

# VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

## CHAPTER 632

*An Act to amend and reenact §§ 6.1-125.15:1, 37.2-1009, 37.2-1020, 37.2-1023, 55-34.7, 55-544.01, 55-544.02, and 55-546.02 of the Code of Virginia; to amend the Code of Virginia by adding in Title 26 a chapter numbered 7, consisting of sections numbered 26-71.01 through 26-74.03; and to repeal §§ 11-9.1 through 11-9.7 and 37.2-1018 of the Code of Virginia, relating to the Uniform Power of Attorney Act.*

[H 719]

Approved April 11, 2010

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 6.1-125.15:1, 37.2-1009, 37.2-1020, 37.2-1023, 55-34.7, 55-544.01, 55-544.02, and 55-546.02 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 26 a chapter numbered 7, consisting of sections numbered 26-71.01 through 26-74.03, as follows:**

§ 6.1-125.15:1. Certain duties of parties to joint bank accounts in financial institutions.

Parties to a joint account in a financial institution occupy the relation of principal and agent as to each other, with each standing as a principal in regard to his ownership interest in the joint account and as agent in regard to the ownership interest of the other party. The provisions of ~~§§ 11-9.6 and 37.2-1018~~ the Uniform Power of Attorney Act (*§ 26-71.01 et seq.*) shall apply to such principal/agent relationships. For the purposes of this section, the definition of a joint account in a financial institution, and the ownership interest of the parties therein, are determined in accordance with the provisions of this chapter.

### *CHAPTER 7.*

### *UNIFORM POWER OF ATTORNEY ACT.*

#### *Article I.*

#### *General Provisions.*

§ 26-71.01. *Short title.*

*This act may be cited as the Uniform Power of Attorney Act.*

§ 26-71.02. *Definitions.*

*For the purposes of this act, unless the context requires otherwise:*

*"Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.*

*"Durable," with respect to a power of attorney, means not terminated by the principal's incapacity.*

*"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.*

*"Good faith" means honesty in fact.*

*"Incapacity" means inability of an individual to manage property or business affairs because the individual:*

*(1) Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or*

*(2) Is missing or outside the United States and unable to return.*

*"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.*

*"Power of attorney" means a writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.*

*"Presently exercisable general power of appointment," with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. The term includes a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. The term does not include a power exercisable in a fiduciary capacity or only by will.*

*"Principal" means an individual who grants authority to an agent in a power of attorney.*

*"Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.*

*"Record" means information that is inscribed on a tangible medium or that is stored in an electronic*

or other medium and is retrievable in perceivable form.

"Sign" means, with present intent to authenticate or adopt a record: (i) to execute or adopt a tangible symbol; or (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

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

§ 26-71.03. Applicability.

This act applies to all powers of attorney except:

1. A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction;

2. A power to make health care decisions;

3. A proxy or other delegation to exercise voting rights or management rights with respect to an entity;

4. A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose; and

5. A power to make arrangements for burial or disposition of remains pursuant to § 54.1-2825.

§ 26-71.04. Power of attorney is durable.

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

§ 26-71.05. Execution of power of attorney.

A power of attorney shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments. A power of attorney in order to be recordable shall satisfy the requirements of § 55-106.

§ 26-71.06. Validity of power of attorney.

A. A power of attorney executed in the Commonwealth on or after July 1, 2010, is valid if its execution complies with § 26-71.05.

B. A power of attorney executed in the Commonwealth before July 1, 2010, is valid if its execution complied with the law of the Commonwealth as it existed at the time of execution.

C. A power of attorney executed other than in the Commonwealth is valid in the Commonwealth if, when the power of attorney was executed, the execution complied with: (i) the law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to § 26-71.07; (ii) the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended; or (iii) the laws of the Commonwealth.

D. Except as otherwise provided by statute other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

E. An agent in possession of a general, special, or limited power of attorney or other writing vesting any power or authority in him shall, where the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure of the principal to deliver the instrument to him, and persons dealing with such agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired; provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in any proceeding brought to terminate, suspend, or limit the authority of the agent.

§ 26-71.07. Meaning and effect of power of attorney.

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

§ 26-71.08. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

A. In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney.

B. If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

§ 26-71.09. When power of attorney effective.

