

Durable Personal Power of Attorney (DE)

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A durable personal power of attorney used by an individual residing in Delaware to authorize a third party to manage the individual's property and financial matters. This Standard Document has integrated notes and drafting tips.

DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

An individual uses the Delaware durable personal power of attorney to authorize a third party to manage the individual's property and financial matters (12 Del. C. §§ 49A-101 to 49A-301). All references to a power of attorney in this Standard Document are to this Delaware durable personal power of attorney unless otherwise stated.

This Standard Document refers to the person:

- Who executes the power of attorney as the principal.
- Appointed by the principal to make financial and property decisions as the agent. The agent is also commonly referred to as the attorney-in-fact.

This Standard Document creates a durable power of attorney. The term durable means that the authority conferred under the power of attorney is not terminated by the principal's subsequent incapacity (12 Del. C. § 49A-102(2)).

This Standard Document does not (and a durable personal power of attorney cannot):

- Give the agent authority to make health care decisions for the principal. These types of powers are granted under an advance health-care directive (16 Del. C. §§ 2501 to 2518). For more information on advance health-care directives in Delaware, see Standard Document, Advance Health-Care Directive (DE) ([W-021-2030](#)).
- Include a power of attorney given primarily for business or commercial purposes or other numerous specific statutory circumstances generally not applicable here. Different forms are generally used to grant those types of powers. (12 Del. C. § 49A-103(a).)

OTHER FORMS OF POWERS OF ATTORNEY

Depending on the principal's needs, additional forms of powers of attorney may be appropriate instead of or in conjunction with this form. These include:

- Statutory short form powers of attorney for other states.
- Internal powers of attorney for financial institutions.

- Military powers of attorney (see Drafting Note, Benefits from Certain Governmental Programs or Civil or Military Service (e)).
- Separate powers of attorney for tax purposes.
- Designations of health care agent (advance health-care directives) (16 Del. C. § 2505 and see Standard Document, Advance Health-Care Directive (DE) ([W-021-2030](#))).
- Limited powers of attorney. If the principal does not want to grant an agent broad fiduciary powers and instead wants to limit an agent’s authority to a specific transaction or type of transaction, counsel should consider preparing a separate special or limited power of attorney for that purpose, though this Standard Document may be revised to accomplish this.

CUSTOM DRAFTING OPTIONS

The power of attorney provisions provided in this document derive largely from

the statutory form provided in 12 Del. C. § 49A-301 and can be used to create a complete document or can be a starting point from which counsel can incorporate or remove powers and provide instructions according to the principal’s needs. Using the statutory form provides greater certainty that third parties will honor the durable personal power of attorney. However, if the durable personal power of attorney satisfies the statutory requirements, the durable personal power of attorney is enforceable.

BRACKETED LANGUAGE

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or phrases indicates that the drafting party should include one of the words or phrases contained in the brackets in the document.

DURABLE PERSONAL POWER OF ATTORNEY

OF

[PRINCIPAL NAME]

Notice to Principal

As the person signing this durable power of attorney, you are the Principal.

The purpose of this power of attorney is to give the person you designate (your “Agent”) broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

This power of attorney does not authorize your Agent to make health-care decisions for you.

Unless you specify otherwise, your Agent’s authority will continue even if you become incapacitated, or until you die or revoke the power of attorney, or until your Agent resigns or is unable to act for you. You should select someone you trust to serve as your Agent.

This power of attorney does not impose a duty on your Agent to exercise granted powers, but when powers are exercised, your Agent must use due care to act for your benefit and in accordance with this power of attorney.

Your Agent must keep your funds and other property separate from your Agent’s funds and other property.

A court can take away the powers of your Agent if it finds your Agent is not acting properly.

The powers and duties of an Agent under a durable power of attorney are explained more fully in Delaware Code, Title 12, Chapter 49A, Section 49A-114 and Sections 49A-201 through 49A-217.

If there is anything about this form that you do not understand, you should ask a lawyer of your own choosing to explain it to you.

I have read or had explained to me this notice and I understand its contents.

Principal

Date

DRAFTING NOTE: NOTICE TO PRINCIPAL

Counsel should include this notice at the beginning of every personal power of attorney and the principal should sign and date the notice when executing the power of attorney.

This notice is not required for a power of attorney to be valid and enforceable.

However, without this signed notice, the agent has the burden of demonstrating the power of attorney is valid if the authority of the agent to act under the power of attorney is challenged (12 Del. C. § 49A-105(b)).

DURABLE PERSONAL POWER OF ATTORNEY FORM INSTRUCTIONS

As the person completing this form, you are the Principal. This form gives another person the power to act on your behalf. The other person is your Agent.

This form allows you to designate: (1) one Agent at a time and up to two Agents in succession; (2) two or more Agents who may act independently of each other (Concurrent Agents); or (3) two or more Agents who must act together (Joint Agents).

If your Agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor Agent(s).

IF YOU HAVE QUESTIONS ABOUT THIS POWER OF ATTORNEY OR THE AUTHORITY YOU ARE GRANTING TO YOUR AGENT(S), YOU SHOULD SEEK LEGAL ADVICE BEFORE COMPLETING AND SIGNING THIS FORM.

The following form may, but need not, be used to create a durable personal power of attorney. The other sections of this chapter govern the effect of this or any other writing used to create a durable personal power of attorney. A durable personal power of attorney that varies from the following form shall not be deemed to be invalid based solely upon such variance.

