.

(13) “Terms of the power of attorney” means the specific language contained in a power of attorney.

(14) “Third party” means any person that acts on a request from, contracts with, or otherwise deals with an agent pursuant to authority granted by a principal in a power of attorney.

This statement was prepared and supplied as a courtesy by:

Rich Cassidy Law  
1233 Shelburne Road  
Suite D5  
South Burlington, VT 05403  
[info@richcassidylaw.com](mailto:info@richcassidylaw.com)  
802-864-8144

The information contained herein is based upon the provisions of 14 VSA Chapter 123, effective July 1, 2002. The statute is not set out here in its entirety, nor in its original order. This information is intended as a guide, ONLY, and does not constitute legal advice. Reference should be had to the complete Statute for specific references and provisions. **SEEK EXPERIENCED LEGAL ADVICE IF YOU HAVE QUESTIONS REGARDING YOUR DUTIES, POWERS OR LIABILITIES.**