

# **GEORGIA STATUTORY FINANCIAL POWER OF ATTORNEY Instructions and Form**

## **INTRODUCTION**

The General Assembly enacted the Uniform Power of Attorney Act during the 2017 legislative session. Within this Act is a revised form for a power of attorney. While this new Act does not require that the new form be used, it does replace the former Statutory Financial Power of Attorney form previously in the law.

The narrative that precedes the form, provides some guidance to understanding and instruction for executing the new form. However, this guidance and instruction is not meant to replace any needed legal advice on the purpose, intent and use of this or any other legal document. Any power of attorney validly executed before July 1, 2017, remains effective unless and until the principal chooses to revoke it, it terminates automatically according to the language of the power of attorney document or until a court of competent jurisdiction orders it terminated.

## **A FINANCIAL POWER OF ATTORNEY**

This document contains information about the "Statutory Financial Power of Attorney." It allows you to name one or more persons to help you handle your financial affairs. Depending on your individual circumstances, you can give this person complete or limited power to act on your behalf. This document does not give someone the power to make medical decisions or personal health decisions for you.

## **EFFECT OF GIVING POWERS AWAY**

Even with this document, you may still legally make decisions about your own financial affairs as long as you choose to or are able to. Talk to your Agent often about what you want and what he or she is doing for you using the document. If your Agent is not following your instructions or doing what you want, you may cancel or revoke the document and end your Agent's power to act for you.

## **THIS DOCUMENT REFLECTS THE WISHES OF THE PRINCIPAL**

Do not let anyone pressure you into making a financial power of attorney, naming an Agent, or granting a power unless it is your choice. If you do not understand any portion of this document, you should ask a lawyer to explain it to you.

## TABLE OF CONTENTS

<b>INSTRUCTIONS .....</b>	<b>19 pages</b>
<b>Definitions.....</b>	<b>4</b>
<b>Powers Not Affected .....</b>	<b>5</b>
<b>Durability of the Power of Attorney .....</b>	<b>5</b>
<b>What Constitutes a Power of Attorney .....</b>	<b>5</b>
<b>Construction of the Power of Attorney .....</b>	<b>6</b>
<i>Appointing Agents .....</i>	<i>6</i>
<i>How to Properly Execute the Power of Attorney .....</i>	<i>6</i>
<i>When the Power of Attorney Becomes Effective .....</i>	<i>7</i>
<i>Nomination of a Conservator.....</i>	<i>7</i>
<b>Validity of Other Forms.....</b>	<b>8</b>
<b>Termination of the Power of Attorney .....</b>	<b>8</b>
<i>When a Power of Attorney Terminates.....</i>	<i>8</i>
<i>Situations that Do Not Terminate the Power of Attorney.....</i>	<i>9</i>
<b>Power of Attorney Agents .....</b>	<b>9</b>
<i>Duties of the Agent.....</i>	<i>9</i>
<i>Authority to Make Gifts.....</i>	<i>10</i>
<i>No Authority to Create a Will.....</i>	<i>11</i>
<i>Disclosures by the Agent.....</i>	<i>11</i>
<i>Compensation of the Agent.....</i>	<i>11</i>
<i>Termination of the Agent's Authority .....</i>	<i>11</i>
<i>Agent Not Liable.....</i>	<i>11</i>
<i>Loss of the Agent's Liability Protection.....</i>	<i>12</i>
<i>Resignation of Agent.....</i>	<i>12</i>
<b>Accepting or Refusing a Power of Attorney Form .....</b>	<b>12</b>
<i>Request for Proof of Validity.....</i>	<i>12</i>
<i>Acceptance of Form Presented.....</i>	<i>13</i>
<i>Refusing a Power of Attorney Form .....</i>	<i>13</i>
<i>Immunity for Accepting Invalid Form .....</i>	<i>14</i>
<b>Actions to Take for Misconduct.....</b>	<b>14</b>
<i>Review of the Agent's Conduct .....</i>	<i>14</i>
<i>Remedies for Violations .....</i>	<i>15</i>
<i>Breach of Fiduciary Duty.....</i>	<i>15</i>
<i>Wrongful Refusal to Accept Form.....</i>	<i>15</i>
<i>Criminal Liability.....</i>	<i>15</i>
<i>Defenses to Prosecution for Theft.....</i>	<i>16</i>
<b>Additional Information .....</b>	<b>17</b>

