

The Senate Committee on Judiciary offered the following substitute to HB 221:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and  
2 trade, so as to enact the "Uniform Power of Attorney Act"; to repeal provisions relating to  
3 a financial power of attorney; to provide for a short title and definitions; to provide for  
4 applicability, validity, meaning, effect, and termination of a power of attorney; to provide for  
5 an agent, coagent, and successor agent, their duties, responsibilities, liability, authority, and  
6 compensation; to provide for general and specific authority that a principal may give an agent  
7 in a power of attorney; to provide for forms; to amend Title 16 of the Official Code of  
8 Georgia Annotated, relating to crimes and offenses, so as to provide for cross-references; to  
9 provide for related matters; to provide for an effective date; to repeal conflicting laws; and  
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 PART I  
13 SECTION 1-1.

14 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is  
15 amended by repealing Article 7 of Chapter 6, relating to financial power of attorney, and  
16 designating it as reserved.

17 PART II  
18 SECTION 2-1.

19 Said title is further amended by adding a new chapter to read as follows:

"CHAPTER 6BARTICLE 110-6B-1.

This chapter shall be known and may be cited as the 'Uniform Power of Attorney Act.'

10-6B-2.

As used in this chapter, the term:

(1) 'Agent' means a person granted authority to act in the place of an individual, whether denominated by such term, attorney-in-fact, or otherwise. Such term shall include a coagent, successor agent, and a person to which authority is delegated.

(2) 'Durable' means not terminated by the principal's incapacity.

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

(4) 'Good faith' means honesty in fact.

(5) 'Incapacity' means inability of an individual to manage property or business affairs because the individual:

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

(B) Is:

(i) Missing;

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

(iii) Outside the United States and unable to return.

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

(7) 'Power of attorney' means a writing or other record that grants authority to a person to act in the place of an individual, whether or not such term is used.

(8) 'Presently exercisable general power of appointment,' with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. Such term shall include a power of appointment not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the

54 passage of the specified period. Such term shall not include a power exercisable in a  
 55 fiduciary capacity or only by will.

56 (9) 'Principal' means an individual who grants authority to a person to act in the place of  
 57 such individual.

58 (10) 'Property' means anything that may be the subject of ownership, whether real or  
 59 personal, or legal or equitable, or any interest or right therein.

60 (11) 'Record' means information that is inscribed on a tangible medium or that is stored  
 61 in an electronic or other medium and is retrievable in perceivable form.

62 (12) 'Sign' means, with present intent to authenticate or adopt a record, to execute or  
 63 adopt a tangible symbol.

64 (13) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the  
 65 United States Virgin Islands, or any territory or insular possession subject to the  
 66 jurisdiction of the United States.

67 (14) 'Stocks and bonds' means stocks, bonds, mutual funds, and all other types of  
 68 securities and financial instruments, whether held directly, indirectly, or in any other  
 69 manner. Such term shall not include commodity futures contracts and call or put options  
 70 on stocks or stock indexes.

71 10-6B-3.

72 (a) This chapter shall apply to all powers of attorney except:

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

76 (2) A power to make health care decisions;

77 (3) A proxy or other delegation to exercise voting rights or management rights with  
 78 respect to an entity;

79 (4) A power created on a form prescribed by a government or governmental subdivision,  
 80 agency, or instrumentality for a governmental purpose;

81 (5) Transaction specific powers of attorney, including, but not limited to, powers of  
 82 attorney under Chapter 6 of this title; and

83 (6) Powers of attorney provided for under Titles 19 and 33.

84 (b) A power of attorney shall not authorize an agent to create a will.

85 10-6B-4.

86 A power of attorney created under this chapter shall be durable unless it expressly provides  
 87 that it is terminated by the incapacity of the principal.

88 10-6B-5.89 (a) A power of attorney shall be:90 (1) Signed by the principal or by another individual in such principal's presence at the  
91 principal's express direction;92 (2) Attested in the presence of the principal by one or more competent witnesses; and93 (3) Attested in the presence of the principal before a notary public or other individual  
94 authorized by law to administer oaths who is not a witness for purposes of paragraph (2)  
95 of this Code section.96 (b) All signatures and attestations required by subsection (a) of this Code section shall be  
97 performed and conducted in the presence of all parties provided for in subsection (a) of this  
98 Code section.99 10-6B-6.100 (a) A power of attorney executed in this state on or after July 1, 2017, shall be valid if its  
101 execution complies with Code Section 10-6B-5.102 (b) This chapter shall not affect a power of attorney executed prior to July 1, 2017, to  
103 which the former provisions of Article 7 of Chapter 6 of this title, as such existed on June  
104 30, 2017, shall continue to apply.105 (c) A power of attorney executed other than in this state shall be valid in this state if, when  
106 the power of attorney was executed, the execution complied with:107 (1) The law of the jurisdiction that determines the meaning and effect of the power of  
108 attorney pursuant to Code Section 10-6B-7; or109 (2) The requirements for a military power of attorney pursuant to 10 U.S.C. Section  
110 1044b, in effect on February 1, 2017.111 (d) Except as otherwise provided by law other than this chapter, a photocopy or  
112 electronically transmitted copy of an original power of attorney shall have the same effect  
113 as the original; provided, however, that when recording a power of attorney in connection  
114 with a conveyance involving real property, an original power of attorney shall be used.115 10-6B-7.116 The meaning and effect of a power of attorney shall be determined by the law of the  
117 jurisdiction indicated in the power of attorney and, in the absence of an indication of  
118 jurisdiction, by the law of the jurisdiction in which the power of attorney was executed.119 10-6B-8.120 (a) In a power of attorney, a principal may nominate a conservator of the principal's estate  
121 for consideration by the court if protective proceedings for the principal's estate are begun

122 after the principal executes the power of attorney. Except for good cause shown or  
 123 disqualification, the court shall make its appointment in accordance with the principal's  
 124 most recent nomination.

125 (b) Unless expressly provided otherwise by the power of attorney or ordered otherwise by  
 126 the court appointing the conservator, if, after a principal executes a power of attorney, a  
 127 court appoints a conservator of the principal's estate or other fiduciary charged with the  
 128 management of some or all of the principal's property, then the appointment of a  
 129 conservator or other fiduciary shall terminate all or part of the power of attorney that relates  
 130 to the matters within the scope of the conservatorship or management by another fiduciary.  
 131 If such power of attorney does not wholly terminate, the agent shall be accountable to the  
 132 conservator or other fiduciary as well as to the principal.

133 (c) If the court orders the power of attorney shall not terminate, the court may impose upon  
 134 the power of attorney or agent such terms and conditions as it determines are in the best  
 135 interest of the principal.

136 10-6B-9.

137 (a) A power of attorney shall be effective when executed unless the principal provides in  
 138 the power of attorney that it becomes effective at a future date or upon the occurrence of  
 139 a future event or contingency.

