



# **Recent Changes To Power of Attorney Rules**

**Noah Garrett, J.D.  
Walker Lambe, PLLC**

**NCPA's 38th ANNUAL MEETING & SEMINAR  
March 22, 2018 – March 24, 2018**


Noah D. Garrett  
Walker Lambe, PLLC

Noah D. Garrett began his legal career at the Wake Forest University School of Law and graduated in May of 2017. He recently sat for and passed the July 2017 North Carolina Bar Exam. While in law school Noah Garrett participated in the Wake Forest Elder Law Clinic, where he assisted clients in executing wills, powers of attorney, and health care documentation for elderly clients. He also represented clients in disputes with creditors and assisted clients in qualifying for Medicaid. He also spent his summers clerking at the North Carolina Court of Appeals, and calling cases before the bench at the Orange County District Attorney's Office. Before law school Noah earned a bachelor's degree from New York University and gained experience working for legal non-profits in the city.

In his spare time, Noah enjoys hiking in the many state and local parks that surround the Triangle and traveling outside of the country. He also enjoys collecting vintage comic books and cooking elaborate meals for family and friends.

THE NORTH CAROLINA UNIFORM POWER OF ATTORNEY ACT

NOAH D. GARRETT  
WALKER LAMBE, PLLC  
DURHAM, NORTH CAROLINA



The North Carolina Uniform  
Power of Attorney Act

Noah D. Garrett  
Walker Lambe, PLLC  
Durham, NC  
[ngarrett@walkerlambe.com](mailto:ngarrett@walkerlambe.com)

---

---

---

---

---

---

---

---

Background

- Existing POA statute (NCGS § 32A) was clunky, unclear, and was providing limited guidance to third parties for dealing with agents
- The effort to change the law was undertaken by the Estate Planning and Fiduciary Law Section of the North Carolina Bar Association
- Had input from a wide variety of sources (clerks, register of deeds, NC DOJ, etc.)

---

---

---

---

---

---

---

---

Background

- On July 20, 2017, Governor Cooper signed Senate Bill 569: “An Act to Adopt the Uniform Power of Attorney Act in this State” into law as Session Law 2017-153.
- Adopts to the Uniform Power of Attorney Act as drafted by the National Conference of Commissioners on Uniform State Laws – bring North Carolina into alignment with most states (with some tweaks)
- Took effect on January 1, 2018

---

---

---

---

---

---

---

---

Organization

- Article 1: definitions, general provisions regarding scope, when the POA is considered durable, execution requirements, determining applicable law, relationship between agent and court-appointed fiduciary, when POA is effective, termination, rules regarding agents, and guidance for third parties
- Article 2: detailed descriptions for agent’s authority relating to real property, tangible personal property, banks; also addresses concerns that agent’s authority might be used to dissipate the principal’s property or alter estate plan, this part lists categories of authority that are *not* implied by a grant of general authority

---

---

---

---

---

---

---

---

Organization

- Article 3: three statutory short forms: (1) statutory form POA, (2) an agent’s certification, and (3) a limited POA for real property transactions (this automatically expires after 1 year unless provided elsewhere)
- Article 4: clarifies relationship of law to previously executed POAs and other law

---

---

---

---

---

---

---

---

Retroactive Effect

- § 32C-4-403(a)
- “Rules of construction or presumption provided by this Chapter applies to powers of attorney executed before the effective date of this Chapter unless there is a clear indication of a contrary intent in the terms of a power of attorney or unless the application of the rule[s] [...] would substantially impair rights of a party [...] [.]”
  - \*includes durability changes!\*
- With limited exceptions, the law applies to POAs created before, on, or after January 1, 2018, unless the terms of the POA clearly express contrary intent or unless the application would substantially impair the rights of a party

---

---

---

---

---

---

---

---

Rule Changes Regarding Durability

Under Previous Law:

An agent cannot act on behalf of a principal after the principal becomes "incapacitated" or "mentally incompetent" unless the POA is specifically durable.

Note: "Incapacitated" and "mentally incompetent" were not defined in the old statute.

Durability required that the POA was signed pursuant to Art. 2 of Chapter 32A, by including the word "This power of attorney shall not be affected by my subsequent incapacity or mental incompetence" or words to the same effect.

---

---

---

---

---

---

---

---

Incapacity defined

- § 32C-1-102(6)
- "Incapacity: The inability of an individual to manage property or business affairs because the individual has any of the following statuses:
  - a. An impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
  - b. Is missing, detained, including incarcerated in a penal system, or outside the United States and unable to return.

---

---

---

---

---

---

---

---

Durability

- § 32C-1-104
- "A power of attorney created pursuant to this Chapter is durable unless the instrument expressly provides that it is terminated by the incapacity of the principal."
- New Uniform POA Act states that a POA is durable if the incapacity of the principal doesn't terminate the POA
  - \*\*This is a reversal, now durability is assumed unless the POA has express language saying that it isn't durable\*\***
- If the POA is "springing," 32C-1-109(b) allows the principal to authorize the agent or other person to provide written verification that the event has occurred
  - If not otherwise specified, incapacity based on principals impairment can be verified by two physicians, or if based on unavailability, by an attorney, judge, or other government officer

---

---

---

---

---

---

---

---

Recording

- Under the new statute, REGARDLESS of incapacity, the POA is NOT required to be recorded in order for the agent to act or for third parties to rely on the POA.
- Under prior law, recordation was required for the agent to act during the principal's incapacity.
- One huge caveat
  - Under the still valid N.C.G.S. § 47-28, a POA must be recorded for the agent to transact in real estate matters on behalf of the principal

---

---

---

---

---

---

---

---

Validity

- § 32C-1-105. Execution of power of attorney
  - "A power of attorney must be (i) 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 and (ii) acknowledged."
  - "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 acknowledgements."
- So, how does a notary certify that someone signed in the principal's conscious presence, and was directed to sign on the power of attorney?

---

---

---

---

---

---

---

---

Validity

- Look to N.C.G.S. § 10B-20(d) and (e)
  - (d) A notary may certify the affixation of a signature by mark on a record presented for notarization if:
    - (1) The mark is affixed in the presence of the notary;
    - (2) The notary writes below the mark:
      - "Mark affixed by (name) in presence of undersigned notary"; and
    - (3) The notary notarizes the signature by performing an acknowledgement, oath or affirmation, jurat, or verification of proof.

---

---

---

---

---

---

---

---

N.C.G.S. § 10B-20(e)

- (e) If a principal is physically unable to sign or make a mark on a record presented for notarization, that principal may designate another person as his or her designee, who shall be a disinterested party, to sign on the principal's behalf pursuant to the following procedure:
  - (1) The principal directs the designee to sign the record in the presence of the notary and two witnesses unaffected by the record;
  - (2) The designee signs the principal's name in the presence of the principal, the notary, and the two witnesses
  - (3) Both witnesses sign their own names to the record near the principal's signature;
  - (4) The notary writes below the principal's signature: "Signature affixed by designee in the presence of (names)"; and
  - (5) The notary notarizes the signature through an acknowledgement, oath or affirmation, jurat, or verification or proof.

