

Power of Attorney (SC)

by Melody J.E. Breeden, Turner, Padgett, Graham and Laney, P.A., with Practical Law Trusts & Estates

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A power of attorney used by an individual residing in South Carolina 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 creates a power of attorney to authorize a third party to act on behalf of the individual. The person who executes the power of attorney is known as the principal. The person appointed by the principal to make financial and property decisions on the principal's behalf is referred to as the agent (or attorney-in-fact). (S.C. Code Ann. § 62-8-102(1), (9).)

In South Carolina, powers of attorney are governed by the South Carolina Uniform Power of Attorney Act, the most recent version of which became effective January 1, 2017 (S.C. Code Ann. §§ 62-8-101 to 62-8-403). There is no statutory form for financial powers of attorney in South Carolina. Practitioners should familiarize themselves with the provisions in the Act and draft powers of attorney accordingly.

Counsel should be specific when drafting a power of attorney. Specificity leads to less confusion about which powers the agent has and does not have. There are some powers that must be specifically stated in the power of attorney. For these powers, a blanket statement that "my agent can do anything I can do" is not sufficient in South Carolina to authorize an agent to act for the principal. (S.C. Code Ann. § 62-8-201 and see Drafting Note, Specific Powers Granted by the Power of Attorney.)

Counsel should also ensure that the document can be recorded in South Carolina because most

third parties, whether dealing with the agent regarding personal or real property matters, only accept a power of attorney that has been recorded (see Recording the Power of Attorney).

This Standard Document authorizes an agent to act as to a principal's financial matters. South Carolina also has a statutory health care power of attorney that a principal can use to designate an individual to make health care decisions for the principal and to express the principal's health care preferences. A principal should create and execute a separate health care power of attorney, which must be substantially in the statutory form, to designate an agent to act for the principal regarding health care decision-making when the principal is incapacitated. (S.C. Code Ann. § 62-5-504.) For more information on health care powers of attorney in South Carolina, see [Standard Document, Health Care Power of Attorney \(SC\)](#).

Caution to Principal

A power of attorney typically grants the agent a variety of powers. Counsel should warn the principal of the risks associated with giving an agent broad authority to act for the principal regarding financial and property matters. Counsel should review with the principal the powers the principal wants to grant in the power of attorney before the power of attorney is drafted and executed.

The principal should also understand the potential for abuse by an agent before selecting an agent. Third parties are not required to inquire about the purpose or motives of an agent and do not typically look beyond the powers granted in the document itself (S.C. Code Ann. §§ 62-8-119 and 62-8-120 and see Drafting Note, Third Party Reliance).

For more information about appointing agents, generally, see Drafting Note, Appointing Agents, Co-Agents, and Successor Agents.

Effective Date of Power of Attorney

Unless specifically stated otherwise in this document the power of attorney is effective when executed (S.C. Code Ann. § 62-8-109 and see Drafting Note, Appointing Agents, Co-Agents, and Successor Agents). This is most common when executing a power of attorney for estate planning purposes.

Counsel may create a springing power of attorney, which is a power of attorney that springs into effect on the occurrence of a certain event such as incapacity, if the client desires (S.C. Code Ann. § 62-8-109(a)).

Springing powers of attorney can create problems with determining when the triggering event occurs. As a result, most South Carolina powers of attorney are effective when signed.

Recording the Power of Attorney

Third parties dealing with the agent for both real and personal property matters generally expect the power of attorney to be recorded in the Register of Deeds Office in the county where the principal resides at the time of recording. Therefore, the principal, or counsel for the principal, routinely records the power of attorney after its execution (see Drafting Note, Execution). If the agent wants to continue to act under this power of attorney after the principal is incapacitated (the power of attorney is durable), the power of attorney **must** be recorded in the county where the principal resides at recording (S.C. Code Ann. § 62-8-109(c)).

For more information on durability, see Drafting Note, Durability.

If the principal has real property in multiple counties, the principal should also record this power of attorney in the counties where the real property is located for the agent to effectively deal with those real properties. Counsel should consult the applicable Register of Deeds county website for specific recording requirements.