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

143 (c) If a power of attorney becomes effective upon the principal's incapacity and the  
 144 principal has not authorized a person to determine whether the principal is incapacitated,  
 145 or the person authorized is unable or unwilling to make the determination, the power of  
 146 attorney shall become effective upon a certification in a writing or other record by:

147 (1) A physician or licensed psychologist determining that the principal has an  
 148 impairment in the ability to receive and evaluate information or make or communicate  
 149 decisions even with the use of technological assistance; or

150 (2) An attorney at law, a judge, or an appropriate governmental official determining that  
 151 the principal is missing, detained, including incarcerated in a penal system, or is outside  
 152 the United States and unable to return.

153 (d) A person authorized by the principal in the power of attorney to determine that the  
 154 principal is incapacitated may act as the principal's personal representative pursuant to the  
 155 Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the  
 156 Social Security Act, 42 U.S.C. Section 1320d, in effect on February 1, 2017, and applicable

157 regulations in effect on February 1, 2017, to obtain access to the principal's health care  
158 information and communicate with the principal's health care provider.

159 10-6B-10.

160 (a) A power of attorney shall terminate when:

161 (1) The principal dies;

162 (2) The principal becomes incapacitated, if the power of attorney specifically provides  
163 that it is not durable;

164 (3) The principal revokes the power of attorney, provided that the principal provides the  
165 agent with notice of such revocation by certified mail and provided that such notice is  
166 filed with the clerk of superior court in the county of domicile of the principal;

167 (4) The agent resigns, becomes incapacitated, or dies;

168 (5) The power of attorney provides that it terminates;

169 (6) The purpose of the power of attorney is accomplished; or

170 (7) One of the events specified in paragraph (3) or (4) of this subsection occurs and the  
171 power of attorney does not provide for another agent to act under the power of attorney.

172 (b) An agent's authority shall terminate when:

173 (1) The agent resigns, becomes incapacitated, or dies;

174 (2) The principal revokes the agent's authority, provided that the principal provides the  
175 agent with notice of such revocation by certified mail and provided that such notice is  
176 filed with the clerk of superior court in the county of domicile of the principal;

177 (3) An action is filed for the dissolution or annulment of the agent's marriage to the  
178 principal or their legal separation, unless the power of attorney otherwise provides; or

179 (4) The power of attorney terminates.

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

183 (d) Termination of an agent's authority or of a power of attorney shall not be effective as  
184 to the agent or another person that, without actual knowledge of the termination, acts in  
185 good faith under the power of attorney. An act so performed, unless otherwise invalid or  
186 unenforceable, shall bind the principal and the principal's successors in interest.

187 (e) Incapacity of the principal of a power of attorney that is not durable shall not revoke  
188 or terminate the power of attorney as to an agent or other person that, without actual  
189 knowledge of the incapacity, acts in good faith under the power of attorney. An act so  
190 performed, unless otherwise invalid or unenforceable, shall bind the principal and the  
191 principal's successors in interest.

192 (f) The execution of a power of attorney shall not revoke a power of attorney previously  
193 executed by the principal unless the subsequent power of attorney provides that the  
194 previous power of attorney shall be revoked or that all other powers of attorney are  
195 revoked.

196 10-6B-11.

197 (a) A principal may designate two or more persons to act as coagents. Unless the power  
198 of attorney otherwise provides, coagents shall exercise their authority independently.

199 (b)(1) A principal may designate one or more successor agents to act if an agent resigns,  
200 dies, becomes incapacitated, is no longer qualified to serve, has declined to serve, or dies.  
201 A principal may grant authority to designate one or more successor agents to an agent or  
202 other person designated by name, office, or function. Unless the power of attorney  
203 otherwise provides, a successor agent shall:

204 (A) Have the same authority as that granted to the original agent; and

205 (B) Not act until all predecessor agents have resigned, become incapacitated, are no  
206 longer qualified to serve, have declined to serve, or died.

207 (2) Once a predecessor agent resigns, becomes incapacitated, is no longer qualified to  
208 serve, or has declined to serve, he or she shall be permanently barred from serving as an  
209 agent under the then existing power of attorney.

210 (c) Except as otherwise provided in the power of attorney and subsection (d) of this Code  
211 section, an agent that does not participate in or conceal a breach of fiduciary duty  
212 committed by another agent, including a predecessor agent, shall not be liable for the  
213 actions of the other agent.

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

220 10-6B-12.

221 Unless the power of attorney otherwise provides, an agent shall not be entitled to  
222 compensation for services rendered. An agent shall be entitled to reasonable  
223 reimbursement of expenses incurred in performing the acts required by the principal under  
224 the power of attorney.

225 10-6B-13.

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

229 10-6B-14.

230 (a) Notwithstanding provisions in the power of attorney, an agent that has accepted  
231 appointment shall act:

232 (1) In accordance with the principal's reasonable expectations to the extent actually  
233 known by the agent and, otherwise, in the principal's best interest;

234 (2) In good faith; and

235 (3) Only within the scope of authority granted in the power of attorney.

236 (b) Except as otherwise provided in the power of attorney, an agent that has accepted  
237 appointment shall:

238 (1) Act loyally for the principal's benefit;

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

241 (3) Act with the care, competence, and diligence ordinarily exercised by agents in similar  
242 circumstances;

243 (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the  
244 principal;

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

248 (6) Attempt to preserve the principal's estate plan, to the extent actually known by the  
249 agent, if preserving such plan is consistent with the principal's best interest based on all  
250 relevant factors, including:

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

252 (B) The principal's foreseeable obligations and need for maintenance;

253 (C) Minimization of taxes, including income, estate, inheritance, generation-skipping  
254 transfer, and gift taxes; and

255 (D) Eligibility for a benefit, a program, or assistance under a law or regulation.

256 (c) An agent that acts in good faith shall not be liable to any beneficiary of the principal's  
257 estate plan for failure to preserve such plan.

258 (d) An agent that acts with care, competence, and diligence for the best interest of the  
259 principal shall not be liable solely because the agent also benefits from the act or has an  
260 individual or conflicting interest in relation to the property or affairs of the principal.



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

265 (f) Absent a breach of duty to the principal, an agent shall not be liable if the value of the  
 266 principal's property declines.

267 (g) An agent that exercises authority to delegate to another person the authority granted  
 268 by the principal or that engages another person on behalf of the principal shall not be liable  
 269 for an act, error of judgment, or default of that person if the agent exercises care,  
 270 competence, and diligence in selecting and monitoring the person.

271 (h) Except as otherwise provided in the power of attorney, an agent shall not be required  
 272 to disclose receipts, disbursements, or transactions conducted on behalf of the principal  
 273 unless ordered by a court or requested by the principal, a guardian, a conservator, another  
 274 fiduciary acting for the principal, a governmental agency having authority to protect the  
 275 welfare of the principal, or, upon the death of the principal, by the personal representative  
 276 or successor in interest of the principal's estate. If so requested, within 30 days the agent  
 277 shall comply with the request or provide a writing or other record substantiating why  
 278 additional time is needed and shall comply with the request within an additional 30 days.

279 10-6B-15.