<b>STATUTORY FORM</b> .....	<b>8 pages</b>
<b>Important Information</b> .....	<b>1</b>
<b>Designation of Agent</b> .....	<b>2</b>
<i>Successor Agent(s)</i> .....	2
<b>Grant of Authority</b> .....	<b>2</b>
<i>General</i> .....	2
<i>Specific</i> .....	3
<i>Authority to Act as HIPAA Representative</i> .....	3
<i>Limitation on Authority</i> .....	3
<b>Special Instructions</b> .....	<b>3</b>
<b>Effective Date</b> .....	<b>4</b>
<b>Nomination of Conservator</b> .....	<b>4</b>
<b>Reliance on Power of Attorney</b> .....	<b>4</b>
<b>Signatures and Acknowledgements</b> .....	<b>5</b>
<b>Agent Acknowledgment</b> .....	<b>6</b>
<i>Duties</i> .....	6
<i>Termination of Authority</i> .....	6
<i>Liability</i> .....	7
<b>Agent Certification Form</b> .....	<b>8</b>
<i>Signature and Acknowledgement</i> .....	8

## DEFINITIONS

**'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 co-agent, successor agent, and a person to which authority is delegated.

**'Durable'** means not terminated by the principal's incapacity.

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

**'Good faith'** means honesty in fact.

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

- 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.

**'O.C.G.A.'** means the Official Code of Georgia Annotated; the codified laws of the State of Georgia.

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

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

**'Presently exercisable general power of appointment,'** with respect to property or a property interest subject to a power of appointment, means power exercisable at the time in question to vest absolute ownership in the principal individually, the principal's estate, the principal's creditors, or the creditors of the principal's estate. 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 passage of the specified period. Such term shall not include a power exercisable in a fiduciary capacity or only by will.

**'Principal'** means an individual who grants authority to a person to act in the place of such individual.

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

**'Record'** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

**'Sign'** means, with present intent to authenticate or adopt a record, to execute or adopt a tangible symbol.

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

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

## **POWERS OF ATTORNEY NOT AFFECTED BY THIS ACT**

This new Act does not affect powers of attorney in the following situations:

- 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;
- 5) Transaction specific powers of attorney, including, but not limited to, powers of attorney under Chapter 6 of this title; and
- 6) Powers of attorney provided for under Titles 19 and 33.

## **DURABILITY OF THE POWER OF ATTORNEY**

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

## **WHAT CONSTITUTES A STATUTORY FINANCIAL POWER OF ATTORNEY**

The term 'statutory form power of attorney' means using:

- The form set out in O.C.G.A. §10-6B-70;
- A military power of attorney pursuant to 10 U.S.C. Section 1044b, in effect on February 1, 2017; or

- A document that substantially reflects the language in the form set out in the law as long as it is properly witnessed as required by Georgia law.

## **CONSTRUCTION OF THE POWER OF ATTORNEY**

### **APPOINTING AGENTS**

- A principal may designate two or more persons to act as coagents.
  - Unless the power of attorney otherwise provides, coagents shall exercise their authority independently of each other and do not have to be in agreement.
- A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is no longer qualified to serve, or has declined 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 same authority as that granted to the original agent; and
      - Not act until all predecessor agents have resigned, become incapacitated, are no longer qualified to serve, have declined to serve, or died.
    - Once a predecessor agent resigns, becomes incapacitated, is no longer qualified to serve, or has declined to serve, he or she shall be permanently barred from serving as an agent under the then existing power of attorney.

### **HOW TO PROPERLY EXECUTE THE POWER OF ATTORNEY**

In order for a power of attorney to be valid, it is required to be:

- Signed by the principal or by another individual in the principal's presence at the principal's express direction;
- Signed by one or more competent (*being of sound mind and at least 14 years of age*) witnesses
  - Witnesses must attest (swear to or affirm) the principal's actions in the presence of the principal and each other;
- All signatures and attestations must be done in the presence of a notary public or other individual authorized by law to administer oaths who is not a witness; and
- The power of attorney document must be notarized.

