

1 H.227

2 An act relating to the Vermont Uniform Power of Attorney Act

3 It is hereby enacted by the General Assembly of the State of Vermont:

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

5 CHAPTER 127. VERMONT UNIFORM POWER OF ATTORNEY ACT

6 Subchapter 1. General Provisions

7 § 4001. SHORT TITLE

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

9 § 4002. DEFINITIONS

10 As used in this chapter:

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

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

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

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

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

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

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

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

13 (i) missing;

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

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

16 (8) “Person” means an individual; corporation; business trust; estate;
17 trust; partnership; limited liability company; association; joint venture; public
18 corporation; government or governmental subdivision, agency, or
19 instrumentality; or any other legal or commercial entity.

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

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

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

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

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

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

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

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

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

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

11 § 4003. APPLICABILITY

12 This chapter applies to all powers of attorney except:

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

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

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

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

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

2 § 4004. POWER OF ATTORNEY IS DURABLE

3 A power of attorney created under this chapter is durable unless it expressly
4 provides that it is terminated by the incapacity or unavailability of the
5 principal.

6 § 4005. EXECUTION OF POWER OF ATTORNEY

7 A power of attorney shall be signed by the principal or in the principal's
8 conscious presence by another individual directed by the principal to sign the
9 principal's name on the power of attorney. A signature on a power of attorney
10 is presumed to be genuine if the principal acknowledges the signature before a
11 notary public or other individual authorized by law to take acknowledgments.

12 § 4006. VALIDITY OF POWER OF ATTORNEY

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

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

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

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

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

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

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

10 § 4007. MEANING AND EFFECT OF POWER OF ATTORNEY

11 The meaning and effect of a power of attorney is determined by the law of
12 the jurisdiction indicated in the power of attorney and, in the absence of an
13 indication of jurisdiction, by the law of the jurisdiction in which the power of
14 attorney was executed.

15 § 4008. NOMINATION OF GUARDIAN; RELATION OF AGENT TO

16 COURT-APPOINTED FIDUCIARY

17 (a) In a power of attorney, a principal may nominate a guardian of the
18 principal's estate or a guardian of the principal's person for consideration by
19 the court if protective proceedings for the principal's estate or person are
20 begun after the principal executes the power of attorney. Except for good

1 cause shown or disqualification, the court shall make its appointment in
2 accordance with the principal's most recent nomination.

3 (b) If, after a principal executes a power of attorney, a court appoints a
4 guardian of the principal's estate or other fiduciary charged with the
5 management of some or all of the principal's property, the agent is accountable
6 to the fiduciary as well as to the principal. The power of attorney is not
7 terminated, and the agent's authority continues unless limited, suspended, or
8 terminated by the court.

9 § 4009. WHEN POWER OF ATTORNEY EFFECTIVE

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

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

17 (c) If a power of attorney becomes effective upon the principal's incapacity
18 or unavailability and the principal has not authorized a person to determine
19 whether the principal is incapacitated or unavailable, or the person authorized
20 is unable or unwilling to make the determination, the power of attorney
21 becomes effective upon a determination in a writing or other record by:

1 (1) a licensed health care professional working within the professional’s
2 scope of practice, including a physician licensed pursuant to 26 V.S.A. chapter
3 23 or 33 and a psychologist licensed pursuant to 26 V.S.A. chapter 55, that the
4 principal is incapacitated within the meaning of subdivision 4002(7)(A) of this
5 chapter; or

6 (2) an attorney at law, a judge, or an appropriate governmental official
7 that the principal is unavailable within the meaning of 4002(7)(B) of this
8 chapter.

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

16 § 4010. TERMINATION OF POWER OF ATTORNEY OR AGENT’S

17 AUTHORITY

18 (a) A power of attorney terminates when:

19 (1) the principal dies;

20 (2) the principal becomes incapacitated or unavailable, if the power of
21 attorney is not durable;

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

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

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

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

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

8 (1) the principal revokes the authority;

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

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

13 (4) the power of attorney terminates.