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

B. If a power of attorney becomes effective upon the occurrence of a future event or contingency, the

principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.

C. If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by: (i) the principal's attending physician and a second physician or licensed clinical psychologist after personal examination of the principal that the principal is incapacitated within the meaning of subdivision (1) of the definition of incapacity in § 26-71.02; or (ii) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of subdivision (1) of the definition of incapacity in § 26-71.02.

D. A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

§ 26-71.10. Termination of power of attorney or agent's authority.

A. A power of attorney terminates when:

1. The principal dies;
2. The principal becomes incapacitated, if the power of attorney is not durable;
3. The principal revokes the power of attorney;
4. The power of attorney provides that it terminates;
5. The purpose of the power of attorney is accomplished; or
6. The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

B. An agent's authority terminates when:

1. The principal revokes the authority;
2. The agent dies, becomes incapacitated, or resigns;
3. An action is filed for the divorce or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or
4. The power of attorney terminates.

C. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection B, notwithstanding a lapse of time since the execution of the power of attorney.

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

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

F. The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

§ 26-71.11. Coagents and successor agents.

A. A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

B. A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent: (i) has the same authority as that granted to the original agent; and (ii) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

C. Except as otherwise provided in the power of attorney and subsection D, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, is not liable for the actions of the other agent.

D. An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

§ 26-71.12. Reimbursement and compensation of agent.

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

circumstances.

*§ 26-71.13. Agent's acceptance.*

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

*§ 26-71.14. Agent's duties.*

*A. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:*

*1. Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest;*

*2. Act in good faith; and*

*3. Act only within the scope of authority granted in the power of attorney.*

*B. Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:*

*1. Act loyally for the principal's benefit;*

*2. Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;*

*3. Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;*

*4. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;*

*5. Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and otherwise act in the principal's best interest; and*

*6. Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:*

*a. The value and nature of the principal's property;*

*b. The principal's foreseeable obligations and need for maintenance;*

*c. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and*

*d. Eligibility for a benefit, a program, or assistance under a statute or regulation.*

*C. An agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.*

*D. An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.*

*E. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.*

*F. Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.*

*G. An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person; however, nothing herein is intended to abrogate any duty of the agent under the Uniform Prudent Investor Act (§ 26-45.3 et seq.).*

*H. Except as otherwise provided in the power of attorney, an agent shall disclose receipts, disbursements, or transactions conducted on behalf of the principal if requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.*

*I. Except as otherwise provided in the power of attorney, an agent shall, on reasonable request made by a person listed in subdivisions A 3 through A 9 of § 26-71.16 who has a good faith belief that the principal suffers an incapacity or, if deceased, suffered incapacity at the time the agent acted, disclose to such person the extent to which he has chosen to act and the actions taken on behalf of the principal within the five years prior to either (i) the date of the request or (ii) the date of the death of the principal, if the principal is deceased at the time such request is made, and shall permit reasonable inspection of records pertaining to such actions by such person. In all cases where the principal is deceased at the time such request is made, such request shall be made within one year after the date of the death of the principal. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.*

*§ 26-71.15. Exoneration of agent.*

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

*1. Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or*

*2. Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.*

*§ 26-71.16. Judicial relief.*

*A. In addition to the remedies referenced in § 26-71.23, the following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:*

*1. The principal or the agent;*

*2. A guardian, conservator, personal representative of the estate of a deceased principal, or other fiduciary acting for the principal;*

*3. A person authorized to make health care decisions for the principal;*

*4. The principal's spouse, parent, or descendant;*

*5. An adult who is a brother, sister, niece, or nephew of the principal;*

*6. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;*

*7. The adult protective services unit of the local department of social services for the county or city where the principal resides or is located;*

*8. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and*

*9. A person asked to accept the power of attorney.*

*B. 1. Whether or not supplemental relief is sought in the proceeding, where an agent has violated duties of disclosure imposed by § 26-71.14, any person to whom such duties are owing may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2; (ii) terminating, suspending, or limiting the authority of the agent; or (iii) bringing a proceeding to hold the agent, or a transferee from such agent, liable for breach of duty or to recover particular assets or the value of such assets of a principal or deceased principal, petition a circuit court for discovery from the agent of information and records pertaining to actions taken pursuant to a power of attorney.*