---

---

---

---

---

---

---

---

One final note on validity

- Not a change from the prior law, but copies are just as valid as original documents.
- § 32C-1-106(d) "Except as otherwise provided by statute other than this Chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original."
- Best practice might be to have certified copies if transacting in real estate
  - Some real estate attorneys might prefer that the copies be certified in the county where the real estate is
- So, keep track of your copies

---

---

---

---

---

---

---

---

Which Law Controls

- § 32C-1-107: meaning and effect determined by (i) the law of the jurisdiction indicated in the POA; or (ii) in the absence of any such indication, the law of the jurisdiction where the POA was executed.
- Example: POA indicates in the body that it is governed by North Carolina law. It does not matter when or where the POA was signed and acknowledged, the meaning and effect of the POA will be determined by North Carolina law.

---

---

---

---

---

---

---

---



Revocation & Termination

- Distinction between termination of agents authority vs. termination of POA
- POA terminates when (§ 32C-1-110):
  - Principal dies
  - If the POA isn't durable (\*must be expressly stated), when the principal becomes incapacitated
  - Principal revokes POA
  - POA provides that it terminates
  - Purpose of POA is complete (ex: limited POAs)
  - Principal revokes agent's authority or agent cannot serve because of death or resignation, and there is no other agent named
  - A guardian of the estate or general guardian terminates the POA

---

---

---

---

---

---

---

---

Revocation & Termination

- Authority under a POA terminates when:
  - Principal revokes authority in writing
  - Agent dies, becomes incapacitated, or is removed
  - Court enters a decree of divorce between principal and the agent unless POA provides otherwise
  - POA terminates
  - A guardian of the estate or general guardian terminates the authority

---

---

---

---

---

---

---

---

Some notes on termination

- A POA does not become "stale" unless termination after a set date is provided for in the body of the document
- A new POA does not automatically terminate the previous POA – to be effective, the new POA must expressly state that the new POA revokes all prior POAs executed by the principal
- 32C-1-110(g): If the POA has been registered, the principal must register an "instrument of revocation" in that office, together with proof of service on the agent.

---

---

---

---

---

---

---

---

Co-Agents

- A principal may designate two or more persons in a single POA to act as coagents, designate one or more successor agents to act if an agent cannot serve, and/or grant authority for agents to appoint successor agents to act in their stead
- Unless the POA expressly requires co-agents to act together, each agent can exercise their authority independently without the knowledge, consent, or joinder of the other agent(s)
- Unless provided otherwise, if a co-agent fails to serve, the remainder serves alone
- Unless provided otherwise, successor agents may act with the same authority as the original agent(s), but cannot act until all predecessors have failed to serve

---

---

---

---

---

---

---

---

Giftng Power

- General grant of gifting power
- This has to be expressly granted – not included in under a “general” grant of authority
- Allows gifts to an individual as long as they don’t exceed the greater of (1) the principal’s history of gift making, or (2) the annual gift tax exclusion (currently \$15,000.00 per person) without regard to whether the exclusion applies to the gift

---

---

---

---

---

---

---

---

Specific Grants of Authority

- Create or change rights of survivorship
- Create or change a beneficiary designation
- Delegate authority granted under the POA
- Renounce or disclaim property, including a power of appointment
- Exercise authority over the content of electronic communication, sent or received by the principal
- Exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36C-6-602 .1.
- Exercise the powers of the principal as settlor of an irrevocable trust to consent to the trust’s modification or termination in accordance with G.S. 36C-4-411(a)

---

---

---

---

---

---

---

---

Rule Against Self Dealing

- § 32C-2-201(c)
- Even if the POA authorizes the agent to do anything requiring specific authorization, unless the POA provides otherwise, the agent may not exercise “general” or “specific” authority under a POA to create in the agent, or in an individual to whom the agent owes a legal obligation of support, any interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.
- KEEP IN MIND: an act by the agent is not voidable and the agent is not liable solely because the agent also benefits from the act or has a conflicting interest – if the act is in good faith for the best interest of the principal then it is not voidable

---

---

---

---

---

---

---

---

Old North Carolina Law Issue: The “Seal”

- N.C.G.S. § 39-6.5
- “When an instrument purports to be exercised by parties acting through another by virtue of a power of attorney, it shall be sufficient if the attorney or attorney-in-fact signs such instrument either in the name of the principal by the attorney or attorney-in-fact or signs as attorney or attorney-in-fact for the principal; and if such instrument purports to be under seal, the seal of the attorney-in-fact shall be sufficient. For such instrument to be executed under seal, the power of attorney must have been executed under seal.”
- Deeds in NC are no longer required to be executed under seal

---

---

---

---

---

---

---

---

But!!

- If the deed purports to be executed under seal, by having the word “seal” next to the grantor’s name, or if the form states the deed is being executed under seal, the POA signing on behalf of the principal must have had that POA executed under Seal.
- The new law resolves this issue:
  - § 47-43.1 has now been revised the language, eliminating the last sentence
  - An agent can sign an instrument under seal regardless of whether the POA was signed under seal

---

---

---

---

---

---

---

---

Agent's Duties

- § 32C-1-114
- Agents have a duty to cooperate with a person that has authority to make health care decisions for the principal
- Agents must "[a]ttempt 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 bases on all the relevant factors, including the following:
  - 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
  - d. Eligibility for a benefit, a program, or assistance under a statute or regulation"

---

---

---

---

---

---

---

---

Application

- Must be thoughtful when dealing with estate planning issues on behalf of the principal, including when applying for public benefits programs.
- POAs should always work in concert with HCPOAs

---

---

---

---

---

---

---

---

QUESTIONS?

Noah D. Garrett

Walker Lambe, PLLC  
Durham, North Carolina

Phone: (919) 493-8411

Email: [ngarrett@walkerlambe.com](mailto:ngarrett@walkerlambe.com)

THANK YOU!

---

---

---

---

---

---

---

---

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

**SESSION LAW 2017-153  
SENATE BILL 569**

AN ACT TO ADOPT THE UNIFORM POWER OF ATTORNEY ACT IN THIS STATE.

The General Assembly of North Carolina enacts:

**PART I. REVISED VERSION OF THE UNIFORM POWER OF ATTORNEY ACT**

**SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

**"Chapter 32C.**

**"North Carolina Uniform Power of Attorney Act.**

**"Article 1.**

**"Definitions and General Provisions.**

**"§ 32C-1-101. Short title.**

This Chapter may be cited as the North Carolina Uniform Power of Attorney Act.

**"§ 32C-1-102. Definitions.**

The following definitions apply in this Chapter:

- (1) Agent. – 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.
- (2) Durable. – With respect to a power of attorney, the incapacity of the principal does not terminate the power of attorney.
- (3) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) Entity. – A sole proprietorship, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity whether or not organized for business purposes.
- (5) Good faith. – Honesty in fact.
- (6) Incapacity. – The inability of an individual to manage property or business affairs because the individual has any of the following statuses:
  - a. An impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
  - b. Is missing, detained, including incarcerated in a penal system, or outside the United States and unable to return.
- (7) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.
- (8) Person. – 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.



- (9) Power of attorney. – 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.
- (10) Reserved.
- (11) Principal. – An individual who grants authority to an agent in a power of attorney.
- (12) Property. – Anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.
- (13) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (14) Sign. – With the 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.
- (15) State. – 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.
- (16) Stocks and bonds. – 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.