Designation of Agent

I, [PRINCIPAL NAME], name the following person(s) as my

Agent(s):

Name of Agent: [AGENT NAME]

Agent's Address: [AGENT ADDRESS]

Agent's Telephone Number: (home) [AGENT HOME NUMBER] (mobile) [AGENT CELL NUMBER]

DESIGNATION OF ADDITIONAL OR SUCCESSOR AGENTS (OPTIONAL)

Name of Agent: [ADDITIONAL OR SUCCESSOR AGENT NAME]

Agent's Address: [ADDRESS]

Agent's Telephone Number: (home)[HOME NUMBER](mobile) [CELL NUMBER]

If more than one Agent has been named above, I intend for those Agents to:

- ___ Act successively, one after the other
- ___ Act concurrently, independent of each other
- ___ Act jointly, not independent of each other

DRAFTING NOTE: DESIGNATION OF AGENT AND SUCCESSOR AGENTS

The principal designates agents and successor agents in this section of the Standard Document. A principal may designate:

- A single agent.
- Two or more people to act as:
 - concurrent agents, each exercising authority independently; or
 - joint agents that can only act together.

(12 Del. C. § 49A-111(a)-(b).)

If the principal designates multiple agents and does not specify that they are concurrent agents or joint agents, the agents are considered concurrent agents (12 Del. C. § 49A-111(c)). A principal may also designate one or more successor agents to act if an agent:

- Resigns.
- Dies.
- Becomes incapacitated.
- Is not qualified to serve.
- Declines to serve.

(12 Del. C. § 49A-111(d).)

The principal should initial or otherwise clearly mark the appropriate line of the Standard Document to indicate whether multiple agents act successively, concurrently, or jointly.

If the principal cannot choose a suitable successor agent or does not want to name a successor, counsel may:

- Exclude the section naming successor agents in its entirety.
- Leave the section blank.
- Include the section with "N/A" rather than the agent's information to show that it was considered and that the principal declined to select a successor.

Counsel should advise the principal that, without a named successor agent, if the principal becomes incapacitated and the named agent can no longer serve, a court might need to appoint a guardian (see Drafting Note, Nomination of Guardian).

EFFECTIVE DATE

You must sign ONE of these two choices:

_____ This power of attorney is effective immediately, and shall not be affected by my subsequent incapacity.

_____ This power of attorney is effective only if and while I am incapacitated as determined under 12 Del. C. § 49A-109(c).

DRAFTING NOTE: EFFECTIVE DATE

The principal may choose whether the power of attorney becomes effective immediately or on a future event or contingency, commonly (and as specified

in the statutory form) the principal's subsequent incapacity. The principal should sign on the appropriate line. If a principal does not indicate otherwise, the power

of attorney is effective immediately when executed (12 Del. C. § 49A-109(a)).

If a power of attorney becomes effective on the occurrence of a future event or contingency:

- The principal may authorize someone to determine that the event or contingency has occurred.
- If the contingency on which the power of attorney becomes effective is the principal's incapacity and no one is authorized to make the determination of whether the principal is incapacitated, the power of attorney becomes effective on a determination in a writing or other record by a physician or by a court that the principal is incapacitated.

(12 Del. C. § 49A-109(b), (c).)

Powers of attorney executed for estate planning purposes (powers of attorney generally not limited to a specific transaction or type of transaction but instead intended for general asset management) are most often made to

be effective immediately when executed instead of on the principal's incapacity or at some other future contingency. The process of determining incapacity might delay an agent's ability to act for the principal.

DESIGNATION OF PERSON AUTHORIZED TO DETERMINE INCAPACITY AS HIPAA AUTHORIZATION

Counsel should advise the principal that a person authorized by the principal in the power of attorney to determine that the principal is incapacitated (including the agent) may, by virtue of being authorized to make that determination, act as the principal's personal representative under the Health Insurance Portability and Accountability Act (HIPAA) to obtain access to the principal's health-care information and communicate with the principal's health-care provider (12 Del. C. § 49A-109(d)). For more information on HIPAA, see Standard Document, HIPAA Release ([W-016-3217](#)).

Grant of General Authority

I grant my Agent(s) general authority to act for me with respect to the following categories of powers, as explained in Chapter 49A of Title 12 of the Delaware Code. A full explanation of each power or authority pursuant to Chapter 49A of Title 12 of the Delaware Code is attached as **Exhibit "A"**.

INITIAL each category you want to include in the Agent's general authority. If you do not select a category listed below, powers associated with that category will NOT be included as part of your Agent's general authority.

- _____ Real Property (12 Del. C. § 49A-204)
- _____ Tangible Personal Property (12 Del. C. § 49A-205)
- _____ Stocks and Bonds (12 Del. C. § 49A-206)
- _____ Commodities and Options (12 Del. C. § 49A-207)
- _____ Banks and Other Financial Institutions (12 Del. C. § 49A-208)
- _____ Operation of Entity or Business (12 Del. C. § 49A-209)
- _____ Insurance and Annuities (12 Del. C. § 49A-210)
- _____ Estates, Trusts, and Other Beneficial Interests (12 Del. C. § 49A-211)
- _____ Claims and Litigation (12 Del. C. § 49A-212)
- _____ Personal and Family Maintenance (12 Del. C. § 49A-213)

- _____ Benefits from Governmental Programs or Civil or Military Service (12 Del. C. § 49A-214)
- _____ Retirement Plans (12 Del. C. § 49A-215)
- _____ Taxes (12 Del. C. § 49A-216)
- _____ Gifts (12 Del. C. § 49A-217)

DRAFTING NOTE: GRANT OF GENERAL AUTHORITY

The grant of general authority provision includes categories of general authority that the principal may give to the agent. Under Delaware law, if a power of attorney grants an agent authority to do all acts that a principal could do and refers to general authority regarding the descriptive terms or the statutory section in which the authority is described, the agent has that general authority as defined under statute (12 Del. C. § 49A-201(a)). These categories of authority are broad, covering the most common types of financial and property transactions.

The powers provided in the statutory sections generally provide the agent with as much authority to act as the principal would have to act regarding each category. The principal may modify the scope of authority granted to the agent in the power of attorney. Counsel should advise the principal to consider the scope of the statutory powers granted to an agent if a general authority is granted and whether the power of attorney should expressly exclude any particular powers or property.