*2. The petition may be filed in the circuit court of the county or city in which the agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under Chapter 10 (§ 37.2-1000 et seq.) of Title 37.2, or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the agent and to the principal, if no guardian or conservator has been appointed, or to the conservator or guardian, if one has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of the Supreme Court of Virginia. Upon the failure of the agent to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 26-71.14, may, upon finding that the failure to comply with the request for information was unreasonable, order the agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney fees.*

*3. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the agent.*

*C. The agent may, after reasonable notice to the principal, petition the circuit court for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney or other writing. The court shall determine the amounts, recipients, and proportions of any gifts of the principal's property after considering all relevant factors including, without limitation, those contained in subsection C of § 26-72.17.*

*D. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.*

*§ 26-71.17. Agent's liability.*

*An agent that violates this act is liable to the principal or the principal's successors in interest for the amount required to:*

*1. Restore the value of the principal's property to what it would have been had the violation not*

occurred; and

2. Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

§ 26-71.18. Agent's resignation; notice.

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

1. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent;

2. If there is no person described in subdivision 1, to an adult who is a spouse, child or other descendant, parent, brother or sister of the principal;

3. If none of the foregoing persons is reasonably available, another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or

4. If none of the foregoing persons is reasonably available, the adult protective services unit of the local department of social services for the county or city where the principal resides or is located.

§ 26-71.19. Acceptance of and reliance upon acknowledged power of attorney.

A. For purposes of this section and § 26-71.20, "acknowledged" means verified before a notary public or other individual authorized to take acknowledgments.

B. A person that in good faith accepts an acknowledged power of attorney that has been signed in accordance with § 26-71.05 without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely upon the power of attorney as if the power of attorney were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. The preceding sentence shall not apply to an acknowledged power of attorney that contains a forged signature of the principal.

C. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation, any or all of the following:

1. An agent's certification under oath of any factual matter concerning the principal, agent, or power of attorney;

2. An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and

3. An opinion of the counsel for the principal or the agent, or the opinion of counsel for the person, as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.

D. An English translation or an opinion of counsel for the principal or the agent requested under this section shall be provided at the principal's expense.

E. An agent's certification, an English translation, or an opinion of counsel shall be in recordable form if the exercise of the power requires recordation of any instrument under the laws of the Commonwealth.

F. For purposes of this section and § 26-71.20, a person that conducts activities through employees and exercises commercially reasonable procedures to communicate information concerning powers of attorney among its employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney has followed such procedures and is nonetheless without actual knowledge of the fact.

§ 26-71.20. Liability for refusal to accept acknowledged power of attorney.

A. Except as otherwise provided in subsection B:

1. A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection C of § 26-71.19 no later than seven business days after presentation of the power of attorney for acceptance;

2. If a person requests a certification, a translation, or an opinion of counsel under subsection C of § 26-71.19, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

3. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

B. A person is not required to accept an acknowledged power of attorney for a transaction if:

1. The person is not otherwise required to engage in the transaction with the principal in the same circumstances, or the principal has otherwise relieved the person from an obligation to engage in the transaction with an agent representing the principal under a power of attorney;

2. Engaging in the transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;

3. The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power;

4. A request for a certification, a translation, or an opinion of counsel under subsection C of § 26-71.19 is refused;

5. The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under subsection C of § 26-71.19 has been requested or provided; or

6. The person makes, or has actual knowledge that another person has made, a report to the local adult protective services department or adult protective services hotline stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

C. A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

1. A court order mandating acceptance of the power of attorney; and
2. Liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

D. For purposes of this section, "business day" shall refer to any day other than Saturday, Sunday, or any day designated as a holiday by the Commonwealth of Virginia or the federal government.

§ 26-71.21. Principles of law and equity.

Unless displaced by a provision of this act, the principles of law and equity supplement this act.

§ 26-71.22. Laws applicable to financial institutions and entities.

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

§ 26-71.23. Remedies under other law.

The remedies under this act are not exclusive and do not abrogate any right or remedy, including a court-supervised accounting, under the laws of the Commonwealth other than this act.