Termination of a Power of Attorney

In South Carolina, a power of attorney terminates when:

- The principal dies.
- The principal revokes the power of attorney (see Drafting Note, Revocation of Prior Power of Attorney).
- The power of attorney provides that it terminates.
- The purpose of the power of attorney is accomplished.
- The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and there is no backup agent.
- The principal is determined to be incapacitated, if the power of attorney is a non-durable power of attorney. However, powers of attorney created for estate planning purposes are generally durable. For more information on durable and non-durable powers of attorney, see Drafting Note, Durability.

(S.C. Code Ann. § 62-8-110(a).)

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.

POWER OF ATTORNEY

APPOINTMENT OF AGENT

I, [PRINCIPAL NAME], have this day appointed [AGENT NAME] to serve as my agent “Agent”) and to exercise the powers set forth below.

In addition, I have this day also appointed [SUCCESSOR AGENT NAME] to serve as successor agent but without authority to exercise any of the powers set forth below except that if my Agent shall be unable or unwilling to serve or to continue to serve as such Agent, then my successor agent shall be fully authorized to serve hereunder and shall have all of the powers granted originally to my Agent and the term “Agent” shall thereupon refer to my successor agent named herein.

DRAFTING NOTE: APPOINTING AGENTS, CO-AGENTS, AND SUCCESSOR AGENTS

The principal should designate as agents only capable individuals the principal trusts, given that the agent has broad authority to act as to the principal’s financial matters under this power of attorney. Counsel should include the full names of the principal and all named agents in this section of the power of attorney.

If a principal wants to designate co-agents, the principal should identify both co-agents in this section. Unless the principal provides otherwise in the power of attorney, each co-agent may act independently (S.C. Code Ann. § 62-8-111(a)). However, co-agents are generally not preferred because:

- Third parties generally do not like to deal with multiple agents serving together at any one time.
- Multiple agents who must act together may result in conflict or delay in acting under the power of attorney.
- Multiple agents who can act independently may result in confusion if the agents are not aware of the acts or inaction of the other.

Therefore, it is generally recommended that the principal name only one person at a time to serve as initial and successor agents.

The principal should also appoint at least one successor or backup agent. Without a successor agent, the power of attorney terminates if the named agent cannot or will not serve (or, if the named agent and all of the successor agents cannot or will not serve) (S.C. Code Ann. § 62-8-110(a)(6)). If the principal is incapacitated at this

time (and therefore cannot create a new power of attorney), a conservatorship may be necessary to handle the financial affairs of the incapacitated principal. Conservatorship is a time-consuming and costly process (S.C. Code Ann. §§ 62-5-401 to 62-5-433).

Duties of the Agent

The agent named in a power of attorney is a fiduciary of the principal (S.C. Code Ann. § 62-8-102(1)). An agent’s duties to the principal include:

- Acting according to the principal’s reasonable expectations, if known, and in the best interest of the principal.
- Acting in good faith.
- Acting only within the scope of the authority granted in the power of attorney.
- Except as otherwise provided in the power of attorney, the agent has duties:
 - to act loyally for the principal’s benefit;
 - to act so as not to create a conflict of interest impairing the agent’s ability to act impartially and in the principal’s best interest;
 - to act with the requisite care, competence, and diligence;
 - to keep sufficient records;
 - to cooperate with a person authorized to make health care decisions for the principal; and

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– to preserve the principal’s estate plan to the extent known, if preserving the plan is consistent with the principal’s best interest.

(S.C. Code Ann. § 62-8-114.) Though the principal can limit some of these duties of the agent in the power of attorney, the principal rarely includes any limiting language (S.C. Code Ann. §§ 62-8-114 and 62-8-115).

DURABILITY

This power of attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing [his/her] own estate.

DRAFTING NOTE: DURABILITY

A power of attorney may be durable or non-durable. A durable power of attorney remains effective during a principal’s incapacity. A non-durable power of attorney terminates when the principal becomes incapacitated.

South Carolina powers of attorney created after January 1, 2017 are durable and, once effective, continue to be effective on the principal’s incapacity unless otherwise specified in the power of attorney (S.C. Code Ann. § 62-8-104). If the principal wants a durable power of attorney, counsel does not need to include specific related language in the power of attorney to make the

power of attorney durable. However, counsel should state that the power of attorney survives the principal’s incapacity for clarity when dealing with third parties.