More complete descriptions of the statutory authority provided under each category appears in Exhibit "A" to this Standard Document (see Drafting Note, Exhibit "A"). Exhibit "A" is not a part of the Delaware statutory form or required by statute. However, attaching a description of powers may be useful for agents and third parties. If the principal deletes Exhibit "A", the principal should delete the applicable language in this section.

The principal may grant additional powers to the agent, but any powers that must be granted with specificity appear in the next section (see Drafting Note, Grant of Specific Authority).

GENERAL AUTHORITY UNDER STATUTE

This Article gives the agent broad authority to exercise powers regarding different types of transactions. The general categories of authority provided in this power of attorney are outlined below. A principal may grant an agent authority to exercise additional powers in this section to meet the principal's needs. However, the principal can grant the authority to exercise certain powers or engage in certain transactions only if the principal expressly grants them, which the principal generally does, if desired, in the Specific Grant of Authority section (see Drafting Note, Grant of Specific Authority).

Real Property Transactions

This power authorizes the agent to manage most aspects of the principal's real estate (12 Del. C. § 49A-204).

Tangible Personal Property Transactions

This power gives the agent the ability to manage all tangible personal property, including jewelry, furniture, household items, and vehicles (12 Del. C. § 49A-205).

Stock and Bond Transactions

This power gives the agent broad authority regarding stock and bond transactions (12 Del. C. § 49A-206).

Commodities and Options Transactions

This power gives the agent broad authority regarding commodities and options transactions (12 Del. C. § 49A-207).

Banking and Other Financial Institution Transactions

This power gives the agent broad authority regarding banking transactions. This

includes the power to enter a safe deposit box and withdraw its contents and to open and close bank accounts (12 Del. C. § 49A-208). However, if the principal wants to authorize the agent to be able to change beneficiary designations, the principal must expressly grant this power (see Drafting Note, Authority to Create or Change a Beneficiary Designation).

Business or Entity Transactions

This power allows the agent to control and manage the principal's business activities (12 Del. C. § 49A-209). Counsel should advise the principal to discuss with the agent the principal's intent regarding any business.

Insurance and Annuities Transactions

This power authorizes the agent to manage all types of insurance policies and annuities (12 Del. C. § 49A-210). Despite the broad power authorized in this section, unless expressly authorized in the Grant of Specific Authority, the agent cannot create or change beneficiaries on these types of accounts (12 Del. C. § 49A-201(b) and see Drafting Note, Authority to Create or Change a Beneficiary Designation).

Estate, Trust, and Other Beneficiary Transactions

This section generally concerns estates, trusts, or beneficiary designations where the principal is a beneficiary (rather than an owner or creator of the interest) and permits the agent to receive distributions the principal would have received (12 Del. C. § 49A-211(a)).

Many other transactions involving estates, trusts, or beneficiary transactions (including those where the principal is the owner or creator of the interest) require express authorization under the Grant of Specific Authority section of this Standard Document, such as the authority to:

- Create, amend, or revoke a trust for the principal (12 Del. C. § 49A-201(b)(1) and see Drafting Note, Authority Regarding Inter Vivos Trust).
- Disclaim an interest of the principal in an estate or trust or another beneficial interest (see Drafting Note, Authority

Regarding Principal's Interests in Estates, Trusts, or Other Beneficial Interests).

- Change a beneficiary (for example, in a trust or an insurance policy) or survivorship rights (see Drafting Note, Powers Requiring a Grant of Specific Authority Under Statute).

Delaware law does not expressly permit a principal to grant an agent the authority to create or revoke a will or codicil for the principal.

Claims and Litigation

This power authorizes the agent to manage any legal matters related to the principal or the principal's property (12 Del. C. § 49A-212).

Personal and Family Maintenance

This power allows the agent to maintain the customary standard of living for the principal and the principal's spouse, minor children, disabled children, children who are full-time students under age 25, and certain other dependents (12 Del. C. § 49A-213). A general power to provide for personal and family maintenance is independent of and not dependent on or limited by an agent's power to make gifts to those persons for which the principal must expressly provide (if desired) (see Drafting Note, Authority to Make Certain Gifts).

Benefits from Certain Governmental Programs or Civil or Military Service

This power authorizes the agent to manage the principal's Social Security, Medicare, Medicaid, or other government assistance (12 Del. C. § 49A-213). However, government agencies might not honor this form. Agencies often require the principal to execute a separate form or, if the principal is incapacitated, require the agent to apply for authorization to represent the principal.

For more information regarding appointment of a representative for social security and military benefits, see Social Security Administration: Form SSA-1696-UF, U.S. Department of Veterans Affairs: VA Form 21-22a, Appointment of Individual as Claimant's Representative, and US Office of Personnel Management: Representative Payees.

Retirement Plan Transactions

This power authorizes the agent to manage all the principal's retirement plans, including qualified or nonqualified pensions, individual retirement accounts, profit sharing, deferred compensation, stock bonuses, or any other type of employee benefit plans (12 Del. C. § 49A-215).

Despite the broad power granted in this section, the agent cannot change any beneficiaries unless the principal grants the power to do so in the Grant of Specific Authority (see Drafting Note, Authority to Create or Change a Beneficiary Designation).

Tax Matters

This power authorizes the agent to handle tax matters for the principal (12 Del. C. § 49A-216).

The Internal Revenue Service requires a separate Form 2848 to allow an agent to represent the principal in federal tax matters (see IRS: Form 2848: Power of Attorney and Declaration of Representative).

General Gifting Power

This power authorizes the agent only to:

- Make gifts up to the annual exclusion amount or double the annual exclusion amount if the principal is married and the principal's spouse consents to gift-splitting.

- Consent to gift-splitting with the principal's spouse.

Under this general authority to make gifts, an agent may make a gift of the principal's property only as the agent determines is consistent with the principal's objectives if 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:

- The value and nature of the principal's property.
- The principal's foreseeable obligations and need for maintenance.
- Minimization of taxes.
- Eligibility for a government benefit, a program, or assistance.
- The principal's personal history of making or joining in making gifts.