## Article 2.

### Authority.

§ 26-72.01. Authority that requires specific grant; grant of general authority.

A. Subject to the provisions of subsection H, an agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited or limited by another statute, agreement, or instrument to which the authority or property is subject:

1. Create, amend, revoke, or terminate an inter vivos trust;
2. Make a gift;
3. Create or change rights of survivorship;
4. Create or change a beneficiary designation;
5. Delegate authority granted under the power of attorney;
6. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; or
7. Exercise fiduciary powers that the principal has authority to delegate.
8. [Reserved.]

B. Notwithstanding a grant of authority to do an act described in subsection A or H, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

C. Subject to subsections A, B, D, and E, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §§ 26-72.04 through 26-72.16.

D. Unless the power of attorney otherwise provides and subject to subsection H, a grant of authority to make a gift is subject to § 26-72.17.

E. Subject to subsections A, B, and D, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

F. Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in the Commonwealth and whether or not the authority is exercised or the power of attorney is executed in the Commonwealth.

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

H. Notwithstanding the provisions of subsection A, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent shall have the authority to make gifts in any amount of any of the principal's property to any individuals or to organizations described in §§ 170 (c) and 2522 (a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This subsection shall not in any way impair the right or power of any principal, by express words in the power of attorney, to authorize, or limit the authority of, an agent to make gifts of the principal's

property.

*§ 26-72.02. Incorporation of authority.*

A. An agent has authority described in this article if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in §§ 26-72.04 through 26-72.17, or cites the section in which the authority is described.

B. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in §§ 26-72.04 through 26-72.17 or a citation to a section of §§ 26-72.04 through 26-72.17 incorporates the entire section as if it were set out in full in the power of attorney.

C. A principal may modify authority incorporated by reference.

*§ 26-72.03. Construction of authority generally.*

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in §§ 26-72.04 through 26-72.17 or that grants to an agent authority to do all acts that a principal could do pursuant to subsection C of § 26-72.01, a principal authorizes the agent, with respect to that subject, to:

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

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

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

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

5. Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;

6. Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;

7. Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;

8. Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;

9. Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and

10. Do any lawful act with respect to the subject and all property related to the subject.

*§ 26-72.04. Real property.*

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

1. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

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

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

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

5. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

a. Insuring against liability or casualty or other loss;

b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

6. Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

7. Participate in a reorganization with respect to real property or an entity that owns an interest in

or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

- a. Selling or otherwise disposing of them;
- b. Exercising or selling an option, right of conversion, or similar right with respect to them; and
- c. Exercising any voting rights in person or by proxy;
8. Change the form of title of an interest in or right incident to real property; and
9. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

**§ 26-72.05. Tangible personal property.**

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

1. Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;
3. Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
4. Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;
5. Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:
  - a. Insuring against liability or casualty or other loss;
  - b. Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;
  - c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
  - d. Moving the property from place to place;
  - e. Storing the property for hire or on a gratuitous bailment; and
  - f. Using and making repairs, alterations, or improvements to the property; and
6. Change the form of title of an interest in tangible personal property.

**§ 26-72.06. Stocks and bonds.**

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

1. Buy, sell, and exchange stocks and bonds;
2. Establish, continue, modify, or terminate an account with respect to stocks and bonds;
3. Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
4. Receive certificates and other evidences of ownership with respect to stocks and bonds; and
5. Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

**§ 26-72.07. Commodities and options.**

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

1. Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
2. Establish, continue, modify, and terminate option accounts.

**§ 26-72.08. Banks and other financial institutions.**

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

1. Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
2. Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
3. Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
4. Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
5. Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

6. Enter a safe deposit box or vault and withdraw or add to the contents;

7. Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

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

9. Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

10. Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

11. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

§ 26-72.09. Operation of entity or business.

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

1. Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

2. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;

3. Enforce the terms of an ownership agreement;

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

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

6. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

7. With respect to an entity or business owned solely by the principal:

a. Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

b. Determine (i) the location of its operation; (ii) the nature and extent of its business; (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation; (iv) the amount and types of insurance carried; and (v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

c. Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

d. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

8. Put additional capital into an entity or business in which the principal has an interest;

9. Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

10. Sell or liquidate all or part of an entity or business;

11. Establish the value of an entity or business under a buyout agreement to which the principal is a party;

12. Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and

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

§ 26-72.10. Insurance and annuities.