**"§ 32C-1-103. Applicability.**

This Chapter applies to all powers of attorney except the following:

- (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.

**"§ 32C-1-104. Power of attorney; durability.**

A power of attorney created pursuant to this Chapter is durable unless the instrument expressly provides that it is terminated by the incapacity of the principal.

**"§ 32C-1-105. Execution of power of attorney.**

A power of attorney must be (i) 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 and (ii) acknowledged. 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 acknowledgements.

**"§ 32C-1-106. Validity of power of attorney.**

(a) A power of attorney executed in this State on or after the effective date of this Chapter is valid if its execution complies with G.S. 32C-1-105.

(b) A power of attorney executed in this State before the effective date of this Chapter is valid if its execution complied with the law of this State as it existed at the time of execution.

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

- (1) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to G.S. 32C-1-107.
- (2) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

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

**"§ 32C-1-107. 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.

**"§ 32C-1-108. Nomination of guardian; relation of agent to court-appointed fiduciary.**

(a) In a power of attorney, a principal may nominate a guardian of the principal's estate, or guardian of the principal's person, or general guardian for consideration by the clerk of superior court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the clerk of superior court shall make its appointment in accordance with the principal's most recent nomination. If a guardian of the principal's person is nominated in a health care power of attorney, that nomination shall control over the nomination, if any, in a power of attorney.

(b) If, after a principal executes a power of attorney, the clerk of superior court appoints a guardian of the principal's estate, or general guardian or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the guardian or 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 in accordance with this Chapter.

**"§ 32C-1-109. 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 in one of the following manners:

- (1) After a personal examination of the principal, by two individuals who are either a physician, a licensed psychologist, or both, that the principal is incapacitated within the meaning of G.S. 32C-1-102(5)a.
- (2) By an attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of G.S. 32C-1-102(5)b.

Notwithstanding the subsequent capacity of the principal to manage property or business affairs, a power of attorney which becomes effective under this subsection shall remain effective until its termination pursuant to G.S. 32C-1-110(a) or the agent's authority terminates pursuant to G.S. 32C-1-110(b).

(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.

**"§ 32C-1-110. Termination of power of attorney.**

(a) A power of attorney terminates when any of the following occur:

- (1) The principal dies.

- (2) If the power of attorney is not durable, the principal becomes incapacitated.
  - (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.
  - (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.
  - (7) A guardian of the principal's estate or general guardian terminates it.
- (b) An agent's authority terminates when any of the following occur:
- (1) The principal revokes the authority in writing.
  - (2) The agent dies, becomes incapacitated, resigns, or is removed.
  - (3) The court enters a decree of divorce between the principal and the agent, unless the power of attorney otherwise provides.
  - (4) The power of attorney terminates.
  - (5) A guardian of the principal's estate or general guardian terminates the authority.
- (c) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, 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.
- (g) A principal may revoke a power of attorney in one of the following manners:
- (1) If the power of attorney has been registered in an office of the register of deeds in this State, it shall be revoked by registration in that office by an instrument of revocation executed and acknowledged by the principal while the principal is not incapacitated with proof of service on the agent in the manner prescribed for service under Rule 5 of the North Carolina Rules of Civil Procedure.
  - (2) If the power of attorney has not been registered in an office of the register of deeds in this State, it may be revoked by one of the following methods:
    - a. A subsequent written revocatory document executed and acknowledged while not incapacitated.
    - b. Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal or by another person in the principal's presence and at the principal's direction, while the principal is not incapacitated.
- (h) A guardian of the principal's estate or general guardian terminates a power of attorney that has been registered in an office of the register of deeds in this State by registering in that office an instrument of revocation executed and acknowledged by such guardian and with proof of service on the agent in the manner prescribed for service under Rule 5 of the North Carolina Rules of Civil Procedure.

**"§ 32C-1-111. Coagents and successor agents.**



(a) A principal may designate two or more persons to act as coagents. A principal may expressly require in the power of attorney that coagents act jointly. If a principal does not expressly require that coagents act jointly, each coagent may exercise the coagents' authority independently without the knowledge, consent, or joinder of any other coagent or coagents. Unless the power of attorney otherwise provides and if any one or more coagents resigns, dies, becomes incapacitated, or otherwise fails to act, the remaining agent or coagents may continue to act.

(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 shall have the following powers and limitations:

- (1) The successor agent has the same authority as that granted to the original agent.
- (2) The successor agent 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, 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.

**"§ 32C-1-112. Reimbursement and compensation of agent.**

(a) If the terms of the power of attorney specify the amount or the way the compensation is to be determined, the agent is entitled to the compensation as specified.

(b) If the terms of the power of attorney do not specify the amount or the way the compensation is to be determined, and the principal thereafter becomes incapacitated, then subsequent to the principal's incapacity the agent is entitled to receive reasonable compensation as determined by the clerk of superior court in accordance with G.S. 32-59.

(c) Unless the power of attorney otherwise provides, an agent is entitled to be reimbursed for expenses properly incurred on behalf of the principal.

**"§ 32C-1-113. 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.

**"§ 32C-1-114. Agent's duties.**

(a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment, when exercising a power under the power of attorney shall do all of the following:

- (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.
- (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 has no affirmative duty to exercise the powers or to continue to exercise the powers granted to the agent by the power of attorney, but if the agent exercises any of the granted powers, the agent shall, in the exercise of such powers, do all of the following:

- (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.
- (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 the following:
  - 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.
  - d. Eligibility for a benefit, a program, or assistance under a statute or regulation.
- (7) Account to the principal or a person designated by the principal in the power of attorney.

(c) When exercising a power under the power of attorney, 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) When exercising a power under the power of attorney, an act by an agent that is in good faith for the best interest of the principal is not voidable and the agent 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) Reserved.

(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.

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian of the estate, general guardian, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate.

**"§ 32C-1-115. 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 relieves the agent of liability for breach of duty committed (i) in bad faith or (ii) with reckless indifference to the purposes of the power of attorney or the best interest of the principal.

**"§ 32C-1-116. Judicial relief.**

(a) The clerks of superior court of this State shall have original jurisdiction of proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk of superior court's jurisdiction is exclusive. The following proceedings are included:

- (1) To compel an accounting by the agent, including the power to compel the production of evidence substantiating any expenditure made by the agent from the principal's assets.
- (2) To terminate a power of attorney or to limit, suspend, or terminate the authority of an agent where a guardian of the estate or a general guardian has been appointed.
- (3) To determine compensation for an agent under G.S. 32C-1-112(b).
- (4) To determine an agent's authority and powers, to construe the terms of a power of attorney created or governed by this Chapter, and to determine any question arising in the performance by an agent of the agent's powers and authority under a power of attorney governed by this Chapter, including, but not limited to, the following proceedings:
  - a. To determine whether and to what extent an agent holds a specific grant of authority under G.S. 32C-2-201.
  - b. To approve an agent's ability to make a gift on behalf of the principal where the gift is governed by G.S. 32C-2-217 because the power of attorney grants the agent only general authority with respect to gifts.
  - c. To authorize the agent to make a gift of the principal's property under G.S. 32C-2-218.
  - d. To authorize the agent to do an act described in G.S. 32C-2-201(a), other than the act to make a gift, under G.S. 32C-2-219.
  - e. To determine whether and to what extent acceptance of a power of attorney shall be mandated under G.S. 32C-1-120(f).

Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding commenced under this Chapter to the extent consistent with this subsection.

(b) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under this subsection over the following actions:

- (1) To modify or amend a power of attorney instrument.
- (2) By or against creditors or debtors of an agent or principal.
- (3) Involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
- (4) To set aside a power of attorney based on undue influence or lack of capacity.
- (5) For the recovery of property transferred or conveyed by an agent on behalf of a principal with intent to hinder, delay, or defraud the principal's creditors.

(c) Proceedings brought under the provisions of subsection (a) of this section shall be commenced as prescribed for in estate proceedings under G.S. 28A-2-6 and may be brought by the following persons:

- (1) The principal or the agent.
- (2) A general guardian, guardian of the principal's estate, or guardian of the principal's person.
- (3) The personal representative of the estate of a deceased principal.
- (4) A person authorized to make health care decisions for the principal.
- (5) Any other interested person, including a person asked to accept a power of attorney.

(d) Venue of any proceeding brought under subsection (a) of this section, is proper in any of the following:

- (1) The county in which the principal resides or domiciled.
- (2) Any county in which an agent resides.
- (3) Any county in which property of the principal is located.

(e) Nothing in this section shall affect the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes.

(f) Upon motion by the principal, the clerk of superior court shall dismiss a petition filed under subsection (a) of this section, unless the clerk of superior court determines the principal is incapacitated within the meaning of G.S. 32C-1-102(5).

(g) Any party adversely affected by an order of the clerk of superior court in a proceeding commenced under subsection (a) of this section may appeal the clerk's order as provided in G.S. 1-301.3.

**"§ 32C-1-117. Agent's liability.**

(a) A violation by an agent of this Chapter is a breach of fiduciary duty.

(b) To remedy a breach of fiduciary duty that has occurred or may occur involving a power of attorney, the court may do the following:

- (1) Enjoin an agent from committing a breach of fiduciary duty.
- (2) Compel an agent to redress a breach of fiduciary duty by paying money, restoring property, or other means.
- (3) Order an agent to account.
- (4) Appoint a special fiduciary to take possession of the property subject to the power of attorney and administer that property.
- (5) Suspend an agent.
- (6) Remove an agent.
- (7) Reduce or deny compensation to or reimbursement of an agent.
- (8) Subject to G.S. 32C-1-119 and other laws governing the rights of third persons dealing in good faith with an agent, void an act of an agent, impose a lien or a constructive trust on property subject to the power of attorney, or trace property wrongfully disposed by an agent and recover the property or its proceeds.
- (9) Order any other appropriate relief.

(c) The court may, for good cause shown, relieve an agent from liability for any breach of fiduciary duty under a power of attorney, or wholly or partly excuse an agent who has acted honestly and reasonably from liability for a breach of fiduciary duty under a power of attorney.

(d) An agent who commits a breach of fiduciary duty under a power of attorney is liable for the following:

- (1) The amount required to restore the value of the property subject to the power of attorney and distributions from that property to what they would have been had the breach not occurred; and
- (2) The profit the agent made by reason of the breach.

(e) Except as otherwise provided in this subsection, if more than one agent is liable for a breach of fiduciary duty under a power of attorney, an agent is entitled to contribution from the other agent or agents. An agent is not entitled to contribution if the agent was substantially more at fault than another agent or if the agent committed the breach of fiduciary duty in bad faith or with reckless indifference to the purposes of the power of attorney or the best interests of the principal. An agent who received a benefit from the breach of fiduciary duty is not entitled to contribution from another agent to the extent of the benefit received.

(f) An agent is liable for any profit made by the agent arising from dealings with property subject to the power of attorney, even absent a breach of fiduciary duty. Nothing in this section limits an agent's right to compensation under G.S. 32C-1-112.

(g) Absent a breach of fiduciary duty under a power of attorney, an agent is not liable for a loss or depreciation in the value of property subject to the power of attorney or for not having made a profit.

(h) In a judicial proceeding involving a claim for breach of fiduciary duty under a power of attorney, the court may award costs and expenses, including reasonable attorneys' fees, as provided in G.S. 6-21(2).

**"§ 32C-1-118. Agent's resignation; notice.**

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice of resignation to the following:

- (1) To the principal if the principal is not incapacitated.
- (2) If the principal is incapacitated, to (i) the guardian of the principal's estate, the guardian of the principal's person, or general guardian, if one has been appointed, and (ii) any coagent or, if none, the successor agent next designated.

**"§ 32C-1-119. Acceptance of and reliance upon power of attorney.**

(a) For purposes of this section and G.S. 32C-1-120, the term "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(b) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under G.S. 32C-1-105 that the signature is genuine.

(c) A person that in good faith accepts a power of attorney 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 (i) 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 and (ii) shall not be held responsible for any breach of fiduciary duty by the agent, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by the agent. This subsection applies without regard to whether or not the person dealing with the agent demands or receives a certification under subsection (d) of this section.

(d) A person that is asked to accept a power of attorney may request, and rely upon, without further investigation, any one or more of the following:

- (1) A certification executed by the agent to the effect that the agent did not have actual knowledge at the time of the presentation of the power of attorney to the person (i) that the power of attorney is void, invalid, or terminated; (ii) that the agent's authority is void, invalid, or terminated; or (iii) of facts that would cause the agent to question the authenticity or validity of the power of attorney. A certification meeting the requirements of this subdivision shall be sufficient proof to the requesting person that (i) the power of attorney is authentic and valid and has not been terminated, (ii) the agent's authority is valid and has not been terminated, and (iii) other factual matters stated in the certification regarding the principal, agent, or power of attorney are true. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the person accepting the certification may require that the certification be prepared and executed so as to be recordable. A certification in the form described in G.S. 32C-3-302 shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.
- (2) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English.

(3) An opinion of counsel 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.

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

(f) For purposes of this section and G.S. 32C-1-120, a person that conducts activities through 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 is without actual knowledge of the fact.

(g) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity.

**"§ 32C-1-120. Liability for refusal to accept acknowledged power of attorney.**

(a) A person is not required to accept, and is not liable for refusing to accept, a power of attorney that has not been duly acknowledged.

(b) Except as otherwise provided in this section:

(1) No later than seven business days after presentation of an acknowledged power of attorney for acceptance, a person shall (i) accept the power of attorney; (ii) refuse to accept the power of attorney pursuant to subsections (c) and (d) of this section; or (iii) request a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d).

(2) If a person requests a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d), then within five business days after receipt of the requested items in reasonably satisfactory form, the person shall either (i) accept the power of attorney or (ii) refuse to accept the power of attorney pursuant to subsections (c) and (d) of this section.

(3) A person may not require an additional or different form of power of attorney if the power of attorney presented reasonably appears to authorize the agent to conduct the business the agent desires to conduct.

(c) A person is not required to accept an acknowledged power of attorney if any of the following circumstances exist:

(1) The person is not otherwise required to engage in a transaction with the principal in the same circumstances.

(2) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with applicable 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 pursuant to G.S. 32C-1-119(d) is refused.