(12 Del. C. § 49A-217.)

If a principal wants to authorize the agent to make gifts over the annual exclusion amount, the principal needs to authorize those gifts in the Grant of Specific Authority (see Drafting Note, Authority to Make Certain Gifts). Similarly, if a principal wants to authorize the agent to be able to make gifts to themselves, the principal should authorize those gifts in the Grant of Specific Authority.

Grant of Specific Authority (Optional)**Proceed with Caution**

Giving your Agent any of the following powers will give your Agent the authority to take actions that could significantly reduce your property or change how and to whom your property is distributed at your death. INITIAL each power you want to include in the Agent's authority. CROSS OUT each power you do not want to include in the Agent's Authority. If you do not select a power listed below, it will NOT be included as part of your Agent's specific authority.

_____ Create, amend, revoke, or terminate an *inter vivos* trust

[_____ Grant a consent or nonobjection to a modification of a trust pursuant to 12 Del. C. § 3342 or similar law]

[_____ Enter into a nonjudicial settlement agreement described in 12 Del. C. § 3338 or similar law]

_____ Make a gift in excess of the limitations in the Durable Personal Power of Attorney Act, 12 Del. C. § 49A-217

[_____ Make a gift to or for the benefit of the Agent(s), not subject to the limitations in the Durable Personal Power of Attorney Act, 12 Del. C. § 49A-217, directly or indirectly or in trust]

- _____ Create or change rights of survivorship
- _____ Create or change a beneficiary designation
- _____ Delegate authority granted under the power of attorney when all successor Agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve
- _____ Exercise fiduciary powers that the Principal has authority to delegate
- _____ Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest
- [_____ Exercise all rights and powers granted to a fiduciary under the Fiduciary Access to Digital Assets and Digital Accounts Act, Chapter 50 of Title 12 of the Delaware Code]

DRAFTING NOTE: GRANT OF SPECIFIC AUTHORITY

Under Delaware law, an agent may exercise certain types of authority for a principal or with the principal's property only if both:

- The power of attorney expressly grants the agent the authority.
- Exercise of the authority is not otherwise prohibited by another agreement or instrument.

(12 Del. C. § 49A-201(b).) This section of the Standard Document enables a principal to expressly grant these authorities.

The powers that require specific authority are only granted if specifically signed for because they can be exercised in a manner that could significantly reduce the principal's property or change how and to whom the principal's property is distributed at the principal's death. If the principal grants any of these specific powers, the agent should:

- Be aware of all the principal's property, including any expected future inheritance and any accounts, insurance policies, annuities, jointly owned property, or other property of which the principal expects to be a beneficiary.
- Understand the principal's expectations and intentions regarding the principal's property and anticipated property.

This form also includes certain powers (in brackets) that are not in the statutory form but for which the principal should grant specific authority (for clarity) if desired by the principal (see Additional Powers for

Which Principal Should Consider Providing a Grant of Specific Authority).

POWERS REQUIRING A GRANT OF SPECIFIC AUTHORITY UNDER STATUTE

Authority Regarding *Inter Vivos* Trust

This clause allows the agent to create, amend, revoke, or terminate an *inter vivos* trust to the extent the principal has the authority to do so (12 Del. C. § 49A-201(b)(1)). Granting this authority provides the agent with flexibility to engage in tax planning and reduce the future cost of estate administration. If the governing instrument for the trust prohibits its amendment, revocation, or termination by an agent under a durable personal power of attorney or otherwise, a grant of this authority under a durable personal power of attorney will not supersede that trust prohibition (12 Del. C. § 49A-201(b)).

The principal and agent should discuss the principal's estate plan in detail if the principal chooses to grant the agent powers over trust disposition and creation. Any action the agent takes regarding a trust should be consistent with the principal's estate planning goals. The agent should know and understand:

- The principal's intentions regarding intended beneficiaries.
- The purpose of any existing trust.
- The property the agent may transfer to a trust or that may already be held in a trust

over which the principal has the power to amend, revoke, or terminate.

The principal and agent should document a detailed plan. This can be used to provide information and instructions to the agent should the principal become incapacitated.

This power of trust disposition and creation is distinct from the powers to:

- Enter into a nonjudicial settlement agreement regarding a trust.
- Consent to the modification of an irrevocable trust, which is separately granted under the second clause above.

For more information on granting the agent these powers, see *Additional Powers for Which Principal Should Consider Providing a Grant of Specific Authority*.

Authority to Make Certain Gifts

Gifting is frequently used as an estate planning tool to minimize the value of an individual's estate and minimize estate taxes, to preserve wealth within a family, or to provide medical and educational assistance. A principal can reduce the principal's estate value by gifting assets to family members, charities, other organizations, or any other person.

The fourth power in the Grant of Specific Authority section allows the principal to grant the agent authority to make gifts that exceed the gifts allowed under the general gifting authority (see *Drafting Note, General Gifting Power*).

The fifth power in the Grant of Specific Authority section is a gifting power that is not in the statutory form (see *Additional Powers for Which Principal Should Consider Providing a Grant of Specific Authority*). It allows the principal to authorize the agent to make gifts **to the agent** over the amounts allowed under 12 Del. C. § 49A-217 (over the annual federal gift tax exclusion). If the principal wants to grant to the agent a power to make gifts to themselves, the principal should expressly state that to ensure that those gifts are not voidable as a breach of the agent's duty of loyalty to the principal. However, the principal and agent should be counseled regarding the potential tax implications of an agent possessing a

power to make gifts to the agent and might want to consider limiting the power.

Counsel should discuss with the principal the benefits and drawbacks of authorizing the power to gift beyond what is granted by the general grant of authority. If the principal includes the power to gift, the agent should also be informed of the scope of the power and the inherent scrutiny that gifting transactions may be subject to if the agent makes unauthorized and unintended gifts. The principal and agent should also discuss a gifting plan and document the plan in writing to show the principal's intent and to provide the agent with direction to execute the plan.

