

GEORGIA STATUTORY FINANCIAL POWER OF ATTORNEY

Instructions and Form

INTRODUCTION

The General Assembly revised the Uniform Power of Attorney Act during the 2018 legislative session. Within this Act is a revised form for a power of attorney. While this Act does not require that the new form be used, it does replace the Statutory Financial Power of Attorney form previously found in the law.

In this material, the narrative that precedes the form provides some guidance to understanding and instructions 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, 2018, 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

A financial power of attorney is a voluntary grant of authority to another to carry out financial decisions and transactions on one's behalf. 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 may 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.

REFLECTING THE WISHES OF THE PRINCIPAL

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

EFFECT OF GIVING POWERS TO ANOTHER

Even with the creation of a power of attorney, if you choose to and can, you may still legally make decisions about your own financial affairs. Your Agent's authority to act is equal to your authority to act for yourself. **A power of attorney does not give your Agent authority to act over you but authority to act for you.** 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.

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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.

"Gift" means a transfer of property for less than adequate consideration in money or money's worth that is not a renunciation within the meaning of Code Section 53-1-20.

'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 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) Any delegation of voting, management, or similar rights related to the governance or administration of an entity or business, including but not limited to, delegation of voting or management rights;
- 4) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose;
- 5) Powers of attorney that only grant authority with respect to a single transaction or series of related transactions involving real estate;
- 6) Powers of attorney provided for under Titles 19 and 33; and
- 7) As set forth in Code Section 10-6B-81.

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 'attested statutory form power of attorney' means a statutory form power of attorney that was purportedly attested (witnessed) as set forth in Code Section 44-2-15.

“Statutory form power of attorney” means a power of attorney:

- Substantially in the form set out in O.C.G.A. §10-6B-70;
- That meets the requirements for a military power of attorney pursuant to 10 U.S.C. Section 1044b, in effect on February 1, 2018; or
- That substantially reflects the language in the form set forth in Code Section 10-6B-70.

CONSTRUCTION OF THE POWER OF ATTORNEY

Appointing Agents

- A principal may designate two or more persons to act as coagents by indicating this in the ‘Special Instructions’.
 - Unless the power of attorney otherwise provides in the ‘Special Instructions’, coagents shall exercise their authority independently of each other and do not have to agree.
- 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.

How to Properly Execute the Power Of Attorney

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;
- Attested in the presence of the principal by a competent (*being of sound mind and at least 14 years of age*) witness who is not also named as an agent in the power of attorney being attested; and
- Attested as set forth in Code Section 44-2-15, in the presence of the principal, by an individual who is not a witness, (such as a judge of a court of record, including a judge of a municipal court, or by a magistrate, a notary public, or a clerk or deputy

clerk of a superior court or of a city court created by special Act of the General Assembly) and who is not also named as an agent in the power of attorney being attested.

- The witnesses described above shall only be required to attest to the signature of the principal or the individual signing at the express direction of the principal.

When the Power of Attorney Becomes Effective

- A power of attorney is effective when executed unless the principal provides in the Special Instructions 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.

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.
- A finding by a court that a principal is incapacitated for purposes of Chapter 6B shall not constitute a determination of or create a presumption regarding such principal's need for a guardian or conservator under Title 29.
- 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

- Powers of attorney validly executed in this state prior to July 1, 2017 remain valid.
- A power of attorney executed in this state on or after July 1, 2017, shall be valid if its execution complies with Code Section 10-6B-5.

Forms from Other States

- 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, 2018.

Photo Copies

- 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, a power of attorney shall be in a form that complies with Part 1 of Article 1 of Chapter 2 of Title 44.

Substantially Similar Forms

A power of attorney shall be deemed to substantially reflect the language in the form set forth in Code Section 10-6B-70 if it:

- Grants, modifies or withholds authority for each of the descriptive terms for the subjects (found below) as described in Code Sections 10-6B-43 through 10-6B-56, either by reference to the descriptive terms or citation to the specific Code sections;
 - Real property
 - Tangible personal property
 - Stocks and bonds
 - Commodities and options
 - Banks and other financial institutions
 - Operation of entity or business
 - Insurance and annuities
 - Estates, trusts, and other beneficial interests

- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Retirement plans
- Taxes
- Gifts
- Grants, modifies or withholds authority for each of the powers found below as described in subsection (a) of Code Section 10-6B-40 either by reference to the powers or citation to such subsection:
 - Create, fund, amend, revoke, or terminate an inter vivos trust;
 - Make a gift;
 - Create or change rights of survivorship;
 - Create or change a beneficiary designation;
 - Authorize another person to exercise 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;
 - Exercise authority over the content of electronic communications, as defined in 18 U.S.C. Section 2510(12), in effect on February 1, 2018 sent or received by the principal;
 - Exercise fiduciary powers, other than those associated with an ownership interest as provided under paragraph (14) of Code Section 10-6B-48, that the principal has authority to delegate and that are expressly and clearly identified (including the persons for which the principal acts as a fiduciary) in the Special Instructions; or
 - Renounce an interest in property, including a power of appointment.
- Contains a provision substantially similar to the following: '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'.

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;
 - a. Nothing prevents a principal who notifies an agent of the revocation of the agent's authority or power of attorney by certified mail or statutory overnight delivery from filing such notification and evidence of its receipt by the agent with the clerk of superior court in the county of the principal's domicile for the

purposes of establishing such agent had knowledge of the principal's revocation.

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

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 the agent's or another person's actual knowledge of the incapacity, when the agent or another person acts in good faith under the power of attorney; or,
- The execution of another 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 delegation of fiduciary powers under paragraph (7) of subsection (a) of Code Section 10-6B-40, shall have the same duties and liabilities as the principal with respect to such fiduciary powers.

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.