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

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

1 (e) Incapacity or unavailability of the principal of a power of attorney that
2 is not durable does not revoke or terminate the power of attorney as to an agent
3 or other person that, without actual knowledge of the incapacity or
4 unavailability, acts in good faith under the power of attorney. An act so
5 performed, unless otherwise invalid or unenforceable, binds the principal and
6 the principal's successors in interest.

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

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

13 § 4011. CO-AGENTS AND SUCCESSOR AGENTS

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

17 (b) A principal may designate one or more successor agents to act if an
18 agent resigns, dies, becomes incapacitated or unavailable, is not qualified to
19 serve, or declines to serve. A principal may grant authority to designate one or
20 more successor agents to an agent or other person designated by name, office,

1 or function. Unless the power of attorney otherwise provides, a successor
2 agent:

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

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

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

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

18 § 4012. REIMBURSEMENT AND COMPENSATION OF AGENT

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

1 § 4013. AGENT’S ACCEPTANCE

2 Except as otherwise provided in the power of attorney, a person accepts
3 appointment as an agent under a power of attorney by exercising authority or
4 performing duties as an agent or by any other assertion or conduct indicating
5 acceptance.

6 § 4014. AGENT’S DUTIES

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

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

12 (2) act in good faith; and

13 (3) act only within the scope of authority granted in the power of
14 attorney.

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

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

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

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

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

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

9 (6) attempt to preserve the principal's estate plan, to the extent actually
10 known by the agent, if preserving the plan is consistent with the principal's
11 best interests based on all relevant factors, including:

12 (A) the value and nature of the principal's property;

13 (B) the principal's foreseeable obligations and need for maintenance;

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

16 (D) eligibility for a benefit, a program, or assistance under a statute
17 or regulation.

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

20 (d) An agent who acts with care, competence, and diligence for the best
21 interests of the principal is not liable solely because the agent also benefits

1 from the act or has an individual or conflicting interest in relation to the
2 property or affairs of the principal.

3 (e) If an agent is selected by the principal because of special skills or
4 expertise possessed by the agent or in reliance on the agent's representation
5 that the agent has special skills or expertise, the special skills or expertise must
6 be considered in determining whether the agent has acted with care,
7 competence, and diligence under the circumstances.

8 (f) Absent a breach of duty to the principal, an agent is not liable if the
9 value of the principal's property declines.

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

15 (h) Except as otherwise provided in the power of attorney, an agent is not
16 required to disclose receipts, disbursements, or transactions conducted on
17 behalf of the principal unless ordered by a court or requested by the principal, a
18 guardian, a conservator, another fiduciary acting for the principal, a
19 governmental agency having authority to protect the welfare of the principal,
20 or, upon the death of the principal, by the personal representative or successor
21 in interest of the principal's estate. If so requested, within 30 days the agent

1 shall comply with the request or provide a writing or other record
2 substantiating why additional time is needed and shall comply with the request
3 within an additional 30 days.

4 § 4015. EXONERATION OF AGENT

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

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

9 (A) dishonestly;

10 (B) in bad faith;

11 (C) with reckless indifference to the purposes of the power of

12 attorney;

13 (D) through willful misconduct;

14 (E) through gross negligence; or

15 (F) with actual fraud; or

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

18 § 4016. JUDICIAL RELIEF

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

21 (1) the principal or the agent;

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

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

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

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

7 (6) a person named as a beneficiary to receive any property, benefit, or
8 contractual right on the principal's death or as a beneficiary of a trust created
9 by or for the principal who has a financial interest in the principal's estate;

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

12 (8) the principal's caregiver or another person who demonstrates
13 sufficient interest in the principal's welfare; and

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

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

18 § 4017. AGENT'S LIABILITY

19 An agent who violates this chapter is liable to the principal or the
20 principal's successors in interest for the amount required to:

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

3 (2) reimburse the principal or the principal's successors in interest for
4 the attorney's fees and costs paid on the agent's behalf;