(5) The person requesting a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d) does not receive the requested items in reasonably satisfactory form within a reasonable period of time.

(6) 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 pursuant to G.S. 32C-1-119(d) has been requested or provided.

(7) The person has reasonable cause to question the authenticity or validity of the power of attorney or the appropriateness of its exercise by the agent.

(8) The agent or principal has previously breached any agreement with the person, whether in an individual or fiduciary capacity.

(9) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office or law enforcement 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.

(d) Without limiting the generality of subsection (c) of this section, nothing in this Chapter requires a person to do any of the following:

- (1) Open an account for a principal at the request of an agent if the principal is not currently a customer of the person.
- (2) Make a loan to the principal at the request of the agent.
- (3) Permit an agent to conduct business not authorized by the terms of the power of attorney, or otherwise not permitted by applicable statute or regulation.

(e) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to all of the following:

- (1) A court order mandating acceptance of the power of attorney.
- (2) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that mandates acceptance of the power of attorney.
- (3) Any other remedy available under applicable law.

(f) The principal, the agent, or a person presented with a power of attorney may initiate a proceeding to determine whether and to what extent acceptance of a power of attorney shall be mandated. The court may award costs and expenses, including reasonable attorneys' fees in its discretion, but may award attorneys' fees to the agent only where the proceeding has substantial merit.

(g) Nothing in this Chapter amends or modifies the rights of banks and other depository institutions to terminate any deposit account in accordance with applicable law.

(h) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within seven business days.

(i) A person who promptly requests a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d) is not deemed to have unreasonably refused to accept a power of attorney prior to receipt of the requested items in reasonably acceptable form.

**"§ 32C-1-121. Principles of law and equity.**

The common law, including the common law of agency, and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another provision of the General Statutes.

**"§ 32C-1-122. Laws applicable to financial institutions and other entities.**

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

**"§ 32C-1-123. Remedies under other law.**

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

"Article 2.

"Authority.

**"§ 32C-2-201. Authority requiring specific grant; grant of general authority.**

(a) Unless the exercise of the authority by an agent under a power of attorney is not otherwise prohibited by another agreement or instrument to which the authority or property is subject, then the following apply:

- (1) An agent 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 that authority:
  - a. Make a gift.

- b. Create or change rights of survivorship.
  - c. Create or change a beneficiary designation.
  - d. Delegate authority granted under the power of attorney.
  - e. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
  - f. Exercise fiduciary powers that the principal has authority to delegate.
  - g. Renounce or disclaim property, including a power of appointment.
  - h. Exercise authority over the content of electronic communication, as defined in 18 U.S.C. § 2510(12), sent or received by the principal.
- (2) An agent may do the following only if the power of attorney or terms of the trust expressly grants the agent that authority:
- a. Exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36C-6-602.1.
  - b. Exercise the powers of the principal as settlor of an irrevocable trust to consent to the trust's modification or termination in accordance with G.S. 36C-4-411(a).

(b) Notwithstanding a grant of authority to do an act described in subsection (a) of this section, an agent may exercise such authority 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, which may include the following:

- (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.
- (5) The principal's personal history of making or joining in making gifts.
- (6) The principal's existing estate plan.

(c) Notwithstanding a grant of authority to do an act described in subsection (a) of this section, unless the power of attorney otherwise provides, an agent 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.

(d) Subject to subsections (a), (b), (c), (e), and (f) of this section, 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 G.S. 32C-2-204 through G.S. 32C-2-216 and G.S. 32C-2-220.

(e) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to subsections (b) and (c) of this section and G.S. 32C-2-217.

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

(g) 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 this State and whether or not the authority is exercised or the power of attorney is executed in this State.

(h) 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.

**"§ 32C-2-202. Incorporation of authority.**



(a) An agent has authority described in this Chapter if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 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 G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 or a citation to G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 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.

**"§ 32C-2-203. 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 G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 or that grants to an agent authority to do all acts that a principal could do pursuant to G.S. 32C-2-201(d), a principal authorizes the agent, with respect to that subject, to do all of the following:

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

**"§ 32C-2-204. 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 do all of the following:

- (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 encumber an interest in real property or right incident to real property as security for the principal or any entity in which the principal has an ownership interest to borrow money or to pay, renew, or extend the time of payment of (i) a debt of the principal, (ii) or a debt guaranteed by the principal, (iii) a debt of any entity in which the principal has an ownership interest, or (iv) a debt guaranteed by any entity in which the principal has an ownership interest.
- (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 which 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 or to be acquired by the principal, including all of the following:
  - 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.
  - d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property.
  - e. Obtaining title insurance for the benefit of the principal and/or any lender that has or will obtain a mortgage or deed of trust encumbering 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 all of the following:
  - a. Selling or otherwise disposing of them.
  - b. Exercising or selling an option, right of conversion, or similar right with respect to them.
  - 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.
- (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.
- (10) With respect to any real property owned or claimed to be owned by the principal's spouse and in which the principal's only interest is a marital interest, waive, release, or subordinate the principal's inchoate right pursuant to G.S. 29-30 to claim an elective life estate in the real property, regardless of whether the waiver, release, or subordination will benefit the agent or a person to whom the agent owes an obligation of support.

**"§ 32C-2-205. 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 do all of the following:

- (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 for the principal or any entity in which the principal has an ownership interest to borrow money or to pay, renew, or extend the time of payment of (i) a debt of the principal, (ii) a debt guaranteed by the principal, (iii) a debt of any entity in which the principal has an ownership interest, or (iv) a debt guaranteed by any entity in which the principal has an ownership interest.
- (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 all of the following:
  - 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.
  - f. Using and making repairs, alterations, or improvements to the property.
- (6) Change the form of title of an interest in tangible personal property.

**"§ 32C-2-206. 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 do all of the following:

- (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 for the principal or any entity in which the principal has an ownership interest to borrow money, or to pay, renew, or extend the time of payment of (i) a debt of the principal, (ii) a debt guaranteed by the principal, (iii) a debt of any entity in which the principal has an ownership interest, or (iv) a debt guaranteed by any entity in which the principal has an ownership interest.
- (4) Receive certificates and other evidences of ownership with respect to stocks and bonds.
- (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.

**"§ 32C-2-207. 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 do all of the following:

- (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.
- (2) Establish, continue, modify, and terminate option accounts.

**"§ 32C-2-208. 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 do all of the following:

- (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, and continue, modify, and terminate any such services.
- (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.
- (7a) Guarantee any obligation necessary for any entity in which the principal has an ownership interest to borrow money or to pay, renew, or extend the time of payment of a debt.
- (7b) Pledge as security personal property of the principal necessary for any entity in which the principal has an ownership interest to borrow money or to pay, renew, or extend the time of payment of a debt.
- (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.
- (11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.
- (12) Establish, modify, and terminate an ABLE account as defined under section 529A of the Internal Revenue Code with any State or financial institution selected by the agent and have the same authority over the ABLE account as

the agent has with regard to any other account with a bank or other financial institution.