Authority to Create or Change Rights of Survivorship

A principal may have a survivorship interest in jointly owned property, including bank or brokerage accounts. On the death of one owner, title automatically passes to the surviving owner. If the sixth power in the Grant of Specific Authority section is granted, the agent may create, modify, or terminate a survivorship interest in the principal's property. For example, the agent may add the principal's child as a joint owner on a bank account. If the principal includes this authority, the principal should inform the agent of all property in which the principal has a survivorship interest.

Authority to Create or Change a Beneficiary Designation

If the seventh power in the Grant of Specific Authority section is granted, the agent may change the designated beneficiary on any of the principal's property that names a beneficiary, including any retirement plan, annuity, or life insurance contract. A principal may include this power to add flexibility in the event of a birth, marriage, divorce, or death in the family or if the principal's overall estate plan changes.

Authority to Delegate Authority Under Power of Attorney

By granting the eighth power in the Grant of Specific Authority section, the principal may authorize the agent to delegate the agent's authority in specific circumstances, including when all successor agents have resigned,

died, or become incapacitated, are no longer qualified to serve, or have declined to serve. Granting this authority provides flexibility in the future and may avoid a guardianship proceeding if no named agent is willing or able to serve.

Authority to Exercise Principal's Fiduciary Powers

By granting the ninth power in the Grant of Specific Authority section, the principal may grant the agent the power to exercise the principal's fiduciary powers to the extent the principal has authority to delegate those powers. For example, if the principal is a trustee under a trust instrument that provides the trustee of that trust the express authority to delegate some or all the trustee's trust powers, the agent may make that delegation on the principal's behalf if the power of attorney grants this power.

Authority Regarding Principal's Interests in Estates, Trusts, or Other Beneficial Interests

By granting the tenth power in the Grant of Specific Authority section, the principal may grant the agent certain powers over the principal's share in or payment from an estate, trust, or other beneficial interest. In some circumstances, it may be desirable and consistent with the principal's estate plan for the agent to reject, renounce, disclaim, release, or consent to a reduction in or modification of these interests. An agent may also choose to waive the principal's right to receive property in a situation where the property would disqualify the principal from receiving financial or medical assistance, such as Medicaid.

If this power is granted, counsel should advise the principal to educate the agent regarding the principal's estate plan to ensure that this authority is only exercised in a manner that is consistent with the principal's wishes.

Authority to Exercise Rights and Powers Under the Fiduciary Access to Digital Assets and Digital Accounts Act

Delaware permits a principal to grant authority to an agent over the principal's digital accounts or digital assets, which are defined broadly (12 Del. C. §§ 5002(11) and 5003).

Digital accounts include email accounts, social network accounts, social media accounts, file sharing accounts, health insurance accounts, health-care accounts, financial management accounts, domain registration accounts, domain name service accounts, web hosting accounts, tax preparation service accounts, and online accounts (12 Del. C. § 5002(6)).

Digital assets include data, text, emails, documents, audio, video, images, sounds, social media content, social networking content, codes, health care records, health insurance records, computer source codes, computer programs, software, software licenses, databases, or the like, including the usernames and passwords created, generated, sent, communicated, shared, received, or stored by electronic means on a digital device (12 Del. C. § 5002(7)).

The principal should understand that granting this power provides the agent with access to virtually all the agent's electronically stored information. This can be a valuable tool to enable an agent to completely fulfill the agent's responsibilities, but it also grants an agent access to information and communications that the principal may want to keep confidential.

ADDITIONAL POWERS FOR WHICH PRINCIPAL SHOULD CONSIDER PROVIDING A GRANT OF SPECIFIC AUTHORITY

In addition to the categories of authority specifically identified by statute, to avoid ambiguity, this Standard Document adds four bracketed categories of authority to account for developments in the law that may require a specific grant of authority in the power of attorney. These include the authority to:

- Enter into a binding nonjudicial settlement agreement regarding a trust under 12 Del. C. § 3338 (whether the principal is the settlor, the trustee or another fiduciary, a beneficiary, or any other person having an interest in the trust).
- Enter into a consent or nonobject to a modification of an irrevocable trust while the principal is living under

12 Del. C. § 3342 (whether the principal is the settlor, the trustee or another fiduciary, a beneficiary, or any other person having an interest in the trust). This authority may also be granted under the terms of the irrevocable trust.

- Make a gift to benefit the agent under 12 Del. C. § 49A-217 (see Authority to Make Certain Gifts).
- Exercise rights regarding the principal's digital assets under the Fiduciary Access

to Digital Assets and Digital Accounts Act (12 Del. C. §§ 5001 to 5007).

Some of these types of authority are new concepts under Delaware law, so it is not entirely clear whether and to what extent they fall within the general grant of authority in the power of attorney (see Drafting Note, Grant of General Authority). Counsel should discuss these authorities with the client to determine whether to modify the statutory form to expressly grant or prohibit these powers.

Reliance on This Power of Attorney

Any person, including my Agent(s), may rely upon this power of attorney or a copy of it unless that person knows it has terminated or is invalid.

DRAFTING NOTE: RELIANCE ON THIS POWER OF ATTORNEY

In Delaware, a third party that in good faith accepts an acknowledged personal power of attorney without actual knowledge that:

- The signature is not genuine may rely on a presumption that the signature is genuine (12 Del. C. § 49A-119(b)).
- The power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority may rely on 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 (12 Del. C. § 49A-119(c)).

A third party must generally accept an acknowledged personal power of attorney and cannot require an additional or different form than the form presented or the statutory form (12 Del. C. § 49A-120(a)). However, a third party is not required to accept a power of attorney if:

- The third party is not otherwise required to engage in a transaction with the principal in the same circumstances.
- Engaging in the transaction with the agent or with the principal in the same

circumstances would be inconsistent with state or federal law.