5 (3) reimburse the reasonable attorney's fees and costs incurred by the
6 principal or the principal's successor in interest in pursuing rectification of the
7 violation by the agent; and

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

10 § 4018. AGENT'S RESIGNATION; NOTICE

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

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

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

17 (A) the principal's caregiver;

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

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

1 § 4019. ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED

2 POWER OF ATTORNEY

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

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

9 (c) A person who effects a transaction in reliance upon an acknowledged
10 power of attorney without actual knowledge that the power of attorney is void,
11 invalid, or terminated; that the purported agent’s authority is void, invalid, or
12 terminated; or that the agent is exceeding or improperly exercising the agent’s
13 authority may rely upon the power of attorney as if the power of attorney were
14 genuine, valid, and still in effect; the agent’s authority were genuine, valid, and
15 still in effect; and the agent had not exceeded and has properly exercised the
16 authority.

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

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

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

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

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

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

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

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

14 (4) to the best of the agent's knowledge, at the time the power of
15 attorney was signed, the principal was competent to execute the document and
16 was not under undue influence to sign the document;

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

19 (6) the agent does not have actual knowledge of the revocation,
20 termination, limitation, or modification of the power of attorney or of the
21 agent's authority;

1 (7) if the agent was married to or in a state-registered domestic
2 partnership with the principal at the time of execution of the power of attorney,
3 then at the time of signing the affidavit or declaration, the marriage or state-
4 registered domestic partnership of the principal and the agent has not been
5 dissolved or declared invalid, and no action is pending for the dissolution of
6 the marriage or domestic partnership for legal separation; and

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

9 (f) An English translation or an opinion of counsel requested under this
10 section must be provided at the principal's expense unless the request is made
11 more than seven business days after the power of attorney is presented for
12 acceptance.

13 (g) For purposes of this section and section 4020 of this title, a person who
14 conducts activities through employees is without actual knowledge of a fact
15 relating to a power of attorney, a principal, or an agent if the employee
16 conducting the transaction involving the power of attorney is without actual
17 knowledge of the fact.

18 § 4020. LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED

19 STATUTORY FORM POWER OF ATTORNEY

20 (a) As used in this section, "statutory form power of attorney" means a
21 power of attorney substantially in the form provided in section 4051 or 4052 of

1 this title or that meets the requirements for a military power of attorney
2 pursuant to 10 U.S.C. § 1044b, as amended.

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

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

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

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

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

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

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

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

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

5 (5) the person in good faith believes that the power is not valid or that
6 the agent does not have the authority to perform the act requested, whether or
7 not a certification, a translation, or an opinion of counsel under subsection
8 4019(d) of this title has been requested or provided; or

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

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

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

18 (2) liability for reasonable attorney's fees and costs incurred in any
19 action or proceeding that confirms the validity of the power of attorney or
20 mandates acceptance of the power of attorney.

1 § 4021. PRINCIPLES OF LAW AND EQUITY

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

4 § 4022. LAWS APPLICABLE TO FINANCIAL INSTITUTIONS AND
5 ENTITIES

6 This chapter does not supersede any other law applicable to financial
7 institutions or other entities, and the other law controls if inconsistent with this
8 chapter.

9 § 4023. REMEDIES UNDER OTHER LAW

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

12 Subchapter 2. Authority

13 § 4031. AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF
14 GENERAL AUTHORITY

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

20 (1) create, amend, revoke, or terminate an inter vivos trust;

21 (2) make a gift;

1 (3) create or change rights of survivorship;

2 (4) create or change a beneficiary designation;

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

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

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

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

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

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

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

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

18 (b) Notwithstanding a grant of authority to do an act described in
19 subsection (a) of this section, unless the power of attorney otherwise provides,
20 an agent that is not an ancestor, spouse, or descendant of the principal may not
21 exercise authority under a power of attorney to create in the agent, or in an

1 individual to whom the agent owes a legal obligation of support, an interest in
2 the principal's property, whether by gift, right of survivorship, beneficiary
3 designation, disclaimer, or otherwise.