If the principal wants the agent’s authority to terminate on the principal’s incapacity, the principal can remove the language included in this provision and instead state that the power of attorney terminates on the principal’s incapacity.

Powers of attorney for estate planning purposes are generally durable because the principal specifically intends for them to be effective on the principal’s incapacity.

REVOCATION OF PRIOR POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS that I, [PRINCIPAL NAME], on [DATE], executed a Power of Attorney whereby I appointed [PREVIOUS AGENT NAME] as my true and lawful attorney. [This Power of Attorney was recorded in the records of the Register of Deeds of [COUNTY NAME] County on [RECORDING DATE], in Deed Book [RECORDING INFORMATION], Page [RECORDING INFORMATION].]

By the execution of this document, I hereby revoke said Power of Attorney [and absolutely renounce any power of [PREVIOUS AGENT NAME] to act on my behalf as my true and lawful attorney under the said Power of Attorney].]

DRAFTING NOTE: REVOCATION OF PRIOR POWER OF ATTORNEY

A principal may revoke a power of attorney at any time for any reason so long as the principal has the capacity to understand the nature and

consequences of revoking a power of attorney (S.C. Code Ann. § 62-8-110 and see *In re Thames*, 544 S.E.2d 854, 857-58 (S.C. Ct. App. 2001).

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A power of attorney executed by the principal does not revoke a previously executed power of attorney unless the document specifically includes language revoking the prior power of attorney (S.C. Code Ann. § 62-8-110(f)). The revocation must be executed with the same formalities as a power of attorney is executed (S.C. Code Ann. § 62-8-110(g)). For more information on the requirements for executing a power of attorney, see Drafting Note, Execution.

If the principal appoints a different agent in the new power of attorney and does not want the agent named in the prior power of attorney to serve under any circumstances, the principal may include the optional language renouncing the previous agent's power for clarity.

A principal may also revoke prior powers of attorney by including a specific provision in a separate document called a Revocation of Durable Power of Attorney (S.C. Code Ann § 62-8-110).

If the principal revokes the power of attorney, the principal should:

- Provide notice of the termination to the agent and third parties likely to deal with the agent (for example, financial institutions where the principal has accounts).
- Keep records documenting the notice.

The revocation is not effective as to the agent or a third party that acts in good faith under a power of attorney without actual notice of termination (S.C. Code Ann § 62-8-110(d)).

Revocation of Recorded Power of Attorney

If the power of attorney being revoked was recorded with the Register of Deeds Office, the revocation must also be recorded in the same Register of Deeds office or offices (S.C. Code Ann. § 62-8-110(d), (g) and see Drafting Note, Recording the Power of Attorney).

ASSET POWERS

My Agent is authorized with respect to any and all of my property and interests in property, real and personal, tangible, intangible and mixed, as follows:

(1) to sell any and every kind of property that I may own now or in the future, real and personal, tangible, intangible and/or mixed, including without being limited to real estate, stocks, bonds, interests in partnerships, limited liability companies and any other securities, contingent and expectant interests, marital rights and any rights of survivorship incident to joint tenancy or tenancy by the entirety, upon such terms and conditions and security as my Agent shall deem appropriate and to grant options with respect to sales thereof;

(a) to make such disposition of the proceeds of such sale or sales (including expending such proceeds for my benefit) as my Agent shall deem appropriate;

(2) to buy every kind of property, real, or personal, tangible, intangible or mixed, including, without limitation, real estate, stocks, bonds, interests in partnerships, limited liability companies and any other securities upon such terms and conditions as my Agent shall deem appropriate; to obtain options with respect to such purchases; to arrange for appropriate disposition, use, safekeeping and/or insuring of any such property purchased by my Agent;

(a) to use any credit card held in my name to make such purchases and to sign such charge slips as may be necessary to use such credit cards;

(b) to repay from any funds belonging to me any money borrowed and to pay for any purchases made or cash advanced using credit cards issued to me;

(3) to invest and reinvest all or any part of my property in any property or interests (included undivided interests) in property, real or personal, tangible, intangible or mixed, wherever located, including without being