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;
 - Except as otherwise provided in the power of attorney, an agent shall not be required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, 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, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.
- 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 'for the benefit of' means a gift to a trust, an account under the Uniform Transfers to Minors Act, a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529, in effect on February 1, 2018, or an ABL account as defined under Internal Revenue Code Section 529A, 26 U.S.C. Section 529A, in effect on February 1, 2018.

'Gift splitting' means the election to have a gift treated as made one-half by the transferor and one-half by the spouse pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513, in effect on February 1, 2018.

'Section 2503(b) amount' means the federal gift tax exclusion under Internal Revenue Code Section 2503(b), 26 U.S.C. 2503(b), in effect on February 1, 2018, indexed for future years under the provisions in effect on February 1, 2018.

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:

- 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 the following amounts, without regard to whether the federal gift tax exclusion applies to the gift:
 - If the principal is not married or is legally separated at the time of the gift, in an amount per donee not to exceed the Section 2503(b) amount; or
 - If the principal is married and not legally separated at the time of the gift, in an amount per donee not to exceed twice the Section 2503(b) amount; and
- Consent to gift splitting if the principal has a spouse for purposes of gift splitting.

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 of The Agent

A power of attorney shall not authorize an agent to:

- Execute or revoke any will or codicil for the principal;
- Make an affidavit as to the personal knowledge of the principal, or
- Vote in any public election on behalf of the principal.

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.

Termination of The Agent's Authority

An agent's authority shall terminate when:

- The agent resigns, becomes incapacitated, or dies;
 - An agent who has been incapacitated for more than six months shall not resume acting as an agent pursuant to the power of attorney that created the agency during which the agent became incapacitated.
- The principal revokes the agent's authority,
- 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.

Agent 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 the estate plan of a principal.
- 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:

- 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

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

Resignation of 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:

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

ACCEPTING OR REFUSING A POWER OF ATTORNEY FORM

The term "attested power of attorney" means a power of attorney that was purportedly attested as set forth in Code Section 44-2-15.

Acceptance of Form Presented

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

Request for Proof of Validity

A person that is asked to accept an attested 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) An English translation of such power of attorney if it contains, in whole or in part, language other than English; and
- (3) 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.

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

- Request a certification, a translation, or an opinion of an attorney [as described in (3) above] no later than seven business days after presentation of such power of attorney for acceptance;
- If a person requests a certification, a translation, or an opinion of an attorney [as described in (3) above], the person shall accept the attested statutory form power of

attorney no later than five business days after receipt of the certification, translation, or opinion of an attorney.

(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)

Refusing A Power of Attorney Form

A person shall not be required to accept an attested 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 such power of attorney before exercise of such power of attorney;
- (4) A request for a certification, a translation, or an opinion of an attorney under subsection (d) of O.C.G.A. § 10-6B-19 is refused;
- (5) The person in good faith believes that such power of attorney 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 (d) 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 Form

- A person that in good faith accepts an attested 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;
- A person that in good faith accepts an attested power of attorney without actual knowledge
 - that such 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 FOR 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, personal representative, or other fiduciary acting for the principal or for the principal's estate;
- (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.

If a petition under this Code section was in the best interest of the principal and the agent admitted to a violation of this chapter or a court found that such agent violated this chapter, a court may order the principal to reimburse the persons other than a governmental agency, who made such petition for part or all of the reasonable attorney's fees, and expenses of litigation incurred by such persons, provided that such fees and expenses were not imposed on the agent, were related to the agent's violation of this chapter, and were reasonable in the context of the agent's misconduct and the general circumstances of the principal.

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.

Agent's Liability to the Principal

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

- Restore the value of the principal's property to what it would have been had the violation not occurred; and
- 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 an attested statutory power of attorney in violation of the requirements of this law shall be subject to:

- A court order mandating acceptance of such power of attorney; and
- 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

- Pursuant to O.C.G.A. §16-8-10, 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.

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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 2018 Georgia Uniform Power of Attorney Act.

State of Georgia
County of _____

STATUTORY FORM POWER OF ATTORNEY

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 in the Special Instructions, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is 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 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 legal advice 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", found at the end of the list, instead of initialing each subject.**)

- Real property
- Tangible personal property
- Stocks and bonds
- Commodities and options
- Banks and other financial institutions
- Operation of entity or business
- Insurance and annuities

- Estates, trusts, and other beneficial interests
- Claims and litigation
- Personal and family maintenance
- Benefits from governmental programs or civil or military service
- Retirement plans
- Taxes
- All Preceding Subjects**

GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent 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 you WANT to give your agent.** You should give your agent specific instructions in the Special Instructions when you authorize your agent to make gifts.)

- Create, fund, amend, revoke, or terminate an inter vivos trust, including a Medicaid Qualifying 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
- Exercise authority over the content of electronic communications sent or received by the principal
- Exercise fiduciary powers that the principal has authority to delegate and that are expressly and clearly identified (including the persons for which the principal acts as a fiduciary) in the Special Instructions
- Renounce 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):

EFFECTIVE DATE

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

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.

SIGNATURE AND ACKNOWLEDGMENT

Principal's signature

(Date)

Principal's name printed

Principal's address

Principal's telephone number

Principal's e-mail address

This document was signed or acknowledged in my presence on _____,
(Date)

by _____.
(Name of principal)

(Witness's signature)

(Witness's name printed)

Witness's address

Witness's telephone number

Witness's e-mail address

State of Georgia

County of _____

This document was signed or acknowledged in my presence on _____,
(Date)

by _____.
(Name of principal)

Signature of notary

(Seal)

My commission expires: _____

This document prepared by: _____

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.

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 or acknowledged in my presence on _____,
(Date)

by _____.
(Name of agent)

Signature of notary

(Seal)

My commission expires: _____.

This document prepared by: _____.