## **WHEN THE POWER OF ATTORNEY BECOMES EFFECTIVE**

- A power of attorney is effective when executed unless the principal provides within the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.
  - 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.
- 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 shall become effective upon a certification in a writing or other record by:
  - A physician or licensed psychologist determining that the principal has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or
  - An attorney at law, a judge, or an appropriate governmental official determining that the principal is missing, detained, including incarcerated in a penal system, or is outside the United States and unable to return.
- 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, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, in effect on February 1, 2017, and applicable regulations in effect on February 1, 2017, to obtain access to the principal's health care information and communicate with the principal's health care provider.

## **NOMINATION OF A CONSERVATOR IN THE POWER OF ATTORNEY**

- A principal may nominate a conservator of the principal's estate for consideration by the court as long as the power of attorney is in place before conservatorship proceedings are begun and except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.
- Unless the court orders otherwise, the appointment of a conservator or other fiduciary shall terminate all or part of the power of attorney that relates to the matters within the scope of the conservatorship or management by another fiduciary.

- If such power of attorney does not wholly terminate, the agent shall be accountable to the conservator or other fiduciary as well as to the principal.
- If the court orders the power of attorney shall not terminate, the court may impose upon the power of attorney or agent such terms and conditions as it determines are in the best interest of the principal.

## **VALIDITY OF OTHER POWER OF ATTORNEY FORMS**

- Valid powers of attorney executed in this state that existed on June 30, 2017, shall continue to be valid after July 1, 2017.
- A power of attorney executed in other states will be valid in this state if, when the power of attorney was executed, the execution complied with:
  - The law in the state named in the power of attorney having jurisdiction or in the absence of named state, in the state where executed; or
  - The requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b, in effect on February 1, 2017.
- Unless excepted by law, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original; provided,
  - When recording a power of attorney in connection with a conveyance (transfer of ownership) involving real property, an original power of attorney shall be used.

## **TERMINATION OF THE POWER OF ATTORNEY**

### **WHEN A POWER OF ATTORNEY TERMINATES**

A power of attorney shall terminate when:

1. The principal dies;
2. The principal becomes incapacitated, if the power of attorney specifically provides that it is not durable;
3. The principal revokes the power of attorney, provided that the principal provides the agent with notice of such revocation by certified mail and provided that such notice is filed with the clerk of superior court in the county of domicile of the principal;
4. The agent resigns, becomes incapacitated, or dies;
5. The power of attorney provides that it terminates;
6. The purpose of the power of attorney is accomplished; or
7. One of the events specified in paragraph 3 or 4 of this subsection occurs and the power of attorney does not provide for another agent to act under the power of attorney.



## **SITUATIONS THAT DO NOT TERMINATE THE POWER OF ATTORNEY**

These conditions will not automatically terminate a power of attorney or cause it to be ineffective:

- Lapse in time between when the power of attorney was executed and the agent's first exercise of authority;
- Lack of actual knowledge of the termination by the agent or another person who act in good faith;
- For a power of attorney that is not durable, the incapacity of the principal of a power of attorney without actual knowledge of the incapacity, when the agent or another person acts in good faith under the power of attorney; or,
- The execution of a subsequent power of attorney unless the subsequent power of attorney expressly states that the previous power of attorney shall be revoked or that all other powers of attorney are revoked.

## **POWER OF ATTORNEY AGENTS**

### **DUTIES OF THE AGENT**

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; unless otherwise stated in the power of attorney.

*An agent that has accepted appointment shall 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;
- In good faith;
- Only within the scope of authority granted in the power of attorney;
- Loyal for the principal's benefit;
- So as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;
- With the care, competence, and diligence ordinarily exercised by agents in similar circumstances;
- With accountability by keeping a record of all receipts, disbursements, and transactions made on behalf of the principal;

- In cooperation with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and
- To preserve the principal's estate plan, to the extent actually known by the agent, if preserving such plan is consistent with the principal's best interest based on all relevant factors, including:
  - The value and nature of the principal's property;
  - The principal's foreseeable obligations and need for maintenance;
  - Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and
  - Eligibility for a benefit, a program, or assistance under a law or regulation.

### **AUTHORITY OF THE AGENT TO MAKE GIFTS**

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

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

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

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

- (1) The value and nature of the principal's property;
- (2) The principal's foreseeable obligations and need for maintenance;
- (3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;

- (4) Eligibility for a benefit, a program, or assistance under a law or regulation; and
- (5) The principal's personal history of making or joining in making gifts.