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limited to securities of all kinds, interests in limited partnerships or limited liability companies, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, or annuity contracts without being limited by any statute or rule of law concerning investments by fiduciaries; to sell (including short sales) and terminate any investments whether made by me or my Agent; to establish, utilize and terminate savings and money market accounts with financial institutions of all kinds;

(4) with respect to real property (including but not limited to any real property described on any exhibit attached to this instrument and any real property I may hereafter acquire or receive and my personal residence); to lease, sublease, release; to eject, remove and relieve tenants or other persons from, and recover possession of by all lawful means; to accept real property as gift or as security for a loan; to collect, sue for, receive and receipt for rents and profits and to conserve, invest or utilize any and all of such rents, profits and receipts to do any act of management and conservation, to pay, compromise, or to contest tax assessments and to apply for refunds in connections therewith; to vote, or give proxies to vote, with or without the power of substitution at homeowners association meetings; to hire assistance and labor; to subdivide, develop, dedicate to public use without consideration, and/or dedicate easements over; to maintain, protect, repair, preserve, insure, build upon, demolish, alter or improve all or any part thereof; to obtain or vacate plats and adjust boundaries; to adjust differences in valuation on exchange or partition by giving or receiving consideration; to release or partially release real property from a lien;

(5) with respect to personal property; to lease, sublease, and release; to recover possession of by all lawful means; to collect, sue for, receive and receipt for rents and profits therefrom; to maintain, protect, repair, preserve, insure, alter or improve all or any part thereof;

(6) to continue the operation of any business including, but not limited to, a ranch or farm, sole proprietorship, partnership, limited liability company or corporation belonging to me or in which I have a substantial interest, for such time and in such manner as my Agent shall deem appropriate, including but not limited to hiring and discharging my employees, employing legal, accounting, financial and other consultants; executing business tax returns and other government forms required to be filed by my business, paying all business related expenses, transacting all kinds of business for me in my name and on my behalf, contributing additional capital to the business, changing the name and/or the form of the business, incorporating the business, entering into such partnership agreement or limited liability company with other persons as my Agent shall deem appropriate, joining in any plan of reorganization, consolidation or merger of such business, selling, liquidating or closing out such business at such time and upon such terms as my Agent shall deem appropriate and representing me in establishing the value of any business under "Buy-Out" or "Buy-Sell" agreements to which I may be a party; to create, continue or terminate retirement plans with respect to such business and to make contributions which may be required by such plans; to borrow and pledge business assets;

(7) to exercise any right, power, privilege, or option which I may have or may claim under any contract of partnership or limited liability company or corporation, whether as a general, special or limited partner or member or shareholder; to modify or terminate my interest upon such terms and conditions as my Agent may deem appropriate; to enforce the terms of any such partnership agreement, limited liability company agreement or corporate by-laws for my protection, whether by action, proceeding or otherwise as my agent shall deem appropriate; to defend, submit to arbitration, settle or compromise any action or other legal proceeding to which I am a party because of my membership in such partnership, limited liability company or corporation;

(8) to establish accounts of all kinds, including checking and savings, for me with financial institutions of any kind, including but not limited to banks and thrift institutions, to modify, terminate, make deposits to and write checks on or make withdrawals from and grant security interests in all accounts in my name or with respect to which I am an authorized signatory (except accounts held by me in a fiduciary capacity), whether or not any such account was established by me or for me by my Agent, to negotiate, endorse, or transfer any checks or other instruments with respect to any such accounts; to contract for any services rendered by any bank or financial institution;

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(9) to contract with any institution for the maintenance of a safe deposit box in my name; to have access to all safe deposit boxes in my name or with respect to which I am an authorized signatory, whether or not the contract for such safe deposit box was executed by me (either alone or jointly with others) or by my Agent in my name; to add to and remove from the contents of any such safe deposit box and to terminate any and all contracts for such boxes; to have access at any time or times to any safe deposit box rented by me, wherever located, in order to remove my original durable power of attorney; and any institution in which any such safe deposit box may be located is not required to make any inquiry, and shall not incur any liability to me or my estate as a result of permitting my Agent in my original durable power of attorney to exercise this power. This power is exercisable without: (a) any contact with or notice to me, my spouse, and/or any interested persons to my estate; (b) any prior court order or authorization; (c) any knowledge of or any prior determination as to my mental or physical capacity or incapacity; (d) any knowledge as to my whereabouts regardless whether my whereabouts are known or unknown; or (e) any other inquiry;