280 A provision in a power of attorney relieving an agent of liability for breach of duty shall  
 281 be binding on the principal and the principal's successors in interest except to the extent the  
 282 provision:

283 (1) Relieves the agent of liability for breach of duty committed in bad faith, or with  
 284 reckless indifference to the purposes of the power of attorney or the best interest of the  
 285 principal; or

286 (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with  
 287 the principal.

288 10-6B-16.

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

291 (1) The principal or the agent;

292 (2) A guardian, conservator, or other fiduciary acting for the principal;

293 (3) A person authorized to make health care decisions for the principal;

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

295 (5) An individual who would qualify as a presumptive heir of the principal;

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

299 (7) A governmental agency having authority to protect the welfare of the principal;

300 (8) The principal's caregiver or another person that demonstrates sufficient interest in the  
 301 principal's welfare; and

302 (9) A person asked to accept the power of attorney.

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

306 10-6B-17.

307 An agent that violates this chapter shall be liable to the principal or the principal's  
 308 successors in interest for the amount required to:

309 (1) Restore the value of the principal's property to what it would have been had the  
 310 violation not occurred; and

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

313 10-6B-18.

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

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

318 (2) If there is no person described in paragraph (1) of this Code section, to:

319 (A) The principal's caregiver; or

320 (B) Another person reasonably believed by the agent to have sufficient interest in the  
 321 principal's welfare.

322 10-6B-19.

323 (a) A person that in good faith accepts a power of attorney without actual knowledge that  
 324 the signature is not genuine may rely upon the presumption under Code Section 10-6B-5  
 325 that the signature is genuine.

326 (b) A person that in good faith accepts a power of attorney without actual knowledge that  
 327 the power of attorney is void, invalid, or terminated, that the purported agent's authority is  
 328 void, invalid, or terminated, or that the agent is exceeding or improperly exercising the  
 329 agent's authority may rely upon the power of attorney as if the power of attorney were

330 genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in  
 331 effect, and the agent had not exceeded and had properly exercised the authority.

332 (c) A person that is asked to accept a power of attorney may request, and rely upon,  
 333 without further investigation:

334 (1) An agent's certification under penalty of perjury of any factual matter concerning the  
 335 principal, agent, or power of attorney;

336 (2) A coagent's certification under penalty of perjury of any factual matter concerning  
 337 the principal, agent, or power of attorney;

338 (3) An English translation of the power of attorney if the power of attorney contains, in  
 339 whole or in part, language other than English; and

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

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

346 (e) For purposes of this Code section, a person that conducts activities through employees  
 347 shall be without actual knowledge of a fact relating to a power of attorney, a principal, or  
 348 an agent if the employee conducting the transaction involving the power of attorney is  
 349 without actual knowledge of the fact.

350 10-6B-20.

351 (a) As used in this Code section, the term 'statutory form power of attorney' means using:

352 (1) The form set forth in Code Section 10-6B-70;

353 (2) A military power of attorney pursuant to 10 U.S.C. Section 1044b, in effect on  
 354 February 1, 2017; or

355 (3) A document that substantially reflects the language in the form set forth in Code  
 356 Section 10-6B-70, so long as it is witnessed as required by Code Section 10-6B-5.

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

358 (1) A person shall either accept a statutory form power of attorney or request a  
 359 certification, a translation, or an opinion of an attorney under subsection (c) of Code  
 360 Section 10-6B-19 no later than seven business days after presentation of the power of  
 361 attorney for acceptance;

362 (2) If a person requests a certification, a translation, or an opinion of an attorney under  
 363 subsection (c) of Code Section 10-6B-19, the person shall accept the power of attorney  
 364 no later than five business days after receipt of the certification, translation, or opinion  
 365 of an attorney; and

366 (3) A person shall not require an additional or different form of power of attorney for  
 367 authority granted in the power of attorney presented.

368 (c) A person shall not be required to accept a statutory form power of attorney if:

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

371 (2) Engaging in a transaction with the agent or the principal in the same circumstances  
 372 would be inconsistent with federal law;

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

375 (4) A request for a certification, a translation, or an opinion of an attorney under  
 376 subsection (c) of Code Section 10-6B-19 is refused;

377 (5) The person in good faith believes that the power is not valid or that the agent does  
 378 not have the authority to perform the act requested, whether or not a certification, a  
 379 translation, or an opinion of an attorney under subsection (c) of Code Section 10-6B-19  
 380 has been requested or provided; or

381 (6) The person makes, or has actual knowledge that another person has made, a report  
 382 to protective services as such term is defined in Code Section 30-5-1 stating a good faith  
 383 belief that the principal may be subject to physical or financial abuse, neglect,  
 384 exploitation, or abandonment by the agent or a person acting for or with the agent.

385 (d) A person that refuses to accept a power of attorney in violation of this Code section  
 386 shall be subject to:

387 (1) A court order mandating acceptance of the power of attorney; and

388 (2) Liability for reasonable attorney's fees and expenses of litigation incurred in any  
 389 action or proceeding that confirms the validity of the power of attorney or mandates  
 390 acceptance of the power of attorney.

391 (e) For purposes of this Code section, a person that conducts activities through employees  
 392 shall be without actual knowledge of a fact relating to a power of attorney, a principal, or  
 393 an agent if the employee conducting the transaction involving the power of attorney is  
 394 without actual knowledge of the fact.

395 10-6B-21.

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

398 10-6B-22.

399 (a) This chapter shall not supersede any other law applicable to financial institutions or  
 400 other entities, and the other law controls if inconsistent with this chapter.

401 (b) This chapter shall not supersede the Bank Secrecy Act of 1970, 31 U.S.C. Section  
 402 5311, in effect on February 1, 2017, and the corresponding regulations thereto, in effect on  
 403 February 1, 2017.

404 10-6B-23.

405 The remedies under this chapter shall not be exclusive and shall not abrogate any right or  
 406 remedy under the laws of this state other than this chapter.

407 ARTICLE 2

408 10-6B-40.

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

413 (1) Create, amend, revoke, or terminate an inter vivos trust;

414 (2) Make a gift;

415 (3) Create or change rights of survivorship;

416 (4) Create or change a beneficiary designation;

417 (5) Delegate authority granted under the power of attorney;

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

420 (7) Exercise fiduciary powers that the principal has authority to delegate;

421 (8) Exercise authority over the content of electronic communications, as defined in 18  
 422 U.S.C. Section 2510(12), in effect on February 1, 2017, sent or received by the principal;  
 423 or

424 (9) Disclaim property, including a power of appointment.

425 (b) Notwithstanding a grant of authority to do an act described in subsection (a) of this  
 426 Code section, unless the power of attorney otherwise provides, an agent that is not an  
 427 ancestor, spouse, or descendant of the principal, shall not exercise authority under a power  
 428 of attorney to create in the agent, or in an individual to whom the agent owes a legal  
 429 obligation of support, an interest in the principal's property, whether by gift, right of  
 430 survivorship, beneficiary designation, disclaimer, or otherwise.

431 (c) Subject to subsections (a), (b), (d), and (e) of this Code section, if a power of attorney  
 432 grants to an agent authority to do all acts that a principal could do, the agent has the general  
 433 authority described in Code Sections 10-6B-43 through 10-6B-55.