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

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

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

12 (f) Authority granted in a power of attorney is exercisable with respect to
13 property that the principal has when the power of attorney is executed or
14 acquires later, whether or not the property is located in this State and whether
15 or not the authority is exercised or the power of attorney is executed in this
16 State.

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

1 § 4032. INCORPORATION OF AUTHORITY

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

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

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

12 § 4033. CONSTRUCTION OF AUTHORITY GENERALLY

13 Except as otherwise provided in the power of attorney, by executing a
14 power of attorney that incorporates by reference a subject described in sections
15 4034–4047 of this title or that grants to an agent authority to do all acts that a
16 principal could do pursuant to subsection 4031(c) of this title, a principal
17 authorizes the agent, with respect to that subject, to:

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

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

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

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

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

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

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

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

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

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

6 § 4034. REAL PROPERTY

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

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

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

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

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

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

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

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

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

14 and

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

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

20 (7) participate in a reorganization with respect to real property or an
21 entity that owns an interest in or right incident to real property and receive, and

1 hold, and act with respect to stocks and bonds or other property received in a
2 plan of reorganization, including:

3 (A) selling or otherwise disposing of them;

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

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

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

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

11 and

12 (10) relinquish any and all of the principal's rights of homestead under
13 27 V.S.A. § 105 and elective share under section 323 of this title.

14 § 4035. TANGIBLE PERSONAL PROPERTY

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

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

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

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

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

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

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

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

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

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

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

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

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

4 § 4036. STOCKS AND BONDS

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

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

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

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

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

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

18 § 4037. COMMODITIES AND OPTIONS

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

- 1 (1) buy, sell, exchange, assign, settle, and exercise commodity futures
2 contracts and call or put options on stocks or stock indexes traded on a
3 regulated option exchange; and
4 (2) establish, continue, modify, and terminate option accounts.

5 § 4038. BANKS AND OTHER FINANCIAL INSTITUTIONS

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

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

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

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

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

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

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

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

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

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

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

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

19 § 4039. OPERATION OF ENTITY OR BUSINESS

20 Subject to the terms of a document or an agreement governing an entity or
21 an entity ownership interest, and unless the power of attorney otherwise

1 provides, language in a power of attorney granting general authority with
2 respect to operation of an entity or business authorizes the agent to:

3 (1) operate, buy, sell, enlarge, reduce, or terminate an ownership
4 interest;

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

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

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

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

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

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

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

1 (B) determine:

2 (i) the location of its operation;

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

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

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

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

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

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

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

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

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

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

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

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

9 § 4040. INSURANCE AND ANNUITIES

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

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

17 (2) procure new, different, and additional contracts of insurance and
18 annuities for the principal and the principal's spouse, children, and other
19 dependents and select the amount, type of insurance or annuity, and mode of
20 payment;

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

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

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

8 (6) exercise an election;

9 (7) exercise investment powers available under a contract of insurance
10 or annuity;

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

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

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

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

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

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

5 § 4041. ESTATES, TRUSTS, AND OTHER BENEFICIAL INTERESTS

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

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

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

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

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

20 (4) initiate, participate in, submit to alternative dispute resolution, settle,
21 oppose, or propose or accept a compromise with respect to litigation to

1 ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or
2 other instrument or transaction affecting the interest of the principal;

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

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

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

12 § 4042. CLAIMS AND LITIGATION

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

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

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

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

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

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

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

20 (7) act for the principal with respect to bankruptcy or insolvency,
21 whether voluntary or involuntary, concerning the principal or some other

1 person, or with respect to a reorganization, receivership, or application for the
2 appointment of a receiver or trustee that affects an interest of the principal in
3 property or other thing of value;

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

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

8 § 4043. PERSONAL AND FAMILY MAINTENANCE

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

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

15 (A) other individuals legally entitled to be supported by the principal;