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

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

2. Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents, and select the amount, type of insurance or

annuity, and mode of payment;

3. Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;

4. Apply for and receive a loan secured by a contract of insurance or annuity;

5. Surrender and receive the cash surrender value on a contract of insurance or annuity;

6. Exercise an election;

7. Exercise investment powers available under a contract of insurance or annuity;

8. Change the manner of paying premiums on a contract of insurance or annuity;

9. Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

10. Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

11. Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;

12. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

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

§ 26-72.11. Estates, trusts, and other beneficial interests.

A. In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be, entitled to a share or payment.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:

1. Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

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

3. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

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

5. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;

6. Conserve, invest, disburse, or use anything received for an authorized purpose;

7. Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and

8. Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

§ 26-72.12. Claims and litigation.

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

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

2. Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

3. Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;

4. Make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the principal in litigation;

5. Submit to alternative dispute resolution, settle, and propose or accept a compromise;

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

7. Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary,

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

8. Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

9. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

*§ 26-72.13. Personal and family maintenance.*

A. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

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

a. [Reserved.]

b. The individuals legally entitled to be supported by the principal; and

c. The individuals whom the principal has customarily supported or indicated the intent to support;

2. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

3. Provide living quarters for the individuals described in subdivision A 1 by:

a. Purchase, lease, or other contract; or

b. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

4. Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subdivision A 1;

5. Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision A 1;

6. Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, as amended, and applicable regulations, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of the Commonwealth to consent to health care on behalf of the principal;

7. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subdivision A 1;

8. Maintain credit and debit accounts for the convenience of the individuals described in subdivision A 1 and open new accounts; and

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

B. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this act.

*§ 26-72.14. Benefits from governmental programs or civil or military service.*

A. In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation including, but not limited to, Social Security, Medicare, Medicaid, and the Department of Veterans Affairs.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

1. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision A 1 of § 26-72.13, and for shipment of their household effects;

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

3. Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;

4. Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;

5. Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

6. Receive the financial proceeds of a claim described in subdivision 4 and conserve, invest, disburse, or use for a lawful purpose anything so received.

*§ 26-72.15. Retirement plans.*

A. In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

1. An individual retirement account under Internal Revenue Code 26 U.S.C. § 408, as amended;
2. A Roth individual retirement account under Internal Revenue Code 26 U.S.C. § 408A, as amended;
3. A deemed individual retirement account under Internal Revenue Code 26 U.S.C. § 408(q), as amended;
4. An annuity or mutual fund custodial account under Internal Revenue Code 26 U.S.C. § 403(b), as amended;
5. A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code 26 U.S.C. § 401(a), as amended;
6. A plan under Internal Revenue Code 26 U.S.C. § 457(b), as amended; and
7. A nonqualified deferred compensation plan under Internal Revenue Code 26 U.S.C. § 409A, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

1. Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
2. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
3. Establish a retirement plan in the principal's name;
4. Make contributions to a retirement plan;
5. Exercise investment powers available under a retirement plan; and
6. Borrow from, sell assets to, or purchase assets from a retirement plan.

*§ 26-72.16. Taxes.*

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

1. Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code 26 U.S.C. § 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
2. Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
3. Exercise any election available to the principal under federal, state, local, or foreign tax law; and
4. Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

*§ 26-72.17. Gifts.*

A. In this section, a gift "for the benefit of" a person includes a gift to a trust, a custodial trust under the Uniform Custodial Trust Act (§ 55-34.1 et seq.), an account under the Uniform Transfers to Minors Act (§ 31-37 et seq.), and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code 26 U.S.C. § 529, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

1. Make outright to, or for the benefit of, a person, a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code 26 U.S.C. § 2503(b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code 26 U.S.C. § 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and
2. Consent, pursuant to Internal Revenue Code 26 U.S.C. § 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

C. An agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, including:

1. The value and nature of the principal's property;
2. The principal's foreseeable obligations and need for maintenance;
3. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
4. Eligibility for a benefit, a program, or assistance under a statute or regulation; and
5. The principal's personal history of making or joining in making gifts.

Article 3.

Statutory Forms.

§ 26-73.01. [Reserved.]