- The third party has actual knowledge of the termination of the power of attorney or of the termination of the agent's authority before exercise of the power.
- The third party has actual knowledge that:
 - the power of attorney has been terminated or revoked;
 - the power of attorney is void or invalid; or
 - the agent does not have the authority to perform the act requested.
- The third party promptly makes, has made, or has actual knowledge that a person has made a report to the appropriate law enforcement or social service agency of 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. (12 Del. C. § 49A-120(b).)

A third party that improperly refuses to accept an acknowledged personal power of attorney is subject to a court order compelling acceptance of the power

of attorney and liability for damages, including reasonable attorney's fees and costs, incurred in any action that confirms

the validity of the power of attorney or compels acceptance of the power of attorney (12 Del. C. § 49A-120(c)).

Nomination of Guardian

If a guardian of my property needs to be appointed for me by a court (INITIAL your selection):

_____ I nominate the agent(s) whom I named in this form in the order designated to act as guardian.

_____ I nominate the following to be guardian in the order designated: [GUARDIAN NAMES].

_____ I do not nominate anyone to be guardian.

DRAFTING NOTE: NOMINATION OF GUARDIAN

This section does not appear in the statutory form but may be included in a power of attorney. This section provides for the appointment of a guardian of property. A guardian of the property for a minor may be appointed under that minor's deceased parent's will. Even if a principal validly appoints an agent under a durable personal power of attorney, circumstances might arise after the principal becomes incapacitated that require the appointment of a guardian of the property for the principal.

The court's appointment of a guardian terminates a personal power of attorney to the extent that the court grants the court-appointed guardian the powers previously held by the agent (12 Del. C. § 49A-108(a)). If the court appoints a guardian, the agent becomes accountable to both the principal and the guardian regarding the powers that the agent continues to hold (12 Del. C. § 49A-108(b)).

Revocation of Prior Power of Attorney

If you have previously executed a power of attorney granting authority covered in this document, indicate below whether or not you wish to revoke the prior power of attorney. INITIAL your selection below:

_____ All my previously executed powers of attorney are hereby revoked, except those powers of attorney described in § 49A-103(a) of Title 12 of the Delaware Code, none of which are personal powers of attorney described within the meaning of § 49A-102(9) of Title 12 of the Delaware Code.

_____ My previously executed powers of attorney hereby remain in effect.

_____ Other. Explain. [EXPLANATION].

DRAFTING NOTE: REVOCATION OF PRIOR POWER OF ATTORNEY

A principal may generally revoke a power of attorney at any time in a subsequent power of attorney or in a separate writing. A new

power of attorney executed by the principal does not revoke a previously executed power of attorney unless the new document

specifically states that it revokes the old power of attorney (12 Del. C. § 49A-110(e)).

This section clarifies the principal’s intent regarding revocation of previous powers of attorney. The principal may want to indicate that the principal is revoking all previous personal powers of attorney even if the principal did not explicitly create any, in case there are any documents that could be considered the principal’s personal power of attorney.

TERMINATION OF POWER OF ATTORNEY

Absent a revocation by the principal, a power of attorney terminates on:

- The principal’s death.
- The occurrence of a terminating event set out in the power of attorney.

- The accomplishment of the power of attorney’s purpose.
- The agent’s death, incapacity, or resignation when no other agent is named.
- Revocation by court order. (12 Del. C. § 49A-110(a).)

NOTICE OF REVOCATION OR TERMINATION

If the principal revokes a power of attorney or any authority granted to an agent or if the power of attorney terminates for any other reason, the principal should promptly provide notice to the agent named in the terminated power of attorney and third parties likely to be affected. Third parties otherwise may be entitled to rely on the power of attorney, and the principal may be bound by the transactions (12 Del. C. § 49A-119(c)).

Governing Law

This Durable Personal Power of Attorney shall be governed by, and construed in accordance with, the laws of the State of Delaware.

DRAFTING NOTE: GOVERNING LAW

Personal powers of attorney in Delaware may include a statement that the principal intends for the personal power of attorney to be governed by and construed under

the laws of the State of Delaware. This statement can be helpful to the agent or a court in determining the scope of an agent’s authority and the principal’s intent.

Signature and Acknowledgement

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this [DATE] day of [MONTH], [YEAR].

_____(SEAL)

Principal Signature

Print Principal Name

SIGNED, SEALED, AND DECLARED by the Principal, [PRINCIPAL NAME], as the Principal’s Durable Personal Power of Attorney in the presence of the following witness, who has signed in the presence of and at the request of the Principal on the day and year appearing above.

I, [WITNESS NAME], swear that I am not related to the Principal by blood, marriage, or adoption; and that I am not entitled to any portion of the estate of the Principal under the Principal’s current will or codicil, or under any current trust instrument of the Principal.

- Disclose your identity as an Agent whenever you act for the Principal by writing or printing the name of the Principal and signing your own name as “Agent” in the following manner:

(Principal’s Name) by (Your Signature) as Agent

Except as otherwise provided in the power of attorney, you must also:

- Not act for your own benefit;
- Avoid conflicts that would impair your ability to act in the Principal’s best interest;
- Act with care, competence, and diligence;
- Keep a record of all receipts, disbursements, and transactions made on behalf of the Principal;
- Cooperate with any person who has authority to make health-care decisions for the Principal; and
- Not act in a manner inconsistent with the Principal’s testamentary plan.

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 this power of attorney or your authority to act under it include:

- Death of the Principal;
- The Principal’s revocation of the power of attorney or your authority;
- The occurrence of a termination event stated in the power of attorney;
- The purpose of the power of attorney is fully accomplished; or
- An action is filed with a court for your separation, annulment, or divorce from the Principal, unless the Principal otherwise provided in the power of attorney that such action will not terminate your authority.