## **NO AUTHORITY TO CREATE A WILL**

An agent under a power of attorney is not authorized to create a will for the principal.

## **DISCLOSURES BY THE AGENT**

An agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless required by the power of attorney document, ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate.

- If so requested, the agent shall comply with the request within 30 days.
- If additional time is needed, the agent must provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

## **COMPENSATION OF THE AGENT**

Unless the power of attorney otherwise provides, an agent is not entitled to compensation for services rendered.

An agent is entitled to reasonable reimbursement of expenses incurred in performing the acts required by the principal under the power of attorney.

## **WHEN THE AGENT'S AUTHORITY TERMINATES**

An agent's authority shall terminate when:

- The agent resigns, becomes incapacitated, or dies;
- The principal revokes the agent's authority, provided that the principal provides the agent with written notice of such revocation by certified mail **and** provided that such notice is filed with the clerk of superior court in the county of domicile (where he/she lives) of the principal;
- An action is filed for the dissolution or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney otherwise provides; or
- The power of attorney terminates.(by a specified date or condition expressly stated in the power of attorney in the Special Instructions)

## **THE AGENT IS NOT LIABLE**

- An agent that acts in good faith shall not be liable to any beneficiary of the principal's estate plan for failure to preserve such plan.
- An agent that acts with care, competence, and diligence for the best interest of the principal shall not be 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.
  - If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.
- Absent a breach of duty to the principal, an agent shall not be liable if the value of the principal's property declines.
- 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 shall not be 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.

## **LOSS OF THE AGENT'S LIABILITY PROTECTION**

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

- (1) Relieves the agent of liability for breach of duty committed in bad faith, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or
- (2) Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

## **THE RESIGNATION OF THE AGENT**

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

If the principal is incapacitated, notice of the agent's resignation must be provided:

1. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent
2. If there is no conservator or guardian, coagent or successor agent, to
  - a. The principal's caregiver; or
  - b. Another person reasonably believed by the agent to have sufficient interest in the principal's welfare.

## **ACCEPTING OR REFUSING A POWER OF ATTORNEY FORM**

### **REQUEST FOR PROOF OF VALIDITY OF A POWER OF ATTORNEY**

A person shall either accept a statutory form power of attorney or –

- Request a certification, a translation, or an opinion of an attorney as described above no later than seven business days after presentation of the power of attorney for acceptance;
- If a person requests a certification, a translation, or an opinion of an attorney as described above, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of an attorney.

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

- (1) An agent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;
- (2) A coagent's certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;
- (3) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and
- (4) An opinion of an attorney 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.

*(NOTE: A form for the agent's certification mentioned above is included in this information at the end of the form for the power of attorney)*

### **ACCEPTANCE OF A POWER OF ATTORNEY FORM PRESENTED**

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

### **REFUSING A POWER OF ATTORNEY FORM**

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

- (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 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 an attorney under subsection (c) of O.C.G.A. § 10-6B-19 is refused;
- (5) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a

- certification, a translation, or an opinion of an attorney under subsection (c) of O.C.G.A. § 10-6B-19 has been requested or provided; or
- (6) The person makes, or has actual knowledge that another person has made, a report to protective services as such term is defined in O.C.G.A. § 30-5-1 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.

## **IMMUNITY FOR ACCEPTING AN INVALID POWER OF ATTORNEY**

A person 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, if:

- A person in good faith accepts a power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption in the law that the signature is genuine; or,
- A person 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,

## **ACTIONS TO TAKE IN THE EVENT OF MISCONDUCT**

### **REVIEW OF THE AGENT'S CONDUCT**

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

- (1) The principal or the agent;
- (2) A guardian, conservator, or other fiduciary acting for the principal;
- (3) A person authorized to make health care decisions for the principal;
- (4) The principal's spouse, parent, or descendant;
- (5) An individual who would qualify as a presumptive heir of the principal;
- (6) A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
- (7) A governmental agency having authority to protect the welfare of the principal;
- (8) The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and
- (9) A person asked to accept the power of attorney.