16 and

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

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

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

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

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

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

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

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

20 (7) continue any provision made by the principal for automobiles or
21 other means of transportation, including registering, licensing, insuring, and

1 replacing them, for the individuals described in subdivision (1) of this
2 subsection;

3 (8) maintain credit and debit accounts for the convenience of the
4 individuals described in subdivision (1) of this subsection and open new
5 accounts; and

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

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

12 § 4044. BENEFITS FROM GOVERNMENTAL PROGRAMS OR CIVIL OR
13 MILITARY SERVICE

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

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

1 (1) execute vouchers in the name of the principal for allowances and
2 reimbursements payable by the United States or a foreign government or by a
3 state or subdivision of a state to the principal, including allowances and
4 reimbursements for transportation of the individuals described in subdivision
5 4043(a)(1) of this title and for shipment of their household effects;

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

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

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

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

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

4 § 4045. RETIREMENT PLANS

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

10 (1) an individual retirement account under Internal Revenue Code § 408,
11 26 U.S.C. § 408, as amended;

12 (2) a Roth individual retirement account under Internal Revenue Code
13 § 408A, 26 U.S.C. § 408A, as amended;

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

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

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

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

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

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

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

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

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

13 (4) make contributions to a retirement plan;

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

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

17 § 4046. TAXES

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

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

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

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

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

18 § 4047. GIFTS

19 (a) For purposes of this section, “gift” includes a gift for the benefit of a
20 person, including a gift to a trust, an account under chapter 115 of this title
21 (Vermont Uniform Transfers to Minors Act), and a tuition savings account or

1 prepaid tuition plan as defined under Internal Revenue Code § 529, 26 U.S.C.
2 § 529, as amended.

3 (b) An agent may make a gift of the principal's property only as the agent
4 determines is consistent with the principal's objectives if actually known by
5 the agent or, if unknown, as the agent determines is consistent with the
6 principal's best interests based on all relevant factors, including:

7 (1) evidence of the principal's intent;

8 (2) the principal's personal history of making or joining in the making
9 of lifetime gifts;

10 (3) the principal's estate plan;

11 (4) the principal's foreseeable obligations and maintenance needs and
12 the impact of the proposed gift on the principal's housing options, access to
13 care and services, and general welfare;

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

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

19 (c) An agent may make a gift of the principal's property only as the agent
20 determines is consistent with the principal's objectives if actually known by

1 the agent and, if unknown, as the agent determines is consistent with the
2 principal's best interests based on all relevant factors, including:

3 (1) the value and nature of the principal's property;

4 (2) the principal's foreseeable obligations and need for maintenance;

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

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

9 (5) the principal's personal history of making or joining in making gifts.

10 Subchapter 3. Statutory Forms

11 § 4051. STATUTORY FORM POWER OF ATTORNEY

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

15 VERMONT STATUTORY FORM POWER OF ATTORNEY

16 IMPORTANT INFORMATION

17 This power of attorney authorizes another person (your agent) to make
18 decisions concerning your property for you (the principal). Your agent will be
19 able to make decisions and act with respect to your property (including your
20 money) whether or not you are able to act for yourself. The meaning of

1 authority over subjects listed on this form is explained in the Vermont Uniform
2 Power of Attorney Act, 14 V.S.A. chapter 127.

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

5 You should select someone you trust to serve as your agent. Unless you
6 specify otherwise, generally the agent's authority will continue until you die or
7 revoke the power of attorney or the agent resigns or is unable to act for you.
8 Your agent is entitled to reasonable compensation unless you state otherwise in
9 the Special Instructions.

10 This form does not revoke powers of attorney previously executed by you
11 unless you initial the introductory paragraph under DESIGNATION OF
12 AGENT that all previous powers of attorney are revoked.

13 This form provides for designation of one agent. If you wish to name more
14 than one agent, you may name a coagent in the Special Instructions. Coagents
15 are not required to act together unless you include that requirement in the
16 Special Instructions.

17 If your agent is unable or unwilling to act for you, your power of attorney
18 will end unless you have named a successor agent. You may also name a
19 second successor agent.