Liability of Agent

The meaning of the authority granted to you is defined in the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A. If you violate the Durable Personal Power of Attorney Act, Delaware Code, Title 12, Chapter 49A, 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 powers, authority, or duties as Agent that you do not understand, you should seek legal advice.

Agent’s Certification

I, [AGENT NAME], have read the attached durable personal power of attorney and I am the person identified as the Agent for the Principal. To the best of my knowledge this power has not been revoked. I hereby acknowledge that, when I act as Agent, I shall:

- Act in accordance with the Principal’s reasonable expectations to the extent actually known to me and, otherwise, in the Principal’s best interest;
- Act in good faith;
- Act only within the scope of authority granted in the personal power of attorney; and
- To the extent reasonably practicable under the circumstances, keep in regular contact with the principal and communicate with the principal.

In addition, in the absence of a specific provision to the contrary in the durable personal power of attorney, when I act as Agent, I shall:

- Keep the assets of the Principal separate from my assets;
- Exercise reasonable caution and prudence; and
- Keep a full and accurate record of all actions, receipts and disbursements on behalf of the Principal.

Print Agent Name

Date

DRAFTING NOTE: STATEMENT TO AGENT

These sections contain a description of the agent's duties, the termination of the agent's authority, and the agent's liabilities. The principal should review this information with the agent before the agent accepts appointment. An agent accepts appointment by:

- Signing the agent's certification.
- Exercising authority or performing duties as agent.
- Any other assertion or conduct indicating acceptance.

(12 Del. C. § 49A-113.)

AGENT'S CERTIFICATION

Despite an agent's acceptance by assertion or conduct, the agent has no actual authority to act as agent under

the personal power of attorney unless the agent executed and affixed the certification to the power of attorney (12 Del. C. § 49A-105(c)). The agent does not need to sign the certification at the time of appointment but must sign the certification before the agent acts.

Many financial institutions and other third parties are familiar with the certification requirement and may reject an attempt by a purported principal to act without an executed certification. However, a third party accepting an acknowledged personal power of attorney without actual knowledge that the purported agent's authority is void or invalid may be protected for relying on the power of attorney under 12 Del. C. § 49A-105(c) as if the agent's authority were in effect.

EXHIBIT "A"**Real Property § 49A-204**

- To demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;
- To sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;
- To pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the Principal or a debt guaranteed by the Principal;
- To release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is asserted;
- To manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the Principal, including:
 - a. Insuring against liability or casualty or other loss;
 - b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
 - c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and
 - d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;
- To use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the Principal has, or claims to have, an interest or right;

- To participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, and hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:
 - a. Selling or otherwise disposing of them;
 - b. Exercising or selling an option, right of conversion, or similar right with respect to them; and
 - c. Exercising any voting rights in person or by proxy;
- To change the form of title of an interest in or right incident to real property; and
- To dedicate to public use, with or without consideration, easements or other real property in which the Principal has, or claims to have, an interest.

Tangible Personal Property § 49A-205

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

Stocks and Bonds § 49A-206

- To buy, sell, and exchange stocks and bonds;
- To establish, continue, modify, or terminate an account with respect to stocks and bonds;
- To pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the Principal;
- To receive certificates and other evidences of ownership with respect to stocks and bonds; and
- To exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

Commodities and Options § 49A-207

- To buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
- To establish, continue, modify, and terminate option accounts.

Banks and Other Financial Institutions § 49A-208

- To continue, modify, and terminate an account or other banking arrangement made by or on behalf of the Principal;

- To establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the Agent(s);
- To contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
- To withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the Principal deposited with or left in the custody of a financial institution;
- To receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
- To enter a safe deposit box or vault and withdraw or add to the contents;
- To borrow money and pledge as security personal property of the Principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the Principal or a debt guaranteed by the Principal;
- To make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the Principal or payable to the Principal or the Principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the Principal and pay it when due;
- To receive for the Principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
- To apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
- To consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Operation of Entity or Business § 49A-209

The powers in this section are subject to the terms of a document or an agreement governing an entity or an entity ownership interest and to applicable laws governing such entity or entity ownership interest.

- To operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
- To perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the Principal has, may have, or claims to have;
- To enforce the terms of, and exercise rights of the Principal pursuant to, the governing document;
- To initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the Principal is a party because of an ownership interest;
- To exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the Principal has or claims to have as the holder of stocks and bonds;
- To initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to which the Principal is a party concerning stocks and bonds or other entity ownership interests;
- With respect to an entity or business owned solely by the Principal:
 - a. To continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the Principal with respect to the entity or business before execution of the personal power of attorney;
 - b. To determine:
 - The location of its operation;
 - The nature and extent of its business;
 - The methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation;
 - The amount and types of insurance carried; and
 - The mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;

- a. To change the name or form of organization under which the entity or business is operated and enter into a governing document with other persons to take over all or part of the operation of the entity or business; and
- b. To demand and receive money due or claimed by the Principal or on the Principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;
- To put additional capital into an entity or business in which the Principal has an interest;
- To join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;
- To sell or liquidate all or part of an entity or business;
- To establish the value of an entity or business under a buy-out agreement to which the Principal is a party;
- To prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and
- To pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the Principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the personal power of attorney.