§ 26-73.02. Agent's certification.

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

AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY  
AND AGENT'S AUTHORITY

State of .....  
County/City of .....

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

I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

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

(4) .....  
.....  
.....  
.....

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

.....  
Agent's Signature Date

.....  
Agent's Name Printed

.....  
.....  
Agent's Address

.....  
Agent's Telephone Number

This document was acknowledged before me on .....,

(Date)

by.....  
(Name of Agent)

..... (Seal, if any)  
Signature of Notary

My commission expires: .....  
Notary Registration Number: .....

This document prepared by:

.....  
Article 4.

*Miscellaneous Provisions.*

*§ 26-74.01. Uniformity of application and construction.*

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

*§ 26-74.02. Relation to Electronic Signatures in Global and National Commerce Act.*

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

*§ 26-74.03. Effect on existing powers of attorney.*

*Except as otherwise provided in this act, on July 1, 2010:*

- 1. This act applies to a power of attorney created before, on, or after July 1, 2010;*
- 2. This act applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2010;*
- 3. This act applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2010, unless the court finds that application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and*
- 4. Notwithstanding any other provision of this act, an act done before July 1, 2010, is not affected by this act.*

*§ 37.2-1009. Court order of appointment; limited guardianships and conservatorships.*

The court's order appointing a guardian or conservator shall: (i) state the nature and extent of the person's incapacity; (ii) define the powers and duties of the guardian or conservator so as to permit the incapacitated person to care for himself and manage property to the extent he is capable; (iii) specify whether the appointment of a guardian or conservator is limited to a specified length of time, as the court in its discretion may determine; (iv) specify the legal disabilities, if any, of the person in connection with the finding of incapacity, including but not limited to mental competency for purposes of Article II, Section 1 of the Constitution of Virginia or Title 24.2; (v) include any limitations deemed appropriate following consideration of the factors specified in § 37.2-1007; and (vi) set the bond of the guardian and the bond and surety, if any, of the conservator.

The court may appoint a limited guardian for an incapacitated person who is capable of addressing some of the essential requirements for his care for the limited purpose of medical decision making, decisions about place of residency, or other specific decisions regarding his personal affairs.

Unless the guardian has a professional relationship with the incapacitated person or is employed by or affiliated with a facility where the person resides, the court's order may authorize the guardian to consent to the admission of the person to a facility pursuant to § 37.2-805.1, upon finding by clear and convincing evidence that (i) the person has severe and persistent mental illness that significantly impairs the person's capacity to exercise judgment or self-control, as confirmed by the evaluation of a licensed psychiatrist; (ii) such condition is unlikely to improve in the foreseeable future; and (iii) the guardian has formulated a plan for providing ongoing treatment of the person's illness in the least restrictive setting suitable for the person's condition.

A guardian need not be appointed for a person who has appointed an agent under an advance directive executed in accordance with the provisions of Article 8 (§ 54.1-2981 et seq.) of Chapter 29 of Title 54.1, unless the court determines that the agent is not acting in accordance with the wishes of the principal or there is a need for decision making outside the purview of the advance directive.

The court may appoint a limited conservator for an incapacitated person who is capable of managing some of his property and financial affairs for limited purposes specified in the order.

A conservator need not be appointed for a person (i) who has appointed an agent under a durable

power of attorney, unless the court determines pursuant to ~~§ 37.2-1018~~ § 26-71.01 that the agent is not acting in the best interests of the principal or there is a need for decision making outside the purview of the durable power of attorney or (ii) whose only or major source of income is from the Social Security Administration or other government program and who has a representative payee.

§ 37.2-1020. Duties and powers of guardian.

A. A guardian stands in a fiduciary relationship to the incapacitated person for whom he was appointed guardian and may be held personally liable for a breach of any fiduciary duty to the incapacitated person. A guardian shall not be liable for the acts of the incapacitated person, unless the guardian is personally negligent. A guardian shall not be required to expend personal funds on behalf of the incapacitated person.