434 (d) Unless the power of attorney otherwise provides, a grant of authority to make a gift  
 435 shall be subject to Code Section 10-6B-56.

436 (e) Subject to subsections (a), (b), and (d) of this Code section, if the subjects over which  
 437 authority is granted in a power of attorney are similar or overlap, the broadest authority  
 438 shall control.

439 (f) Authority granted in a power of attorney is exercisable with respect to property that the  
 440 principal has when the power of attorney is executed or acquires later, whether or not the  
 441 property is located in this state and whether or not the authority is exercised or the power  
 442 of attorney is executed in this state.

443 (g) An act performed by an agent pursuant to a power of attorney shall have the same  
 444 effect and inures to the benefit of and binds the principal and the principal's successors in  
 445 interest as if the principal had performed the act.

446 10-6B-41.

447 (a) An agent shall have authority described in this article if the power of attorney refers  
 448 to general authority with respect to the descriptive term for the subjects stated in Code  
 449 Sections 10-6B-43 through 10-6B-56 or cites the Code section in which the authority is  
 450 described.

451 (b) A reference in a power of attorney to general authority with respect to the descriptive  
 452 term for a subject stated in Code Sections 10-6B-43 through 10-6B-56 or a citation to a  
 453 specific Code section in Code Sections 10-6B-43 through 10-6B-56 shall incorporate the  
 454 entire Code section as if it were set out in full in the power of attorney.

455 (c) A principal may modify authority incorporated by reference.

456 10-6B-42.

457 Except as otherwise provided in the power of attorney, by executing a power of attorney  
 458 that incorporates by reference a subject described in Code Sections 10-6B-43 through  
 459 10-6B-56 or that grants to an agent authority to do all acts that a principal could do  
 460 pursuant to subsection (c) of Code Section 10-6B-40, a principal shall authorize the agent,  
 461 with respect to that subject, to:

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

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

- 469 (3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication  
 470 the agent considers desirable to accomplish a purpose of a transaction, including creating  
 471 at any time a schedule listing some or all of the principal's property and attaching it to the  
 472 power of attorney;
- 473 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
 474 propose or accept a compromise with respect to a claim existing in favor of or against the  
 475 principal or intervene in litigation relating to the claim;
- 476 (5) Seek on the principal's behalf the assistance of a court or other governmental agency  
 477 to carry out an act authorized in the power of attorney;
- 478 (6) Engage, compensate, and discharge an attorney, accountant, discretionary investment  
 479 manager, expert witness, or other advisor;
- 480 (7) Prepare, execute, and file a record, report, or other document to safeguard or promote  
 481 the principal's interest under a law or regulation;
- 482 (8) Communicate with any representative or employee of a government or governmental  
 483 subdivision, agency, or instrumentality, on behalf of the principal;
- 484 (9) Except as otherwise provided under federal privacy laws, access communications  
 485 intended for, and communicate on behalf of the principal, whether by mail, electronic  
 486 transmission, telephone, or other means; and
- 487 (10) Do any lawful act with respect to the subject and all property related to the subject.

488 10-6B-43.

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

- 491 (1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit,  
 492 or otherwise acquire or reject an interest in real property or a right incident to real  
 493 property;
- 494 (2) Sell; exchange; convey with or without covenants, representations, or warranties;  
 495 quitclaim; release; surrender; retain title for security; encumber; partition; consent to  
 496 partitioning; subject to an easement or covenant; subdivide; apply for zoning or other  
 497 governmental permits; plat or consent to platting; develop; grant an option concerning;  
 498 lease; sublease; contribute to an entity in exchange for an interest in that entity; or  
 499 otherwise grant or dispose of an interest in real property or a right incident to real  
 500 property;
- 501 (3) Pledge or mortgage an interest in real property or right incident to real property as  
 502 security to borrow money or pay, renew, or extend the time of payment of a debt of the  
 503 principal or a debt guaranteed by the principal;

- 504 (4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of  
 505 trust, conditional sale contract, encumbrance, lien, or other claim to real property which  
 506 exists or is asserted;
- 507 (5) Manage or conserve an interest in real property or a right incident to real property  
 508 owned or claimed to be owned by the principal, including:
- 509 (A) Insuring against liability or casualty or other loss;  
 510 (B) Obtaining or regaining possession of or protecting the interest or right by litigation  
 511 or otherwise;  
 512 (C) Paying, assessing, compromising, or contesting taxes or assessments or applying  
 513 for and receiving refunds in connection with such taxes or assessments; and  
 514 (D) Purchasing supplies, hiring assistance or labor, and making repairs or alterations  
 515 to the real property;
- 516 (6) Use, develop, alter, replace, remove, erect, or install structures or other improvements  
 517 upon real property in or incident to which the principal has, or claims to have, an interest  
 518 or right;
- 519 (7) Participate in a reorganization with respect to real property or an entity that owns an  
 520 interest in or right incident to real property and receive, and hold, and act with respect to  
 521 stocks and bonds or other property received in a plan of reorganization, including:
- 522 (A) Selling or otherwise disposing of them;  
 523 (B) Exercising or selling an option, right of conversion, or similar right with respect  
 524 to them; and  
 525 (C) Exercising any voting rights in person or by proxy;
- 526 (8) Change the form of title of an interest in or right incident to real property; and  
 527 (9) Dedicate to public use, with or without consideration, easements or other real  
 528 property in which the principal has, or claims to have, an interest.

529 10-6B-44.

- 530 Unless the power of attorney otherwise provides, language in a power of attorney granting  
 531 general authority with respect to tangible personal property shall authorize the agent to:
- 532 (1) Demand, buy, receive, accept as a gift or as security for an extension of credit, or  
 533 otherwise acquire or reject ownership or possession of tangible personal property or an  
 534 interest in tangible personal property;
- 535 (2) Sell; exchange; convey with or without covenants, representations, or warranties;  
 536 quitclaim; release; surrender; create a security interest in; grant options concerning; lease;  
 537 sublease; or otherwise dispose of tangible personal property or an interest in tangible  
 538 personal property;



- 539 (3) Grant a security interest in tangible personal property or an interest in tangible  
 540 personal property as security to borrow money or pay, renew, or extend the time of  
 541 payment of a debt of the principal or a debt guaranteed by the principal;  
 542 (4) Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien,  
 543 or other claim on behalf of the principal, with respect to tangible personal property or an  
 544 interest in tangible personal property;  
 545 (5) Manage or conserve tangible personal property or an interest in tangible personal  
 546 property on behalf of the principal, including:  
 547 (A) Insuring against liability or casualty or other loss;  
 548 (B) Obtaining or regaining possession of or protecting the property or interest, by  
 549 litigation or otherwise;  
 550 (C) Paying, assessing, compromising, or contesting taxes or assessments or applying  
 551 for and receiving refunds in connection with such taxes or assessments;  
 552 (D) Moving the property from place to place;  
 553 (E) Storing the property for hire or on a gratuitous bailment; and  
 554 (F) Using and making repairs, alterations, or improvements to the property; and  
 555 (6) Change the form of title of an interest in tangible personal property.

