

H.227

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2 Representative Andriano of Orwell moves that the bill be amended as  
3 follows:

4 First: In Sec. 1, 14 V.S.A. § 4002, in subdivision (2), after “incapacity” by  
5 inserting “or unavailability”

6 Second: In Sec. 1, 14 V.S.A. § 4002, by striking subdivision (7) in its  
7 entirety and inserting in lieu thereof a new subdivision (7) to read as follows:

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

12 Third: In Sec. 1, 14 V.S.A. § 4002, by inserting a new subdivision (17) to  
13 read as follows:

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

16 (A) missing;

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

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

19 Fourth: In Sec. 1, 14 V.S.A. § 4004, in subdivision (2), after “incapacity”  
20 by inserting “or unavailability”

**Commented [RC1]:** If you renumber this as (7) (B) instead of as (17), the cross reference in Section 4009 (c) (2) will be correct and you will keep related definitions together which will be easier for future researchers. In that event, you would, of course re designate (A) (B) and © to be (1) (2) and (3).

1        Fifth: In Sec. 1, 14 V.S.A. § 4009, by striking subsection (c) in its entirety  
2 and inserting in lieu thereof a new subsection (c) to read as follows:

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

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

13        (2) an attorney at law, a judge, or an appropriate governmental official that  
14 the principal is unavailable within the meaning of subdivision 4002(17) of this  
15 chapter.

16        Sixth: In Sec. 1, 14 V.S.A. § 4009, in subsection (d), after “incapacitated”  
17 by inserting “or unavailable”

18        Seventh: In Sec. 1, 14 V.S.A. § 4010, in subdivision (a)(2), after  
19 “incapacitated” by inserting “or unavailable”

20        Eighth: In Sec. 1, 14 V.S.A. § 4010, in subdivision (a)(6), after  
21 “incapacitated” by inserting “or unavailable”

1 Ninth: In Sec. 1, 14 V.S.A. § 4010, in subdivision (b)(2), after  
2 “incapacitated” by inserting “or unavailable”

3 Tenth: In Sec. 1, 14 V.S.A. § 4010, by striking subsection (e) in its entirety  
4 and inserting in lieu thereof a new subsection (e) to read as follows:

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

11 Eleventh: In Sec. 1, 14 V.S.A. § 4010, by inserting a new subsection (g) to  
12 read as follows:

13 (g)(1) The principal of a power of attorney shall not revoke the power of  
14 attorney if the principal has been determined to be incapacitated.

15 (2) The principal of a power of attorney may revoke the power of  
16 attorney if the principal is unavailable.

17 Twelfth: In Sec. 1, 14 V.S.A. § 4011, in subsection (b), after  
18 “incapacitated” by inserting “or unavailable”

19 Thirteenth: In Sec. 1, 14 V.S.A. § 4011, in subdivision (b)(2), after  
20 “incapacitated” by inserting “or unavailable”

**Commented [RC2]:** I would substitute "may" for "shall."  
You don't intend to forbid revocation, you mean to say that  
the principal does not have the ability to do it.

**Commented [RC3]:** This subsection is a little worrisome.  
Unless it is a power coupled with an interest (to which this  
Act is inapplicable), a principal can always revoke a power.  
Some judge might be puzzled by the negative implication of  
this subdivision, i.e. if the principal can revoke if the agent is  
unavailable, does that mean that the principal can't otherwise  
revoke? The Bill talks about principals revoking so often that  
I don't think this reading makes sense, but then the Bill never  
explicitly says a Principal can revoke at will.

1        Fourteenth: In Sec. 1, 14 V.S.A. § 4011, in subsection (d), after  
2        “incapacitated” by inserting “or unavailable”

3        Fifteenth: In Sec. 1, 14 V.S.A. § 4018, after “incapacitated” by inserting  
4        “or unavailable”

5        Sixteenth: In Sec. 1, 14 V.S.A. chapter 127, subchapter 3, by striking  
6        § 4051 in its entirety and inserting in lieu thereof a new § 4051 to read as  
7        follows:

8        § 4051. STATUTORY FORM POWER OF ATTORNEY

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

12                    VERMONT STATUTORY FORM POWER OF ATTORNEY

13                            IMPORTANT INFORMATION

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

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

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

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

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

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

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

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



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

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

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

4 ( ) Real Property

5 ( ) Tangible Personal Property

6 ( ) Stocks and Bonds

7 ( ) Commodities and Options

8 ( ) Banks and Other Financial Institutions

9 ( ) Operation of Entity or Business

10 ( ) Insurance and Annuities

11 ( ) Estates, Trusts, and Other Beneficial Interests

12 ( ) Claims and Litigation

13 ( ) Personal and Family Maintenance

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

15 ( ) Retirement Plans

16 ( ) Taxes

17 ( ) All Preceding Subjects

18 GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

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

20 I have INITIALED the specific authority listed below:

- 1 (CAUTION: Granting any of the following will give your agent the authority  
2 to take actions that could significantly reduce your property or change how  
3 your property is distributed at your death. INITIAL ONLY the specific  
4 authority you WANT to give your agent.)
- 5 ( ) An agent who is not an ancestor, spouse, or descendant may exercise  
6 authority under this power of attorney to create in the agent or in an individual  
7 to whom the agent owes a legal obligation of support an interest in my  
8 property whether by gift, rights of survivorship, beneficiary designation,  
9 disclaimer, or otherwise
- 10 ( ) Create, amend, revoke, or terminate an inter vivos, family, living,  
11 irrevocable, or revocable trust
- 12 ( ) Consent to the modification or termination of a noncharitable  
13 irrevocable trust under 14A V.S.A. § 411
- 14 ( ) Make a gift, subject to the limitations of 14 V.S.A. § 4047 (gifts) and  
15 any special instructions in this power of attorney
- 16 ( ) Create, amend, or change rights of survivorship
- 17 ( ) Create, amend, or change a beneficiary designation
- 18 ( ) Waive the principal’s right to be a beneficiary of a joint and survivor  
19 annuity, including a survivor benefit under a retirement plan
- 20 ( ) Exercise fiduciary powers that the principal has authority to delegate



1 ( ) Authorize another person to exercise the authority granted under this  
2 power of attorney

3 ( ) Disclaim or refuse an interest in property, including a power of  
4 appointment

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

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

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

10 ( ) Exercise authority with respect to intellectual property, including,  
11 without limitation, copyrights, contracts for payment of royalties, and  
12 trademarks

13 LIMITATION ON AGENT'S AUTHORITY

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

17  
18 WHEN POWER OF ATTORNEY EFFECTIVE

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

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

**Commented [RC4]:** I think you want to leave this language before the new language below:

"SPECIAL INSTRUCTIONS (OPTIONAL)

Initial:

( )"

And then delete "SPECIAL INSTRUCTIONS (OPTIONAL)" below?

1 OR

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

4 OR

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

7 \_\_\_\_\_  
8 \_\_\_\_\_  
9 \_\_\_\_\_  
10 \_\_\_\_\_  
11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14 SPECIAL INSTRUCTIONS (OPTIONAL)

15 You may give special instructions on the following lines:

16 \_\_\_\_\_  
17 \_\_\_\_\_  
18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_  
21 \_\_\_\_\_

Commented [RC5]: Cut this if you add it above?

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EFFECTIVE DATE

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

NOMINATION OF GUARDIAN (OPTIONAL)

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

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

\_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

Name of Nominee for guardian of my person: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

RELIANCE ON THIS POWER OF ATTORNEY

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

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

SIGNATURE AND ACKNOWLEDGMENT

1

2

\_\_\_\_\_

3

Your Name Printed

4

\_\_\_\_\_

5

Your Address

6

\_\_\_\_\_

7

Your Telephone Number

8

\_\_\_\_\_

9

State of \_\_\_\_\_

10

County of \_\_\_\_\_

11

This document was acknowledged before me on \_\_\_\_\_ (Date)

12

by \_\_\_\_\_.

13

(Name of Principal)

14

\_\_\_\_\_ (Seal, if any)

15

Signature of Notary \_\_\_\_\_

16

My commission expires: \_\_\_\_\_

17

IMPORTANT INFORMATION FOR AGENT

18

Agent's Duties

19

When you accept the authority granted under this power of attorney, a

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special legal relationship is created between you and the principal. This

1 relationship imposes upon you legal duties that continue until you resign or the  
2 power of attorney is terminated or revoked. You must:

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

6 (2) act in good faith;

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

8 and

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

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

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

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

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

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



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

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

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