B. A guardian's duties and authority shall not extend to decisions addressed in a valid advance directive or durable power of attorney previously executed by the incapacitated person. A guardian may seek court authorization to revoke, suspend, or otherwise modify a durable power of attorney, as provided by ~~§ 11-9.1~~ the *Uniform Power of Attorney Act* (§ 26-71.01 *et seq.*). Notwithstanding the provisions of the Health Care Decisions Act (§ 54.1- 2981 *et seq.*) and in accordance with the procedures of § 37.2-1012, a guardian may seek court authorization to modify the designation of an agent under an advance directive, but the modification shall not in any way affect the incapacitated person's directives concerning the provision or refusal of specific medical treatments or procedures.

C. A guardian shall maintain sufficient contact with the incapacitated person to know of his capabilities, limitations, needs, and opportunities. The guardian shall visit the incapacitated person as often as necessary.

D. A guardian shall be required to seek prior court authorization to change the incapacitated person's residence to another state, to terminate or consent to a termination of the person's parental rights, or to initiate a change in the person's marital status.

E. A guardian shall, to the extent feasible, encourage the incapacitated person to participate in decisions, to act on his own behalf, and to develop or regain the capacity to manage personal affairs. A guardian, in making decisions, shall consider the expressed desires and personal values of the incapacitated person to the extent known and shall otherwise act in the incapacitated person's best interest and exercise reasonable care, diligence, and prudence.

§ 37.2-1023. Management powers and duties of conservator.

A. A conservator, in managing the estate, shall have the following powers and the powers set forth in § 64.1-57 as of the date the conservator acts, which may be exercised without prior court authorization except as otherwise specifically provided in the court's order of appointment:

1. To ratify or reject a contract entered into by an incapacitated person;
2. To pay any sum distributable for the benefit of the incapacitated person or for the benefit of a legal dependent by paying the sum directly to the distributee, to the provider of goods and services, to any individual or facility that is responsible for or has assumed responsibility for care and custody, or to a distributee's custodian under a Uniform Gifts or Transfers to Minors Act of any applicable jurisdiction or by paying the sum to the guardian of the incapacitated person or, in the case of a dependent, to the dependent's guardian or conservator;
3. To maintain life, health, casualty, and liability insurance for the benefit of the incapacitated person or his legal dependents;
4. To manage the estate following the termination of the conservatorship until its delivery to the incapacitated person or successors in interest;
5. To execute and deliver all instruments and to take all other actions that will serve in the best interests of the incapacitated person;
6. To initiate a proceeding (i) to revoke a power of attorney under the provisions of ~~§ 11-9.1~~ the *Uniform Power of Attorney Act* (§ 26-71.01 *et seq.*) or (ii) to make an augmented estate election under § 64.1-13; and
7. To borrow money for periods of time and upon terms and conditions for rates, maturities, renewals, and security that to the conservator shall seem advisable, including the power to borrow from the conservator, if the conservator is a bank, for any purpose; to mortgage or pledge the portion of the incapacitated person's estate that may be required to secure the loan or loans; and, as maker or endorser, to renew existing loans.

B. The court may impose requirements to be satisfied by the conservator prior to the conveyance of any interest in real estate, including (i) increasing the amount of the conservator's bond, (ii) securing an appraisal of the real estate or interest, (iii) giving notice to interested parties as the court deems proper, (iv) consulting by the conservator with the commissioner of accounts and, if one has been appointed, with the guardian, and (v) requiring the use of a common source information company, as defined in § 54.1-2130, when listing the property. If the court imposes any such requirements, the conservator shall make a report of his compliance with each requirement, to be filed with the commissioner of accounts. Promptly following receipt of the conservator's report, the commissioner shall file a report with the court indicating whether the requirements imposed have been met and whether the sale is otherwise consistent with the conservator's duties. The conveyance shall not be closed until a report by the commissioner of

accounts is filed with the court and confirmed as provided in §§ 26-33, 26-34 and 26-35.

§ 55-54.7. General duties of custodial trustee.

If appropriate, a custodial trustee shall register or record the instrument vesting title to custodial trust property. If the beneficiary is not incapacitated, a custodial trustee shall follow the directions of the beneficiary in the management, control, investment, or retention of the custodial trust property. In the absence of effective contrary direction by the beneficiary while not incapacitated, the custodial trustee shall observe the standard of care set forth in the Uniform Prudent Investor Act (§ 26-45.3 et seq.), except to the extent provided by § 26-40.01. However, a custodial trustee, in the custodial trustee's discretion, may retain any custodial trust property received from the transferor. Subject to this paragraph, a custodial trustee shall take control of and collect, hold, manage, invest, and reinvest custodial trust property.