**"§ 32C-2-209. Operation of entity.**

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 authorizes the agent to do all of the following:

- (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 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 before execution of the power of attorney.
  - b. Determine all of the following:
    1. The location of its operation.
    2. The nature and extent of its business.
    3. The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation.
    4. The amount and types of insurance carried.
    5. 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 is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity.
  - d. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity and control and disburse the money in the operation of the entity.
- (8) Put additional capital into an entity in which the principal has an interest.
- (9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity.
- (10) Sell or liquidate all or part of an entity.
- (11) Establish the value of an entity 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 and make related payments.
- (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, including

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

**"§ 32C-2-210. 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 do all of the following:

- (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 which 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.
- (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.
- (14) Change the beneficiary to a state or other government entity to qualify the principal for medical assistance or other benefits notwithstanding G.S. 32C-2-201(a)(4) requiring an express grant of authority to change a beneficiary.

**"§ 32C-2-211. Estates, trusts, and other beneficial interests.**

(a) In this section, the term "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 do all of the following:

- (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.

**"§ 32C-2-212. 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 do all of the following:

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

**"§ 32C-2-213. 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 do all of the following:

- (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. The principal's children who are legally entitled to be supported by the principal.
  - b. Other individuals legally entitled to be supported by the principal.
  - 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 (1) of this subsection by the following means:
  - a. Purchase, lease, or other contract.
  - 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 (1) of this subsection.
- (5) Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision (1) of this subsection.
- (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 this state 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 (1) of this subsection.
- (8) Maintain credit and debit accounts for the convenience of the individuals described in subdivision (1) of this subsection and open new accounts.
- (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 Chapter.

**"§ 32C-2-214. Benefits from governmental programs or civil or military service.**



(a) In this section, the term "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation including Social Security, Medicare, and Medicaid.

(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 do all of the following:

- (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 G.S. 32C-2-213(a)(1), 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.
- (6) Receive the financial proceeds of a claim described in subdivision (4) of this subsection and conserve, invest, disburse, or use for a lawful purpose anything so received.
- (7) Make elections under the Survivor Benefit Plan as defined under Subchapter II of Title 10 of the United States Code, as amended, including the authority to elect that benefits be paid to a supplemental or special needs trust for a disabled child.

**"§ 32C-2-215. Retirement plans.**

(a) In this section, the term "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 section 408 of the Internal Revenue Code.
- (2) A Roth individual retirement account under section 408A of the Internal Revenue Code.
- (3) A deemed individual retirement account under section 408(q) of the Internal Revenue Code.
- (4) An annuity or mutual fund custodial account under section 403(b) of the Internal Revenue Code.
- (5) A pension, profit sharing, stock bonus, or other retirement plan qualified under section 401(a) of the Internal Revenue Code.
- (6) A plan under sections 457(b) and (f) of the Internal Revenue Code.
- (7) A nonqualified deferred compensation plan under section 409A of the Internal Revenue Code.

(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 do all of the following:

- (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.
- (6) Borrow from, sell assets to, or purchase assets from a retirement plan.

**"§ 32C-2-216. 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 do all of the following:

- (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 section 2032A of the Internal Revenue Code, 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.
- (4) Act for the principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

**"§ 32C-2-217. Gifts authorized by general authority.**

(a) In this section, a gift "for the benefit of" an individual includes a gift to a trust, an account under the Uniform Transfers to Minors Act, a tuition savings account or prepaid tuition plan as defined under section 529 of the Internal Revenue Code, and an ABLÉ account as defined under section 529A of the Internal Revenue Code.

(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 do the following:

- (1) Make 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 for the following purposes:
  - a. To or for the benefit of an individual so long as the value of the gift does not exceed the greater of (i) the amount determined to be in accordance with the principal's history of making or joining in the making of gifts or (ii) the annual dollar limit of the federal gift tax exclusion under section 2503(b) of the Internal Revenue Code without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to the split gift pursuant to section 2513 of the Internal Revenue Code in an amount per donee not to exceed twice the annual federal gift tax exclusion limit.

- b. To any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code in accordance with the principal's history of making or joining in the making of gifts.
- (2) Consent, pursuant to section 2513 of the Internal Revenue Code to the splitting of a gift made by the principal's spouse with respect to gifts described in subdivision (1) of this subsection.

**"§ 32C-2-218. Gifts authorized by court order.**

An agent may petition the court for an order authorizing the agent to make a gift of the principal's property that is reasonable under the circumstances, including a gift that is in addition to, or that otherwise differs from, the gifts authorized by the power of attorney.

**"§ 32C-2-219. Certain acts authorized by the court.**

(a) Except as provided in subsection (b) of this section, an agent under a power of attorney that does not expressly grant the agent the authority to do an act described in G.S. 32C-2-201(a) may petition the court for authority to do the act described in G.S. 32C-2-201(a) that is reasonable under the circumstances.

(b) This section shall not apply to the authority of an agent to make a gift pursuant to G.S. 32C-2-218.

"Article 3.

"Statutory Forms.

**"§ 32C-3-301. Statutory form power of attorney.**

As a nonexclusive method to grant a power of attorney, a document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this Chapter:

"NORTH CAROLINA  
STATUTORY SHORT FORM POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32C OF THE NORTH CAROLINA GENERAL STATUTES, WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the North Carolina Uniform Power of Attorney Act.

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

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the Additional Provisions and Exclusions.

This form provides for designation of one agent, successor agent, and second successor agent. If you wish to name more than one agent, successor agent, and second successor agent, you may name a coagent, successor coagent, or second successor coagent in the Additional Provisions and Exclusions. Coagents, successor coagents, or second successor coagents are not required to act together unless you include that requirement in the Additional Provisions and Exclusions.

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

This power of attorney becomes effective immediately.

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

### DESIGNATION OF AGENT

I, \_\_\_\_\_, name the following person as my agent:  
\_\_\_\_\_  
(Name of Principal).

Name of Agent:

### DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

Name of Successor Agent:

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

Name of Second Successor Agent:

INITIAL below if you want to give an agent the power to name a successor agent.

( ) I give to my acting agent the full power to appoint another to act as my agent, and full power to revoke such appointment, if no agent named by me above is willing or able to act.

### GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the North Carolina Uniform Power of Attorney Act, Chapter 32C of the General Statutes:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial "All Preceding Subjects" instead of initialing each subject.)

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY  
(OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Make a gift, subject to the limitations provided in G.S. 32C-2-217
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that I have authority to delegate
- Disclaim or refuse an interest in property, including a power of appointment
- Access the content of electronic communications.

EXERCISE OF SPECIFIC AUTHORITY IN FAVOR OF AGENT  
(OPTIONAL)

( ) UNLESS INITIALED, an agent MAY NOT exercise any of the grants of specific authority initialed above in favor of the agent or an individual to whom the agent owes a legal obligation of support.

ADDITIONAL PROVISIONS AND EXCLUSIONS  
(OPTIONAL)

\_\_\_\_\_

EFFECTIVE DATE

This power of attorney is effective immediately.

NOMINATION OF GUARDIAN  
(OPTIONAL)

INITIAL below ONLY if you WANT your acting agent to be your Guardian.

( ) If it becomes necessary for a court to appoint a guardian of my estate or a general guardian, I nominate my agent acting under this power of attorney to be the guardian to serve without bond or other security.

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.

MEANING AND EFFECT

The meaning and effect of this power of attorney shall for all purposes be determined by the law of the State of North Carolina.