20 This power of attorney becomes effective immediately unless you state
21 otherwise in the Special Instructions.

1 If you have questions about the power of attorney or the authority you are
2 granting to your agent, you should seek legal advice before signing this form.

3 DESIGNATION OF AGENT

4 I _____ (Name of Principal) () revoke all previous
5 powers of attorney and name the following person as my agent:

6 Name of Agent: _____

7 Agent’s Address: _____

8 Agent’s Telephone Number: _____

9 DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

11 Name of Successor Agent: _____

12 Successor Agent’s Address: _____

13 Successor Agent’s Telephone Number: _____

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

16 Name of Second Successor Agent: _____

17 Second Successor Agent’s Address: _____

18 Second Successor Agent’s Telephone Number: _____

1 GRANT OF GENERAL AUTHORITY

2 I grant my agent and any successor agent general authority to act for me
3 with respect to the following subjects as defined in the Vermont Uniform
4 Power of Attorney Act, 14 V.S.A. chapter 127.

5 (INITIAL each subject you want to include in the agent’s general authority. If
6 you wish to grant general authority over all of the subjects, you may initial
7 “All Preceding Subjects” instead of initialing each subject.)

8 () Real Property

9 () Tangible Personal Property

10 () Stocks and Bonds

11 () Commodities and Options

12 () Banks and Other Financial Institutions

13 () Operation of Entity or Business

14 () Insurance and Annuities

15 () Estates, Trusts, and Other Beneficial Interests

16 () Claims and Litigation

17 () Personal and Family Maintenance

18 () Benefits from Governmental Programs or Civil or Military Service

19 () Retirement Plans

20 () Taxes

21 () All Preceding Subjects

1 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

3 I have INITIALED the specific authority listed below:

4 (CAUTION: Granting any of the following will give your agent the authority

5 to take actions that could significantly reduce your property or change how

6 your property is distributed at your death. INITIAL ONLY the specific

7 authority you WANT to give your agent.)

8 () An agent who is not an ancestor, spouse, or descendant may exercise

9 authority under this power of attorney to create in the agent or in an individual

10 to whom the agent owes a legal obligation of support an interest in my

11 property whether by gift, rights of survivorship, beneficiary designation,

12 disclaimer, or otherwise

13 () Create, amend, revoke, or terminate an inter vivos, family, living,

14 irrevocable, or revocable trust

15 () Consent to the modification or termination of a noncharitable

16 irrevocable trust under 14A V.S.A. § 411

17 () Make a gift, subject to the limitations of 14 V.S.A. § 4047 (gifts) and

18 any special instructions in this power of attorney

19 () Create, amend, or change rights of survivorship

20 () Create, amend, or change a beneficiary designation

1 () Waive the principal’s right to be a beneficiary of a joint and survivor
2 annuity, including a survivor benefit under a retirement plan

3 () Exercise fiduciary powers that the principal has authority to delegate

4 () Authorize another person to exercise the authority granted under this
5 power of attorney

6 () Disclaim or refuse an interest in property, including a power of
7 appointment

8 () Exercise authority with respect to elective share under 14 V.S.A. § 319

9 () Exercise waiver rights under 14 V.S.A. § 323

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

13 () Exercise authority with respect to intellectual property, including,
14 without limitation, copyrights, contracts for payment of royalties, and
15 trademarks

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

18 LIMITATION ON AGENT’S AUTHORITY

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

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WHEN POWER OF ATTORNEY EFFECTIVE

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

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

OR

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

OR

() I direct that this power of attorney shall become effective when one or more of the following occurs:

SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

1 _____
2 _____
3 _____
4 _____
5 _____
6 _____

7 EFFECTIVE DATE

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

10 NOMINATION OF GUARDIAN (OPTIONAL)

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

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

14 _____

15 Nominee's Address: _____

16 Nominee's Telephone Number: _____

17 Name of Nominee for guardian of my person: _____

18 Nominee's Address: _____

19 Nominee's Telephone Number: _____

1 RELIANCE ON THIS POWER OF ATTORNEY

2 Any person, including my agent, may rely upon the validity of this power of
3 attorney or a copy of it unless that person knows it has terminated or is invalid.
4 Unless expressly stated otherwise, this power of attorney is durable and shall
5 remain valid if I become incapacitated or unavailable.