A custodial trustee at all times shall keep custodial trust property of which the custodial trustee has control, separate from all other property in a manner sufficient to identify it clearly as custodial trust property of the beneficiary. Custodial trust property, the title to which is subject to recordation, is so identified if an appropriate instrument so identifying the property is recorded, and custodial trust property subject to registration is so identified if it is registered, or held in an account in the name of the custodial trustee, designated in substance: "as custodial trustee for . . . . . (name of beneficiary) under the Virginia Uniform Custodial Trust Act."

A custodial trustee shall keep records of all transactions with respect to custodial trust property, including information necessary for the preparation of tax returns, and shall make the records and information available at reasonable times to the beneficiary or legal representative of the beneficiary.

~~The exercise of a durable power of attorney for an incapacitated beneficiary is not effective to terminate or direct the administration or distribution of a custodial trust. An agent under a power of attorney for an incapacitated beneficiary may not terminate or direct the administration of a custodial trust.~~

§ 55-544.01. Methods of creating trust.

A trust may be created by:

1. Transfer of property to another person as trustee during the settlor's lifetime *by the settlor or by the settlor's agent, acting in accordance with § 26-71.14, under a power of attorney, which expressly authorizes the agent to create a trust on settlor's behalf*; or by will or other disposition taking effect upon the settlor's death;
2. Declaration by the owner of property that the owner holds identifiable property as trustee; or
3. Exercise of a power of appointment in favor of a trustee.

§ 55-544.02. Requirements for creation.

A. A trust is created only if:

1. The settlor has capacity to create a trust; *or when the trust is created by the settlor's agent under a power of attorney, which expressly authorizes the agent to create a trust on the settlor's behalf*;
2. The settlor *or his agent* indicates an intention to create the trust;
3. The trust has a definite beneficiary or is:
  - a. A charitable trust;
  - b. A trust for the care of an animal, as provided in § 55-544.08; or
  - c. A trust for a noncharitable purpose, as provided in § 55-544.09;
4. The trustee has duties to perform; and
5. The same person is not the sole trustee and sole beneficiary.

B. A beneficiary is definite if the beneficiary can be ascertained now or in the future, subject to any applicable rule against perpetuities.

C. A power in a trustee to select a beneficiary from an indefinite class is valid. If the power is not exercised within a reasonable time, the power fails and the property subject to the power passes to the persons who would have taken the property had the power not been conferred.

§ 55-546.02. Revocation or amendment of revocable trust.

A. Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before July 1, 2006.

B. If a revocable trust is created or funded by more than one settlor:

1. To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;
2. To the extent the trust consists of property other than community property, each settlor may revoke or amend the trust with regard to the portion of the trust property attributable to that settlor's contribution; and
3. Upon the revocation or amendment of the trust by fewer than all of the settlors, the trustee shall promptly notify the other settlors of the revocation or amendment.

C. The settlor may revoke or amend a revocable trust:

1. By substantial compliance with a method provided in the terms of the trust; or
2. If the terms of the trust do not provide a method, by any method manifesting clear and convincing

evidence of the settlor's intent.

D. Upon revocation of a revocable trust, the trustee shall deliver the trust property as the settlor directs.

E. A settlor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent, *acting in accordance with § 26-71.14*, under a power of attorney ~~only that expressly authorizes such action except~~ to the extent ~~(i)~~ expressly ~~authorized prohibited~~ by the terms of the trust or ~~(ii) authorized by the court for good cause shown~~.

F. A conservator of the settlor or, if no conservator has been appointed, a guardian of the settlor may exercise a settlor's powers with respect to revocation, amendment, or distribution of trust property only (i) to the extent expressly authorized by the terms of the trust or (ii) authorized by the court supervising the conservatorship or guardianship for good cause shown.

G. A trustee who does not know that a trust has been revoked or amended is not liable to the settlor or settlor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

**2. That §§ 11-9.1 through 11-9.7 and 37.2-1018 of the Code of Virginia are repealed.**