Upon a motion by the principal, the court shall dismiss a petition filed as outlined above, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

## **REMEDIES FOR VIOLATIONS OF THIS ACT**

The **remedies** under this chapter shall not be exclusive and shall not do away with any right or remedy under the other laws of this state.

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

- 1) Restore the value of the principal's property to what it would have been had the violation not occurred; and
- 2) Reimburse the principal or the principal's successors in interest for the attorney's fees and costs paid on the agent's behalf.

### *Breach of Fiduciary Duty*

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 shall be liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.

Except as otherwise provided in the power of attorney or the above language, an agent that does not participate in or conceal a breach of fiduciary duty committed by another agent, including a predecessor agent, shall not be liable for the actions of the other agent.

### *Wrongful Refusal to Accept a Power of Attorney*

A person that refuses to accept a power of attorney in violation of the requirements of this law shall be subject to:

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

## **CRIMINAL LIABILITY UNDER TITLE 16 POSSIBLE**

The use of a power of attorney as provided for in this Act shall not, in and of itself, absolve a person from prosecution under the Protection of Elder Persons Act in O.C.G.A. §16-5-100 et.seq.

## **DEFENSES TO PROSECUTION FOR THEFT**

- It is an affirmative defense to a prosecution for theft under O.C.G.A. §§16-8-2 through 16-8-9 that the person:
  - was unaware that the property or service was that of another;
  - acted under an honest claim of right to the property or service involved or;
  - acted under a right to acquire or dispose of the property as he or she did; provided, however, that the use of a power of attorney as provided here does not, in and of itself, absolve (pardon or excuse) a person from criminal responsibility; or
  - took property or service exposed for sale intending to purchase and pay for it promptly or reasonably believing that the owner, if present, would have consented.





## **Georgia Department of Human Services**

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## **SAMPLE FORM**

**The following form substantially complies with the statutory form power of attorney that has the meaning and effect prescribed by the 2017 Georgia Uniform Power of Attorney Act.**



## STATUTORY FORM POWER OF ATTORNEY

State of Georgia

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

### 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 O.C.G.A. Chapter 6B of Title 10.

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, is unable to act for you or is removed by a court. If you revoke the power of attorney, you must communicate your revocation by notice to the agent in writing by certified mail and file such notice with the clerk of superior court in your county of domicile (where you live).

Your agent is not entitled to any compensation unless you state otherwise in the Special Instructions. Your agent shall be entitled to reimbursement of reasonable expenses incurred in performing the acts required by you in your power of attorney.

**This form provides for designation of one agent. If you wish to name more than one agent, you may name a successor agent or name a coagent in the Special Instructions. Coagents will not be required to act together unless you include that requirement in the Special Instructions.**

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 shall be durable (it will continue to be effective even if you become incapacitated) unless you state otherwise in the Special Instructions.**

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

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



**DESIGNATION OF AGENT**

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

Name of agent: \_\_\_\_\_  
Agent's address: \_\_\_\_\_  
Agent's telephone number: \_\_\_\_\_  
Agent's e-mail address: \_\_\_\_\_

**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: \_\_\_\_\_  
Successor agent's address: \_\_\_\_\_  
Successor agent's telephone number: \_\_\_\_\_  
Successor agent's e-mail address: \_\_\_\_\_

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

Name of second successor agent: \_\_\_\_\_  
Second successor agent's address: \_\_\_\_\_  
Second successor agent's telephone number: \_\_\_\_\_  
Second successor agent's e-mail address: \_\_\_\_\_

**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 O.C.G.A. Chapter 6B of Title 10:

(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.)

- |  |   |
|--|---|
| <input type="checkbox"/> Real property                                   | <input type="checkbox"/> Claims and litigation  |
| <input type="checkbox"/> Tangible personal property                      | <input type="checkbox"/> Personal and family maintenance                                  |
| <input type="checkbox"/> Stocks and bonds                                | <input type="checkbox"/> Benefits from governmental programs or civil or military service |
| <input type="checkbox"/> Commodities and options                         | <input type="checkbox"/> Retirement plans   |
| <input type="checkbox"/> Banks and other financial institutions          | <input type="checkbox"/> Taxes  |
| <input type="checkbox"/> Operation of entity or business                 | <input type="checkbox"/> <b>All preceding subjects</b>                                    |
| <input type="checkbox"/> Insurance and annuities                         |   |
| <input type="checkbox"/> Estates, trusts, and other beneficial interests |   |





**GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

My agent **SHALL 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 that you do **WANT** to give your agent. **DO NOT INITIAL Any Authority You Do Not Want Your Agent to Have.** You should give your agent specific instructions in the Special Instructions when you authorize your agent to make gifts.)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of O.C.G.A. § 10-6B-56 and any Special Instructions in this power of attorney
- 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 the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Access the content of electronic communications
- Exercise fiduciary powers that the principal has authority to delegate
- Disclaim or refuse an interest in property, including a power of appointment

**AUTHORITY TO ACT AS HIPAA REPRESENTATIVE (Optional)**

By initialing this statement, I hereby authorize my agent to act as my personal representative pursuant to the Health Insurance Portability and Accountability Act (HIPAA), Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, in effect on February 1, 2017, and applicable regulations in effect on February 1, 2017, to obtain access to my health care information and communicate with my health care provider, unless this authorization conflicts with any other appointment of such representative.

**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 OF POWER OF ATTORNEY**

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

**NOMINATION OF CONSERVATOR (OPTIONAL)**

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

Name of nominee for conservator of my estate:

Nominee's address: \_\_\_\_\_

Nominee's telephone number: \_\_\_\_\_

Nominee's e-mail address: \_\_\_\_\_

**RELIANCE ON THIS POWER OF ATTORNEY**

This power of attorney revokes any other financial power of attorney previously executed by me unless I have stated otherwise in the Special Instructions.

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.



**SIGNATURES AND ACKNOWLEDGMENT**

\_\_\_\_\_  
Principal's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Principal's name printed

\_\_\_\_\_  
Principal's address

\_\_\_\_\_  
Principal's telephone number

\_\_\_\_\_  
Principal's e-mail address

**WITNESSES (2<sup>nd</sup> Witness Optional)**

This document was signed in my presence on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.  
(Name of principal)

This document was signed in my presence on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_.  
(Name of principal)

\_\_\_\_\_  
(Witness's signature)

\_\_\_\_\_  
(Witness's signature)

\_\_\_\_\_  
(Witness's name printed)

\_\_\_\_\_  
(Witness's name printed)

\_\_\_\_\_  
Witness's address

\_\_\_\_\_  
Witness's address

\_\_\_\_\_  
Witness's telephone number

\_\_\_\_\_  
Witness's telephone number

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

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

**State of Georgia**

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

This document was signed in my presence on this the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, principal, and witness (es) \_\_\_\_\_ and \_\_\_\_\_ (2<sup>nd</sup> optional).

\_\_\_\_\_  
(Seal)

Signature of notary

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

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



## IMPORTANT INFORMATION FOR AGENT

### Agent's Duties

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

You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best 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:

\_\_\_\_\_ by \_\_\_\_\_ as Agent.  
(Principal's printed name) (Agent's signature)

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

- (1) Act loyally for the principal's benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (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; and
- (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.

### Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates 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 the principal;
- (2) The principal's revocation of your authority or the power of attorney so as long as the revocation of the power of attorney is communicated to you in writing by certified mail and provided that such notice is filed with the clerk of superior court in the county of domicile of the principal;
- (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, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

### **Liability of Agent**

The meaning of the authority granted to you is defined in O.C.G.A. Chapter 6B of Title 10. If you violate O.C.G.A. Chapter 6B of Title 10 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.'**

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



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

**State of Georgia**  
**County of** \_\_\_\_\_

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

I further certify that to my knowledge:

- (1) The principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;
- (2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;
- (3) If I were named as a successor agent, the prior agent is no longer able or willing to serve; and
- (4) \_\_\_\_\_

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

(Insert other relevant statements)

**SIGNATURE AND ACKNOWLEDGMENT**

\_\_\_\_\_  
Agent's signature Date

\_\_\_\_\_  
Agent's name printed

\_\_\_\_\_  
Agent's address

\_\_\_\_\_  
Agent's telephone number

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

This document was signed in my presence on the \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by \_\_\_\_\_.

(Name of agent)

(Seal)

\_\_\_\_\_  
(Signature of notary)

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

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

\_\_\_\_\_  
Principal's Initials