556 10-6B-45.

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

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

568 10-6B-46.

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

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

574 10-6B-47.

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

578 (1) Continue, modify, and terminate an account or other banking arrangement made by  
579 or on behalf of the principal;

580 (2) Establish, modify, and terminate an account or other banking arrangement with a  
581 bank, trust company, savings and loan association, credit union, thrift company,  
582 brokerage firm, or other financial institution selected by the agent;

583 (3) Contract for services available from a financial institution, including renting a safe  
584 deposit box or space in a vault;

585 (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or property  
586 of the principal deposited with or left in the custody of a financial institution;

587 (5) Receive statements of account, vouchers, notices, and similar documents from a  
588 financial institution and act with respect to them;

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

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

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

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

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

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

606 10-6B-48.

607 Subject to the terms of a document or an agreement governing an entity or an entity  
608 ownership interest, and unless the power of attorney otherwise provides, language in a

- 609 power of attorney granting general authority with respect to operation of an entity or  
610 business shall authorize the agent to:
- 611 (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;  
612 (2) Perform a duty or discharge a liability and exercise in person or by proxy a right,  
613 power, privilege, or option that the principal has, may have, or claims to have;  
614 (3) Enforce the terms of an ownership agreement;  
615 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
616 propose or accept a compromise with respect to litigation to which the principal is a party  
617 because of an ownership interest;  
618 (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power,  
619 privilege, or option the principal has or claims to have as the holder of stocks and bonds;  
620 (6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
621 propose or accept a compromise with respect to litigation to which the principal is a party  
622 concerning stocks and bonds;  
623 (7) With respect to an entity or business owned solely by the principal:
- 624 (A) Continue, modify, renegotiate, extend, and terminate a contract made by or on  
625 behalf of the principal with respect to the entity or business before execution of the  
626 power of attorney;  
627 (B) Determine:
- 628 (i) The location of its operation;  
629 (ii) The nature and extent of its business;  
630 (iii) The methods of manufacturing, selling, merchandising, financing, accounting,  
631 and advertising employed in its operation;  
632 (iv) The amount and types of insurance carried; and  
633 (v) The mode of engaging, compensating, and dealing with its employees and  
634 accountants, attorneys, or other advisors;  
635 (C) Change the name or form of organization under which the entity or business is  
636 operated and enter into an ownership agreement with other persons to take over all or  
637 part of the operation of the entity or business; and  
638 (D) Demand and receive money due or claimed by the principal or on the principal's  
639 behalf in the operation of the entity or business and control and disburse the money in  
640 the operation of the entity or business;
- 641 (8) Put additional capital into an entity or business in which the principal has an interest;  
642 (9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger  
643 of the entity or business;  
644 (10) Sell or liquidate all or part of an entity or business;

- 645 (11) Establish the value of an entity or business under a buy-out agreement to which the  
646 principal is a party;  
647 (12) Prepare, sign, file, and deliver reports, compilations of information, returns, or other  
648 papers with respect to an entity or business and make related payments; and  
649 (13) Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any  
650 other act to protect the principal from illegal or unnecessary taxation, assessments, fines,  
651 or penalties, with respect to an entity or business, including attempts to recover, in any  
652 manner permitted by law, money paid before or after the execution of the power of  
653 attorney.

654 10-6B-49.

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

- 657 (1) Continue, pay the premium or make a contribution on, modify, exchange, rescind,  
658 release, or terminate a contract procured by or on behalf of the principal which insures  
659 or provides an annuity to either the principal or another person, whether or not the  
660 principal is a beneficiary under the contract;  
661 (2) Procure new, different, and additional contracts of insurance and annuities for the  
662 principal and the principal's spouse, children, and other dependents, and select the  
663 amount, type of insurance or annuity, and mode of payment;  
664 (3) Pay the premium or make a contribution on, modify, exchange, rescind, release, or  
665 terminate a contract of insurance or annuity procured by the agent;  
666 (4) Apply for and receive a loan secured by a contract of insurance or annuity;  
667 (5) Surrender and receive the cash surrender value on a contract of insurance or annuity;  
668 (6) Exercise an election;  
669 (7) Exercise investment powers available under a contract of insurance or annuity;  
670 (8) Change the manner of paying premiums on a contract of insurance or annuity;  
671 (9) Change or convert the type of insurance or annuity with respect to which the  
672 principal has or claims to have authority described in this Code section;  
673 (10) Apply for and procure a benefit or assistance under a law or regulation to guarantee  
674 or pay premiums of a contract of insurance on the life of the principal;  
675 (11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the  
676 principal in a contract of insurance or annuity;  
677 (12) Select the form and timing of the payment of proceeds from a contract of insurance  
678 or annuity; and  
679 (13) Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in  
680 connection with, a tax or assessment levied by a taxing authority with respect to a

681 contract of insurance or annuity or its proceeds or liability accruing by reason of such tax  
 682 or assessment.

683 10-6B-50.

684 (a) As used in this Code section, the term 'estate, trust, or other beneficial interest' means  
 685 a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund  
 686 from which the principal is, may become, or claims to be, entitled to a share or payment.

687 (b) Unless the power of attorney otherwise provides, language in a power of attorney  
 688 granting general authority with respect to estates, trusts, and other beneficial interests shall  
 689 authorize the agent to:

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

692 (2) Demand or obtain money or any other thing of value to which the principal is, may  
 693 become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest,  
 694 by litigation or otherwise;

695 (3) Exercise for the benefit of the principal a presently exercisable general power of  
 696 appointment held by the principal;

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

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

704 (6) Conserve, invest, disburse, or use anything received for an authorized purpose;

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

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

710 10-6B-51.

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

713 (1) Assert and maintain before a court or administrative agency a claim, claim for relief,  
 714 cause of action, counterclaim, offset, recoupment, or defense, including an action to  
 715 recover property or any other thing of value, recover damages sustained by the principal,

716 eliminate or modify tax liability, or seek an injunction, specific performance, or other  
717 relief;

718 (2) Bring an action to determine adverse claims or intervene or otherwise participate in  
719 litigation;

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

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

726 (5) Submit to alternative dispute resolution, settle, and propose or accept a compromise;

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

735 (7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or  
736 involuntary, concerning the principal or some other person, or with respect to a  
737 reorganization, receivership, or application for the appointment of a receiver or trustee  
738 which affects an interest of the principal in property or any other thing of value;

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

741 (9) Receive money or any other thing of value paid in settlement of or as proceeds of a  
742 claim or litigation.

743 10-6B-52.