6 SIGNATURE AND ACKNOWLEDGMENT

7 _____

8 Your Name Printed

9 _____

10 Your Address

11 _____

12 Your Telephone Number

13 _____

14 State of _____

15 County of _____

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

17 by _____ .

18 (Name of Principal)

19 _____ (Seal, if any)

20 Signature of Notary _____

21 My commission expires: _____

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IMPORTANT INFORMATION FOR AGENT

Agent’s Duties

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

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

(2) act in good faith;

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

and

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

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

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

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

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

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

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

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

10 Termination of Agent's Authority

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

15 (1) death of the principal;

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

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

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

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

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

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

3 Liability of Agent

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

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

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

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

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

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

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

5 DESIGNATION OF AGENT

6 I/we _____ and _____

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

8 Name of Agent: _____

9 Name of Alternate Agent: _____

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

11 (Street): _____, (Municipality)

12 _____, Vermont.

13 Transaction for which the power of attorney is given:

14 Sale

15 Purchase or Acquisition

16 Mortgage

17 Finance and/or Mortgage

18 Gift

19 GRANT OF AUTHORITY

20 I/we grant my (our) agent and any alternate agent authority named in this
21 power of attorney to act for me/us with respect to a real estate transaction

1 involving the property with the address stated above, including, but not limited
2 to, the powers described in 14 V.S.A. § 4034(2), (3), and (4) as provided in the
3 Vermont Uniform Power of Attorney Act, 14 V.S.A. chapter 127.

4 POWER TO DELEGATE

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

8 TERM

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

11 SELF DEALING

12 [] If this box is checked, the agent named in this power of attorney may
13 convey the subject real estate with or without consideration to the agent,
14 individually, in trust, or to one or more persons with the agent.

15 CHOICE OF LAW

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

18 SIGNATURE AND ACKNOWLEDGMENT

19 _____

20 Your Name Printed

21 _____

1 Your Address

2 _____

3 Your Telephone Number

4 _____

5 State of _____

6 County of _____

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

8 by _____.

9 (Name of Principal)

10 _____ (Seal, if any)

11 Signature of Notary _____

12 My commission expires: _____

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

15 § 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 _____
18 _____
19 _____

1 SIGNATURE AND ACKNOWLEDGMENT

2 _____

3 _____

4 Agent's Name Printed

5 _____

6 Agent's Address

7 _____

8 Agent's Telephone Number

9 This document was acknowledged before me on _____,

10 (Date)

11 by _____

12 (Name of Agent)

13 _____ (Seal, if any)

14 Signature of Notary

15 My commission expires: _____

16 Subchapter 4. Miscellaneous Provisions

17 § 4061. UNIFORMITY OF APPLICATION AND CONSTRUCTION

18 In applying and construing this uniform act, consideration shall be given to

19 the need to promote uniformity of the law with respect to its subject matter

20 among the states that enact it.

1 § 4062. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
2 NATIONAL COMMERCE ACT

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

8 § 4063. EFFECT ON EXISTING POWERS OF ATTORNEY

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

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

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

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

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

20 Sec. 2. REPEAL

21 14 V.S.A. chapter 123 (powers of attorney) is repealed.

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

2 § 401. METHODS OF CREATING TRUST

3 A trust may be created:

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

7 (2) by declaration by the owner of property that the owner holds
8 identifiable property as trustee;

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

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

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

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

1 ~~subdivision grants the agent or attorney-in-fact authority that is as broad or~~
2 ~~comprehensive as that which the principal could exercise for himself or~~
3 ~~herself.~~

4 Sec. 4. EFFECTIVE DATE

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