Insurance and Annuities § 49A-210

- To continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the Principal which insures or provides an annuity to either the Principal or another person, whether or not the Principal is a beneficiary under the contract;
- To procure new, different, and additional contracts of insurance and annuities for the Principal and select the amount, type of insurance or annuity, and mode of payment;
- To pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the Agent(s);
- To apply for and receive a loan secured by a contract of insurance or annuity;
- To surrender and receive the cash surrender value on a contract of insurance or annuity;
- To exercise an election;
- To exercise investment powers available under a contract of insurance or annuity;
- To change the manner of paying premiums on a contract of insurance or annuity;
- To change or convert the type of insurance or annuity with respect to which the Principal has or claims to have authority described in this section;
- To apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the Principal;
- To collect, sell, assign, hypothecate, borrow against, or pledge the interest of the Principal in a contract of insurance or annuity;
- To select the form and timing of the payment of proceeds from a contract of insurance or annuity; and
- To pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

Estates, Trusts, and Other Beneficial Interests § 49A-211

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

- To accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;

- To demand or obtain money or another thing of value to which the Principal is, may become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;
- To exercise for the benefit of the Principal a presently exercisable general power of appointment held by the Principal;
- To initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of the Principal;
- To initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;
- To conserve, invest, disburse, or use anything received for an authorized purpose;
- To transfer an interest of the Principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of an existing trust created by the Principal as settlor for the benefit of the Principal; and
- To renounce or resign from any fiduciary position held by the Principal.

Claims and Litigation § 49A-212

- To assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the Principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;
- To bring an action to determine adverse claims or intervene or otherwise participate in litigation;
- To seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;
- To make or accept a tender, offer of judgment, or admission of facts, submit a controversy on an agreed statement of facts, consent to examination, and bind the Principal in litigation;
- To submit to alternative dispute resolution, settle, and propose or accept a compromise;
- To waive the issuance and service of process upon the Principal, accept service of process, appear for the Principal, designate persons upon which process directed to the Principal may be served, execute and file or deliver stipulations on the Principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
- To act for the Principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the Principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee which affects an interest of the Principal in property or other thing of value;
- To pay a judgment, award, or order against the Principal or a settlement made in connection with a claim or litigation; and
- To receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

Personal and Family Maintenance § 49A-213

Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that Agent(s) may or may not have with respect to gifts under Chapter 49A of Title 12 of the Delaware Code.

- To perform the acts necessary to maintain the customary standard of living of the Principal, the Principal's spouse, minor children, disabled adult children, children who are full time students under the age of 25, and dependents as defined under § 152 of the Internal Revenue Code of 1986, as amended (the "Code");

- To provide living quarters for the individuals described in paragraph (1) of this section by:
 - a. Purchase, lease, or other contract; or
 - b. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the Principal or occupied by those individuals;
- To provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in paragraph (1) of this section;
- To pay expenses for necessary health care and custodial care on behalf of the individuals described in paragraph (1) of this section;
- To act as the Principal's personal representative pursuant to the Health Insurance Portability and Accountability Act §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d et seq., as amended, and applicable regulations, to obtain information to make decisions relating to the past, present, or future payment for the provision of health care consented to by the Principal or anyone authorized under the law of this State to consent to health care on behalf of the Principal;
- To continue any provision made by the Principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in paragraph (1) of this section;
- To maintain credit and debit accounts for the convenience of the individuals described in paragraph (1) of this section and open new accounts;
- To continue payments incidental to the membership or affiliation of the Principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations; and
- Shall make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the Principal is a party.

Benefits from Governmental Programs or Civil or Military Service § 49A-214

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

- To execute vouchers in the name of the Principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the Principal, including allowances and reimbursements for transportation of the individuals described in § 49A-213(a)(1) of Title 12 of the Delaware Code, and for shipment of their household effects;
- To take possession and order the removal and shipment of property of the Principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
- To enroll in, apply for, select, reject, change, amend, or discontinue, on the Principal's behalf, a benefit or program;
- To prepare, file, and maintain a claim of the Principal for a benefit or assistance, financial or otherwise, to which the Principal may be entitled under a statute or regulation;
- To initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the Principal may be entitled to receive under a statute or regulation; and
- To receive the financial proceeds of a claim described in paragraph (4) of this section and conserve, invest, disburse, or use for a lawful purpose anything so received.

Retirement Plans § 49A-215

In this section, “retirement plan” means a plan or account created by an employer, the Principal, or another individual to provide qualified or nonqualified retirement benefits or deferred compensation of which the Principal is a participant, beneficiary, or owner, including, but not limited to, a plan or account under the following sections of the Code: (i) an individual retirement account under § 408 of the Code; (ii) a Roth individual retirement account under § 408A of the Code; (iii) a deemed individual retirement account under § 408(q) of the Code; (iv) an annuity or mutual fund custodial account under § 403(b) of the Code; (v) a pension, profit-sharing, stock bonus, or other retirement plan qualified under § 401(a) of the Code; (vi) a plan under § 457(b) of the Code; (vii) a nonqualified deferred compensation plan under § 409A of the Code; and (viii) a plan under a Code section which did not exist at the time the personal power of attorney was executed.

- To select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
- To make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
- To establish a retirement plan in the Principal’s name;
- To make contributions to a retirement plan;
- To exercise investment powers available under a retirement plan; and
- To borrow from, sell assets to, or purchase assets from a retirement plan.

Taxes § 49A-216

- To prepare, sign, and file federal, state, local, and foreign income, gift, generation skipping transfer, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under § 2032A of the Code, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
- To pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
- To exercise any election available to the Principal under federal, state, local, or foreign tax law; and
- To act for the Principal in all tax matters for all periods before the Internal Revenue Service, or other taxing authority.

Gifts § 49A-217

In this section, a gift “for the benefit of” a person includes a gift to a trust, an account or an interest in property held under the Delaware Uniform Transfers to Minors Act or similar statute of any other state or jurisdiction, and a tuition savings account or prepaid tuition plan as defined under § 529 of the Code, or similar plan.

- To 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 § 2503(b) of the Code, 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 § 2513 of the Code in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and
- To consent, pursuant to § 2513 of the Code 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.

DRAFTING NOTE: EXHIBIT "A"

Exhibit "A" to the Standard Document tracks the Delaware statutes that describe the scope of an agent's authority when the principal grants an agent general authority in the power of attorney

(see Drafting Note, Grant of General Authority). It may be helpful to the principal, the agent, and third parties to include a copy of this Exhibit "A" with the power of attorney.

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Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

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