744 (a) Unless the power of attorney otherwise provides, language in a power of attorney  
745 granting general authority with respect to personal and family maintenance shall authorize  
746 the agent to:

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

750 (A) The principal's minor children;

- 751 (B) The principal's adult children who are pursuing a postsecondary school education  
752 and are under 25 years of age;
- 753 (C) The principal's parents or the parents of the principal's spouse, if the principal had  
754 established a pattern of such payments; and
- 755 (D) Any other individuals legally entitled to be supported by the principal;
- 756 (2) Make periodic payments of child support and other family maintenance required by  
757 a court or governmental agency or an agreement to which the principal is a party;
- 758 (3) Provide living quarters for the individuals described in paragraph (1) of this  
759 subsection by:
- 760 (A) Purchase, lease, or other contract; or
- 761 (B) Paying the operating costs, including interest, amortization payments, repairs,  
762 improvements, and taxes, for premises owned by the principal or occupied by those  
763 individuals;
- 764 (4) Provide normal domestic help, usual vacations and travel expenses, and funds for  
765 shelter, clothing, food, appropriate education, including postsecondary and vocational  
766 education, and other current living costs for individuals described in paragraph (1) of this  
767 subsection to enable such individuals to maintain their customary standard of living;
- 768 (5) Pay expenses for necessary health care and custodial care on behalf of the individuals  
769 described in paragraph (1) of this subsection;
- 770 (6) Act as the principal's personal representative pursuant to the Health Insurance  
771 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security  
772 Act, 42 U.S.C. Section 1320d, in effect on February 1, 2017, and applicable regulations  
773 in effect on February 1, 2017, in making decisions related to the past, present, or future  
774 payment for the provision of health care consented to by the principal or anyone  
775 authorized under the laws of this state to consent to health care on behalf of the principal;
- 776 (7) Continue any provision made by the principal for automobiles or other means of  
777 transportation, including registering, licensing, insuring, and replacing them, for the  
778 individuals described in paragraph (1) of this subsection;
- 779 (8) Maintain credit and debit accounts for the convenience of the individuals described  
780 in paragraph (1) of this subsection and open new accounts; and
- 781 (9) Continue payments incidental to the membership or affiliation of the principal in a  
782 religious institution, club, society, order, or other organization or to continue  
783 contributions to those organizations.
- 784 (b) Authority with respect to personal and family maintenance shall be neither dependent  
785 upon, nor limited by, authority that an agent may or may not have with respect to gifts  
786 under this chapter.

787 10-6B-53.

788 (a) As used in this Code section, the term 'benefits from governmental programs or civil  
789 or military service' means any benefit, program, or assistance provided under a law or  
790 regulation, including Social Security, medicare, and Medicaid.

791 (b) Unless the power of attorney otherwise provides, language in a power of attorney  
792 granting general authority with respect to benefits from governmental programs or civil or  
793 military service shall authorize the agent to:

794 (1) Execute vouchers in the name of the principal for allowances and reimbursements  
795 payable by the United States or a foreign government or by a state or political subdivision  
796 of a state to the principal, including allowances and reimbursements for transportation of  
797 the individuals described in paragraph (1) of subsection (a) of Code Section 10-6B-52,  
798 and for shipment of their household effects;

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

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

805 (4) Prepare, file, and maintain a claim of the principal for a benefit or assistance,  
806 financial or otherwise, to which such principal may be entitled under a law or regulation;

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

810 (6) Receive the financial proceeds of a claim described in paragraph (4) of this  
811 subsection and conserve, invest, disburse, or use for a lawful purpose anything so  
812 received.

813 10-6B-54.

814 (a) As used in this Code section, the term 'retirement plan' means a plan or account created  
815 by an employer, the principal, or another individual to provide retirement benefits or  
816 deferred compensation of which such principal is a participant, beneficiary, or owner,  
817 including a plan or account under the following sections of the Internal Revenue Code:

818 (1) An individual retirement account under Internal Revenue Code Section 408, 26  
819 U.S.C. Section 408, in effect on February 1, 2017;

820 (2) A Roth individual retirement account under Internal Revenue Code Section 408A,  
821 26 U.S.C. Section 408A, in effect on February 1, 2017;



- 822 (3) A deemed individual retirement account under Internal Revenue Code Section  
823 408(q), 26 U.S.C. Section 408(q), in effect on February 1, 2017;
- 824 (4) An annuity or mutual fund custodial account under Internal Revenue Code Section  
825 403(b), 26 U.S.C. Section 403(b), in effect on February 1, 2017;
- 826 (5) A pension, profit-sharing, stock bonus, or other retirement plan qualified under  
827 Internal Revenue Code Section 401(a), 26 U.S.C. Section 401(a), in effect on February 1,  
828 2017;
- 829 (6) A plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section 457(b), in  
830 effect on February 1, 2017; and
- 831 (7) A nonqualified deferred compensation plan under Internal Revenue Code Section  
832 409A, 26 U.S.C. Section 409A, in effect on February 1, 2017.
- 833 (b) Unless the power of attorney otherwise provides, language in a power of attorney  
834 granting general authority with respect to retirement plans shall authorize the agent to:
- 835 (1) Select the form and timing of payments under a retirement plan and withdraw  
836 benefits from a plan;
- 837 (2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one  
838 retirement plan to another;
- 839 (3) Establish a retirement plan in the principal's name;
- 840 (4) Make contributions to a retirement plan;
- 841 (5) Exercise investment powers available under a retirement plan; and
- 842 (6) Borrow from, sell assets to, or purchase assets from a retirement plan.

843 10-6B-55.

- 844 Unless the power of attorney otherwise provides, language in a power of attorney granting  
845 general authority with respect to taxes shall authorize the agent to:
- 846 (1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property,  
847 Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests  
848 for extension of time, petitions regarding tax matters, and any other tax-related  
849 documents, including receipts, offers, waivers, consents, including consents and  
850 agreements under Internal Revenue Code Section 2032A, 26 U.S.C. Section 2032A, in  
851 effect on February 1, 2017, closing agreements, and any power of attorney required by  
852 the Internal Revenue Service or other taxing authority with respect to a tax year upon  
853 which the statute of limitations has not run and the following 25 tax years;
- 854 (2) Pay taxes due, collect refunds, post bonds, receive confidential information, and  
855 contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- 856 (3) Exercise any election available to the principal under federal, state, local, or foreign  
857 tax law; and

858 (4) Act for the principal in all tax matters for all periods before the Internal Revenue  
859 Service, or other taxing authority.

860 10-6B-56.

861 (a) As used in this Code section, the term a gift 'for the benefit of' a person includes a gift  
862 to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings  
863 account or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26  
864 U.S.C. Section 529, in effect on February 1, 2017.

865 (b) Unless the power of attorney otherwise provides, language in a power of attorney  
866 granting general authority with respect to gifts shall authorize the agent only to:

867 (1) Make outright to, or for the benefit of, a person, a gift of any of the principal's  
868 property, including by the exercise of a presently exercisable general power of  
869 appointment held by the principal, in an amount per donee not to exceed the annual dollar  
870 limits of the federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26  
871 U.S.C. Section 2503(b), in effect on February 1, 2017, without regard to whether the  
872 federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent  
873 to a split gift pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513,  
874 in effect on February 1, 2017, in an amount per donee not to exceed twice the annual  
875 federal gift tax exclusion limit; and

876 (2) Consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513,  
877 in effect on February 1, 2017, to the splitting of a gift made by the principal's spouse in  
878 an amount per donee not to exceed the aggregate annual gift tax exclusions for both  
879 spouses.