SIGNATURE AND ACKNOWLEDGMENT

\_\_\_\_\_ Your Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_ Your Name Printed \_\_\_\_\_

State of \_\_\_\_\_, County of \_\_\_\_\_.

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_.

Date: \_\_\_\_\_

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

(Official Seal)

\_\_\_\_\_, Notary Public  
Printed or typed name

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

## IMPORTANT INFORMATION FOR AGENT

### Agent's Duties

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

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and
- (4) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner: (Principal's Name) by (Your Signature) as Agent.

Unless the Additional Provisions and Exclusions in this power of attorney state otherwise, you must also:

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects, or if you do not know the principal's expectations, to act in the principal's best interest;
- (6) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest; and
- (7) Account to the principal (or a person designated by the principal (if any)) in the Additional Provisions and Exclusions.

### Termination of Agent's Authority

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

- (1) Death of a principal;
- (2) The principal's revocation of the power of attorney or the termination of your authority;
- (3) The occurrence of a termination event stated in the power of attorney;

- (4) The purpose of the power of attorney is fully accomplished; or
- (5) If you are married to the principal, your divorce from the principal, unless the Additional Provisions and Exclusions in this power of attorney state that your divorce from the principal will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the North Carolina Uniform Power of Attorney Act. If you violate the North Carolina Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

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

**"§ 32C-3-302. 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  
(G.S. 32C-3-302)

I, \_\_\_\_\_ (Name of Agent), do hereby state and affirm the following under penalty of perjury:

(1) \_\_\_\_\_ (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated \_\_\_\_\_.

(2) The powers and authority granted to me in the power of attorney are currently exercisable by me.

(3) I have no actual knowledge of any of the following:

- (a) The principal is deceased.
- (b) The power of attorney or my authority as agent under the power of attorney has been revoked or terminated, partially or otherwise.
- (c) The principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the power of attorney was executed.
- (d) The power of attorney was not properly executed and is not a legal, valid power of attorney.
- (e) (Insert other relevant statements)

\_\_\_\_\_  
\_\_\_\_\_

(4) I agree not to exercise any powers granted under the power of attorney if I become aware that the principal is deceased, that the power of attorney has been revoked or terminated, or that my authority as agent under the power of attorney has been revoked or terminated.

SIGNATURE AND ACKNOWLEDGMENT

\_\_\_\_\_  
Agent's Signature \_\_\_\_\_  
Date



\_\_\_\_\_  
Agent's Name Printed

\_\_\_\_\_  
Agent's Address

\_\_\_\_\_  
Agent's Telephone Number

COUNTY OF \_\_\_\_\_, STATE OF \_\_\_\_\_.

Sworn to or affirmed and subscribed before me this day by:

Date: \_\_\_\_\_

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

(Official Seal)

\_\_\_\_\_, Notary Public

\_\_\_\_\_  
Printed or typed name

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

**"§ 32C-3-303. Limited power of attorney for real property.**

While no particular phrasing is required for a limited power of attorney for transactions involving the purchase, sale, or financing of real property or tangible personal property related to real property, the following form may be used to create a limited power of attorney for transactions involving the purchase, sale, or financing of designated real property or tangible personal property related to the designated real property. The following form has as the meaning and effect prescribed by this Chapter:

"Return to:

NORTH CAROLINA  
LIMITED POWER OF ATTORNEY FOR REAL PROPERTY

I, \_\_\_\_\_, name the following person as my  
agent:  
(Name of Principal)

Name of Agent: \_\_\_\_\_

For purposes of this power of attorney, the "Property" is all of that real property located in  
\_\_\_\_\_ County, North Carolina, and known or identified as follows:

GRANT OF AUTHORITY

I grant my agent general authority to act for me with respect to the Property, all tangible personal property related to the Property, and all financial transactions relating to the Property. The authority granted to my agent pursuant to this power of attorney expressly includes the following:

- (1) The authority to act with respect to real property as set forth in Section 32C-2-204 of the North Carolina General Statutes;
- (2) The authority to act with respect to tangible personal property as set forth in Section 32C-2-205 of the North Carolina General Statutes; and
- (3) The authority to act with respect to banks and other financial institutions as set forth in Section 32C-2-208 of the North Carolina General Statutes.

The authority granted to my agent pursuant to this power of attorney may be exercised by my agent even though the exercise of that authority may benefit the agent or a person to whom the agent owes an obligation of support.

EFFECTIVE DATE; AUTOMATIC EXPIRATION

This power of attorney is effective immediately. The authority of my agent to act on my behalf pursuant to this power of attorney will automatically expire on \_\_\_\_\_ (or, if no date is specified, one year from the date of this power of attorney). Actions taken by my agent on my behalf pursuant to this power of attorney while this power of attorney remains in effect shall continue to bind me even after my agent's authority expires.

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.

MEANING AND EFFECT

The meaning and effect of this power of attorney shall for all purposes be determined by the law of the State of North Carolina.

SIGNATURE AND ACKNOWLEDGMENT

\_\_\_\_\_  
Your Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Your Name Printed

State of \_\_\_\_\_, County of \_\_\_\_\_.

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document: \_\_\_\_\_.

Date: \_\_\_\_\_

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

(Official Seal)

\_\_\_\_\_, Notary Public

\_\_\_\_\_  
Printed or typed name

"Article 4.

"Miscellaneous Provisions.

**"§ 32C-4-401. Uniformity of application and construction.**

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

**"§ 32C-4-402. Relation to Electronic Signatures in Global and National Commerce Act.**

The provisions of this Chapter governing the legal effect, validity, or enforceability of electronic records or electronic signatures, and of contracts formed or performed with the use of those records or signatures, conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify, and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

**"§ 32C-4-403. Effect on existing powers of attorney.**

(a) Except as otherwise provided in this Chapter, the following apply on the effective date of this Chapter:

- (1) This Chapter applies to a power of attorney created before, on, or after the effective date of this Chapter unless there is clear indication of a contrary intent in the terms of a power of attorney or unless application of a particular provision of this Chapter would substantially impair rights of a party.
- (2) This Chapter applies to a judicial proceeding concerning a power of attorney commenced on or after the effective date of this Chapter.
- (3) This Chapter applies to a judicial proceeding concerning a power of attorney commenced before the effective date of this Chapter unless the court finds that application of a provision of this Chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that the particular provision of this Chapter does not apply and the superseded law applies.
- (4) A rule of construction or presumption provided by this Chapter applies to powers of attorney executed before the effective date of this Chapter unless there is a clear indication of a contrary intent in the terms of a power of attorney or unless the application of the rule of construction or presumption would substantially impair rights of a party created under North Carolina law in effect prior to the effective date of this Chapter in which case the rule

of construction or presumption does not apply and the superseded rule of construction or presumption applies.

(b) If a right is acquired, extinguished, or banned upon the expiration of a prescribed period that commenced under law of this State other than this Chapter before the effective date of this Chapter, that statute continues to apply to the right even if it has been repealed or superseded.

(c) References to prior statutes and powers of attorney, whether executed on or after the adoption of this Chapter shall be deemed to refer to the corresponding provisions this Chapter unless application of the rule of construction would substantially impair substantial rights of a party.