880 (c) An agent may make a gift of the principal's property only as the agent determines is  
881 consistent with the principal's objectives if actually known by the agent and, if unknown,  
882 as the agent determines is consistent with the principal's best interest based on all relevant  
883 factors, including:

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

885 (2) The principal's foreseeable obligations and need for maintenance;

886 (3) Minimization of taxes, including income, estate, inheritance, generation-skipping  
887 transfer, and gift taxes;

888 (4) Eligibility for a benefit, a program, or assistance under a law or regulation; and

889 (5) The principal's personal history of making or joining in making gifts.

890

ARTICLE 3

891

10-6B-70.

892

A document substantially in the following form may be used to create a statutory form

893

power of attorney that has the meaning and effect prescribed by this chapter.

894

'State of Georgia

895

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

896

**STATUTORY FORM POWER OF ATTORNEY**

897

**IMPORTANT INFORMATION**

898

This power of attorney authorizes another person (your agent) to make decisions

899

concerning your property for you (the principal). Your agent will be able to make

900

decisions and act with respect to your property (including your money) whether or not you

901

are able to act for yourself. The meaning of authority over subjects listed on this form is

902

explained in O.C.G.A. Chapter 6B of Title 10.

903

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

904

You should select someone you trust to serve as your agent. Unless you specify otherwise,

905

generally the agent's authority will continue until you die or revoke the power of attorney

906

or the agent resigns or is unable to act for you. If you revoke the power of attorney, you

907

must communicate your revocation by notice to the agent in writing by certified mail and

908

file such notice with the clerk of superior court in your county of domicile.

909

Your agent is not entitled to any compensation unless you state otherwise in the Special

910

Instructions. Your agent shall be entitled to reimbursement of reasonable expenses

911

incurred in performing the acts required by you in your power of attorney.

912

This form provides for designation of one agent. If you wish to name more than one agent,

913

you may name a successor agent or name a coagent in the Special Instructions. Coagents

914

will not be required to act together unless you include that requirement in the Special

915

Instructions.

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

918 This power of attorney shall be durable unless you state otherwise in the Special  
919 Instructions.

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

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

924 **DESIGNATION OF AGENT**

925 I \_\_\_\_\_ (Name of principal)  
926 name the following person as my agent:

927 Name of agent: \_\_\_\_\_

928 Agent's address: \_\_\_\_\_

929 Agent's telephone number: \_\_\_\_\_

930 Agent's e-mail address: \_\_\_\_\_

931 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

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

933 Name of successor agent: \_\_\_\_\_

934 Successor agent's address: \_\_\_\_\_

935 Successor agent's telephone number: \_\_\_\_\_

936 Successor agent's e-mail address: \_\_\_\_\_

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

939 Name of second successor agent: \_\_\_\_\_

940 Second successor agent's address: \_\_\_\_\_

941 Second successor agent's telephone number: \_\_\_\_\_

942 Second successor agent's e-mail address: \_\_\_\_\_

943 **GRANT OF GENERAL AUTHORITY**

944 I grant my agent and any successor agent general authority to act for me with respect to the  
 945 following subjects as defined in O.C.G.A. Chapter 6B of Title 10:

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

- 949 ( ) Real property  
 950 ( ) Tangible personal property  
 951 ( ) Stocks and bonds  
 952 ( ) Commodities and options  
 953 ( ) Banks and other financial institutions  
 954 ( ) Operation of entity or business  
 955 ( ) Insurance and annuities  
 956 ( ) Estates, trusts, and other beneficial interests  
 957 ( ) Claims and litigation  
 958 ( ) Personal and family maintenance  
 959 ( ) Benefits from governmental programs or civil or military service  
 960 ( ) Retirement plans  
 961 ( ) Taxes  
 962 ( ) All preceding subjects

963 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

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

966 (CAUTION: Granting any of the following will give your agent the authority to take  
 967 actions that could significantly reduce your property or change how your property is  
 968 distributed at your death. INITIAL ONLY the specific authority you WANT to give your  
 969 agent. You should give your agent specific instructions in the Special Instructions when  
 970 you authorize your agent to make gifts.)

- 971  Create, amend, revoke, or terminate an inter vivos trust
- 972  Make a gift, subject to the limitations of O.C.G.A. § 10-6B-56 and any Special
- 973 Instructions in this power of attorney
- 974  Create or change rights of survivorship
- 975  Create or change a beneficiary designation
- 976  Authorize another person to exercise the authority granted under this power of
- 977 attorney
- 978  Waive the principal's right to be a beneficiary of a joint and survivor annuity,
- 979 including a survivor benefit under a retirement plan
- 980  Access the content of electronic communications
- 981  Exercise fiduciary powers that the principal has authority to delegate
- 982  Disclaim or refuse an interest in property, including a power of appointment

**LIMITATION ON AGENT'S AUTHORITY**

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

**SPECIAL INSTRUCTIONS (OPTIONAL)**

You may give special instructions on the following lines (you may add lines or place your special instructions in a separate document and attach it to the power of attorney):

---



---



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---

**EFFECTIVE DATE**

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

999

**NOMINATION OF CONSERVATOR (OPTIONAL)**

1000  
1001

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

1002  
1003  
1004  
1005  
1006

Name of nominee for conservator of my estate:  
\_\_\_\_\_  
Nominee's address:  
\_\_\_\_\_  
Nominee's telephone number:  
\_\_\_\_\_  
Nominee's e-mail address:  
\_\_\_\_\_

1007

**RELIANCE ON THIS POWER OF ATTORNEY**

1008  
1009

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

1010

**SIGNATURE AND ACKNOWLEDGMENT**

1011  
1012  
1013  
1014  
1015  
1016  
1017  
1018  
1019  
1020  
1021

\_\_\_\_\_  
Your signature \_\_\_\_\_  
Date  
\_\_\_\_\_  
Your name printed  
\_\_\_\_\_  
\_\_\_\_\_  
Your address  
\_\_\_\_\_  
Your telephone number  
\_\_\_\_\_  
Your e-mail address

1022  
1023  
1024  
1025  
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1027  
1028  
1029  
1030  
1031  
1032

This document was signed in my presence on \_\_\_\_\_  
(Date)  
by \_\_\_\_\_  
(Name of principal)  
\_\_\_\_\_  
(Witness's name printed)  
\_\_\_\_\_  
Witness's address  
\_\_\_\_\_  
Witness's telephone number

1033 \_\_\_\_\_  
1034 Witness's e-mail address

1035 State of Georgia  
1036 County of \_\_\_\_\_

1037 This document was signed in my presence on \_\_\_\_\_.  
1038 (Date)

1039 by \_\_\_\_\_.  
1040 (Name of principal)

1041 \_\_\_\_\_ (Seal)  
1042 Signature of notary

1043 My commission expires: \_\_\_\_\_

1044 This document prepared by: \_\_\_\_\_.

1045 **IMPORTANT INFORMATION FOR AGENT**

1046 **Agent's Duties**

1047 When you accept the authority granted under this power of attorney, a special legal  
1048 relationship is created between you and the principal. This relationship imposes upon you  
1049 legal duties that continue until you resign or the power of attorney is terminated or revoked.

1050 You must:

1051 (1) Do what you know the principal reasonably expects you to do with the principal's  
1052 property or, if you do not know the principal's expectations, act in the principal's best  
1053 interest;

1054 (2) Act in good faith;

1055 (3) Do nothing beyond the authority granted in this power of attorney; and

1056 (4) Disclose your identity as an agent whenever you act for the principal by writing or  
1057 printing the name of the principal and signing your own name as "agent" in the following  
1058 manner:

1059 \_\_\_\_\_ by \_\_\_\_\_ as Agent.  
1060 (Principal's name) (Your signature)



1061 Unless the Special Instructions in this power of attorney state otherwise, you must also:

1062 (1) Act loyally for the principal's benefit;

1063 (2) Avoid conflicts that would impair your ability to act in the principal's best interest;

1064 (3) Act with care, competence, and diligence;

1065 (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the  
1066 principal;

1067 (5) Cooperate with any person that has authority to make health care decisions for the  
1068 principal to do what you know the principal reasonably expects or, if you do not know  
1069 the principal's expectations, to act in the principal's best interest; and

1070 (6) Attempt to preserve the principal's estate plan if you know the plan and preserving  
1071 the plan is consistent with the principal's best interest.

### 1072 **Termination of Agent's Authority**

1073 You must stop acting on behalf of the principal if you learn of any event that terminates  
1074 this power of attorney or your authority under this power of attorney. Events that terminate  
1075 a power of attorney or your authority to act under a power of attorney include:

1076 (1) Death of the principal;

1077 (2) The principal's revocation of your authority or the power of attorney so as long as the  
1078 revocation of the power of attorney is communicated to you in writing by certified mail  
1079 and provided that such notice is filed with the clerk of superior court in the county of  
1080 domicile of the principal;

1081 (3) The occurrence of a termination event stated in the power of attorney;

1082 (4) The purpose of the power of attorney is fully accomplished; or

1083 (5) If you are married to the principal, a legal action is filed with a court to end your  
1084 marriage, or for your legal separation, unless the Special Instructions in this power of  
1085 attorney state that such an action will not terminate your authority.

### 1086 **Liability of Agent**

1087 The meaning of the authority granted to you is defined in O.C.G.A. Chapter 6B of Title 10.  
1088 If you violate O.C.G.A. Chapter 6B of Title 10 or act outside the authority granted, you  
1089 may be liable for any damages caused by your violation.

1090 **If there is anything about this document or your duties that you do not understand,**  
1091 **you should seek legal advice.'**

1092 10-6B-71.

1093 The following optional form may be used by an agent to certify facts concerning a power  
1094 of attorney.

1095 **'AGENT'S CERTIFICATION AS TO THE VALIDITY OF**  
1096 **POWER OF ATTORNEY AND AGENT'S AUTHORITY**

1097 State of Georgia

1098 County of \_\_\_\_\_

1099 I, \_\_\_\_\_ (name of agent), certify under penalty  
1100 of perjury that \_\_\_\_\_ (name of principal) granted  
1101 me authority as an agent or successor agent in a power of attorney dated  
1102 \_\_\_\_\_.

1103 I further certify that to my knowledge:

1104 (1) The principal is alive and has not revoked the power of attorney or my authority to  
1105 act under the power of attorney and the power of attorney and my authority to act under  
1106 the power of attorney have not terminated;

1107 (2) If the power of attorney was drafted to become effective upon the happening of an  
1108 event or contingency, the event or contingency has occurred;

1109 (3) If I were named as a successor agent, the prior agent is no longer able or willing to  
1110 serve; and

1111 (4) \_\_\_\_\_

1112 \_\_\_\_\_

1113 \_\_\_\_\_

1114 \_\_\_\_\_

1115 \_\_\_\_\_

1116 (Insert other relevant statements)

1117 **SIGNATURE AND ACKNOWLEDGMENT**

1118 \_\_\_\_\_

1119 Agent's signature

\_\_\_\_\_

Date

1120 \_\_\_\_\_  
 1121 Agent's name printed  
 1122 \_\_\_\_\_  
 1123 \_\_\_\_\_  
 1124 Agent's address  
 1125 \_\_\_\_\_  
 1126 Agent's telephone number  
 1127 \_\_\_\_\_  
 1128 Agent's e-mail address

1129 This document was signed in my presence on \_\_\_\_\_,  
 1130 (Date)

1131 by \_\_\_\_\_  
 1132 (Name of agent)

1133 \_\_\_\_\_ (Seal)  
 1134 Signature of notary

1135 My commission expires: \_\_\_\_\_

1136 This document prepared by: \_\_\_\_\_ !

ARTICLE 4

1138 10-6B-80.

1139 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global  
 1140 and National Commerce Act, 15 U.S.C. Section 7001 et seq., but shall not modify, limit,  
 1141 or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic  
 1142 delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section  
 1143 7003(b).

1144 10-6B-81.

1145 Chapter 6 of this title shall not apply to a power of attorney created pursuant to this  
 1146 chapter."

**PART III**  
**SECTION 3-1.**

1149 Said title is further amended by adding a new Code section to Article 1 of Chapter 6, relating  
 1150 to agency, to read as follows:

1151 "10-6-7.

1152 This chapter shall not apply to powers of attorney to which Chapter 6B of this title is  
 1153 applicable."

1154 **SECTION 3-2.**

1155 Title 16 of the Official Code of Georgia Annotated, relating to crimes and offenses, is  
 1156 amended by revising Code Section 16-8-10, relating to affirmative defenses to prosecution  
 1157 for violation of Code Sections 16-8-2 through 16-8-7, to read as follows:

1158 "16-8-10.

1159 It is an affirmative defense to a prosecution for violation of Code Sections 16-8-2 through  
 1160 ~~16-8-7~~ 16-8-9 that the person:

1161 (1) Was unaware that the property or service was that of another;

1162 (2) Acted under an honest claim of right to the property or service involved ~~or~~;

1163 (3) Acted under a right to acquire or dispose of it the property as he or she did; provided,  
 1164 however, that the use of a power of attorney as provided in Chapter 6B of Title 10 shall  
 1165 not, in and of itself, absolve a person from criminal responsibility; or

1166 ~~(3)~~(4) Took property or service exposed for sale intending to purchase and pay for it  
 1167 promptly or reasonably believing that the owner, if present, would have consented."

1168 **SECTION 3-3.**

1169 Said title is further amended by revising Code Section 16-5-105, relating to the applicability  
 1170 of Article 8, the protection of elder persons, as follows:

1171 "16-5-105.

1172 (a) The use of a power of attorney as provided for in Chapter 6B of Title 10 shall not, in  
 1173 and of itself, absolve a person from prosecution under this article.

1174 (b) This article shall be cumulative and supplemental to any other law of this state."

1175 **PART IV**

1176 **SECTION 4-1.**

1177 This Act shall become effective on July 1, 2017.

1178 **SECTION 4-2.**

1179 All laws and parts of laws in conflict with this Act are repealed.