(d) Notwithstanding the provisions of this Chapter, the powers conferred by former G.S. 32A-2 shall apply to a Statutory Short Form Power of Attorney that was created in accordance with former G.S. 32A-1 prior to January 1, 2018."

## **PART II. CONFORMING CHANGES TO THE GENERAL STATUTES**

**SECTION 2.1.** G.S. 30-3.4 reads as rewritten:

### **"§ 30-3.4. Procedure for determining the elective share.**

(a) Exercisable Only During Lifetime. – The right of the surviving spouse to file a claim for an elective share must be exercised during the lifetime of the surviving spouse, by the surviving spouse, by the surviving spouse's ~~attorney in fact agent~~ if the surviving spouse's power of attorney expressly authorizes the ~~attorney in fact agent~~ to do so or to generally engage in ~~estate transactions, estate, trusts, and other beneficial interests,~~ or, with approval of court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse dies before the claim for an elective share has been settled, the surviving spouse's personal representative shall succeed to the surviving spouse's rights to an elective share.

...."

**SECTION 2.2.** G.S. 47-28 reads as rewritten:

### **"§ 47-28. Powers of attorney.**

(a) Recording required for powers of attorney affecting real property:

(1) Before any transfer of real property executed by an ~~attorney in fact agent~~ empowered by a power of attorney governed by ~~Article 1, Article 2, or Article 2A of Chapter 32A-32C~~ of the General Statutes, the power of attorney or a certified copy of the power of attorney shall be registered in the office of the register of deeds of the county in which the principal is domiciled or where the real property lies. If the principal is not a resident of North Carolina, the power of attorney or a certified copy of the power of attorney may be recorded in any county in the State wherein the principal owns real property or has a significant business reason for registering in the county.

...

(3) Any instrument subject to the provisions of G.S. 47-17.2, 47-18, or 47-20 and signed by an ~~attorney in fact agent~~ and recorded in a county other than the county where a power of attorney is recorded in this State shall include the recording information, including book, page, and county for the power of attorney.

...

(b) If the instrument of conveyance is recorded prior to the registration of the power of attorney or a certified copy of the power of attorney pursuant to subsection (a) of this section, the power of attorney or a certified copy of the power of attorney may be registered in the office of the register of deeds as provided in subsection (a) of this section thereafter provided that the ~~attorney in fact agent~~ was empowered at the time of the original conveyance.

Notwithstanding the provisions of subsection (a) of this section, no conveyance shall be rendered invalid by the recordation of the power of attorney or a certified copy of the power of attorney after the instrument of conveyance, and the registration shall relate back to the date and time of registration of the instrument of conveyance.

...."

**SECTION 2.3.** G.S. 47-43.1 reads as rewritten:

**"§ 47-43.1. Execution and acknowledgment of instruments by attorneys or attorneys-in-fact.**

When an instrument purports to be executed by parties acting through another by virtue of a power of attorney, it shall be sufficient if the attorney or ~~attorney in fact agent~~ signs such instrument either in the name of the principal by the attorney or ~~attorney in fact agent~~ or signs as attorney or ~~attorney in fact agent~~ for the principal; and if such instrument purports to be under seal, the seal of the ~~attorney in fact agent~~ shall be sufficient. ~~For such instrument to be executed under seal, the power of attorney must have been executed under seal."~~

**SECTION 2.4.** G.S. 50-22 reads as rewritten:

**"§ 50-22. Action on behalf of an incompetent.**

A duly appointed ~~attorney in fact agent~~ who has the power to sue and defend civil actions on behalf of an incompetent spouse and who has been appointed pursuant to a durable power of attorney executed in accordance with Chapter ~~32A-32C~~ of the General Statutes, a guardian appointed in accordance with Chapter 35A of the General Statutes, or a guardian ad litem appointed in accordance with G.S. 1A-1, Rules 17 and 25(b), may commence, defend, maintain, arbitrate, mediate, or settle any action authorized by this Chapter on behalf of an incompetent spouse. However, only a competent spouse may commence an action for absolute divorce."

**SECTION 2.5.** G.S. 90-21.13 reads as rewritten:

**"§ 90-21.13. Informed consent to health care treatment or procedure.**

...

(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

- (1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with ~~G.S. 35A-1208(a);~~G.S. 35A-1208(a).
- (2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority ~~granted;~~granted.
- (3) An ~~attorney in fact agent,~~ with powers to make health care decisions for the patient, appointed by the patient pursuant to ~~Article 1 or Article 2 of Chapter 32A-32C~~ of the General Statutes, to the extent of the authority ~~granted;~~granted.
- (4) The patient's ~~spouse;~~spouse.
- (5) A majority of the patient's reasonably available parents and children who are at least 18 years of ~~age;~~age.
- (6) A majority of the patient's reasonably available siblings who are at least 18 years of ~~age;~~ or age.

- (7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

...."

**SECTION 2.6.** G.S. 90-322 reads as rewritten:

**"§ 90-322. Procedures for natural death in the absence of a declaration.**

...

(b) If a person's condition has been determined to meet the conditions set forth in subsection (a) of this section and no instrument has been executed as provided in G.S. 90-321, then life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician with the concurrence of the following persons, in the order indicated:

- (1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(b) unless the Clerk has suspended the authority of that health care agent in accordance with ~~G.S. 35A-1208(a);~~G.S. 35A-1208(a).
- (2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority ~~granted;~~granted.
- (3) An ~~attorney-in-fact, agent,~~ with powers to make health care decisions for the patient, appointed by the patient pursuant to ~~Article 1 or Article 2 of Chapter 32A—32C~~ of the General Statutes, to the extent of the authority ~~granted;~~granted.
- (4) The patient's ~~spouse;~~spouse.
- (5) A majority of the patient's reasonably available parents and children who are at least 18 years of ~~age;~~age.
- (6) A majority of the patient's reasonably available siblings who are at least 18 years of ~~age;~~ or age.
- (7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

If none of the above is reasonably available then at the discretion of the attending physician the life-prolonging measures may be withheld or discontinued upon the direction and under the supervision of the attending physician.

...."

**SECTION 2.7.** G.S. 122C-73 reads as rewritten:

**"§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.**

...

(f) An advance instruction for mental health treatment may be combined with a health care power of attorney or general power of attorney that is executed in accordance with the requirements of Chapter 32A or Chapter 32C of the General Statutes so long as each form shall be executed in accordance with its own statute."

**SECTION 2.8.** Articles 1, 2, 2A, 2B, and 5 of Chapter 32A of the General Statutes are repealed.

**PART III. EFFECTIVE DATE AND AUTHORIZATION FOR THE PRINTING OF OFFICIAL AND DRAFTERS' COMMENTS**

**SECTION 3.** This act becomes effective January 1, 2018. The Revisor of Statutes shall cause to be printed, as annotations to the published General Statutes, all relevant portions of the Official Comments to the Uniform Power of Attorney Act (2006) and all explanatory comments of the drafters of this act as the Revisor may deem appropriate.

In the General Assembly read three times and ratified this the 29<sup>th</sup> day of June, 2017.

s/ Daniel J. Forest  
President of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

s/ Roy Cooper  
Governor

Approved 4:20 p.m. this 20<sup>th</sup> day of July, 2017