(10) to institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial, or administrative hearings, actions, suits, proceedings, attachments, arrests, or distresses, involving me in any way, including but not limited to claims by or against me arising out of property damages or personal injuries suffered by or caused by me or under such circumstances that the loss resulting therefrom will or may become my responsibility and otherwise to engage in litigation involving me, my property or any interest of mine, including any property or interest or person for which or whom I have or may have any responsibility;

(11) to borrow money for my use upon such terms and conditions as my Agent shall deem appropriate and to secure such borrowing by the granting of security interests in any property or interest in property which I may now or hereafter own; to borrow money upon any life insurance policies owned by me upon my life and to grant a security interest in such policy to secure any such loans; and no insurance company shall be under any obligation whatsoever to determine the need for such loan or the application of the proceeds by my Agent;

(12) to execute a revocable trust agreement with such trustee or trustees as my Agent shall select, which trust shall provide that all income and principal shall be paid to me or to some person for my benefit, or applied for my benefit in such amounts as I or my Agent shall request or as the trustee or trustees shall determine. On my death any remaining income and principal which are assets of the revocable trust shall be paid to my personal representative and the trust shall terminate. The revocable trust may be revoked or amended by me or my Agent at any time and from time to time; provided, however, that any amendment by my Agent must be such that by law or under the provisions of this instrument, such amendment could have been included in the original trust agreement or if amended by me, that I have the capacity to amend the trust. My Agent may also deliver and convey any or all of my assets to the trustee or trustees thereof; add any or all of my assets to such a trust already in existence at the time of the creation of this instrument or created by me at any time thereafter, and for the purpose of funding any trust, to enter and remove any of my cash or property from any safe deposit box of mine (whether the box is registered in my name alone or jointly with one or more other persons);

(13) to represent me in all tax matters; to prepare, sign, and file federal, state, and/or local income, gift and other tax returns of all kinds, and any and all other tax related documents; to pay taxes due, collect and make such disposition of refunds as my Agent shall deem appropriate; to post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service and/or any state and/or local taxing authority; to exercise any elections I may have under federal, state, or local tax law; and generally to represent me or obtain professional representation for me in all tax matters and proceedings of all kinds and for all periods before all officers of the Internal Revenue Service and state and local authorities; to engage, compensate and discharge attorneys, accountants and other tax and financial advisers and consultants who represent and/or assist me in connection with any and all tax matters involving or in any way related to me or any property in which I have or may have any interest or responsibility;

(14) to support and/or continue to support any person whom I have undertaken to support or to whom I may owe an obligation of support, in the same manner and in accordance with the same standard of living as I may have provided in the past (adjusted if necessary by circumstances and inflation), including but not limited

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to the payment of real property taxes, payments on loans secured by my residence, maintenance of my residence, making payments for food, clothing and shelter, medical care, normal vacations, travel expenses, and education;

(15) to renounce any fiduciary position to which I have been or may be appointed or elected, including but not limited to personal representative, trustee, guardian, attorney-in-fact, officer or director of a corporation; and any governmental or political office or position to which I have been or may be elected or appointed; to resign any such positions in which capacity I am presently serving; to file an accounting with a court of competent jurisdiction or settle the accounting on a receipt and release or such other informal method as my Agent shall deem appropriate;

(16) to lend money and property at such interest rate, if any, and upon such terms and conditions, and with such security, if any, as my Agent may deem appropriate; to renew, extend, and modify any such loan or loans that I may have previously made;

(17) to purchase, maintain, surrender, collect, or cancel (a) life insurance or annuities of any kind on my life or on the life of anyone for whom I have an insurable interest, (b) liability insurance protecting me and my estate against third party claims, (c) hospital insurance, medical insurance, Medicare supplement insurance, prescription drug insurance, dental insurance, vision insurance, custodial care insurance, and disability income insurance for me or any of my dependents, and (d) casualty insurance insuring assets of mine against loss or damage due to fire, theft, or other commonly insured risk; to pay all insurance premiums, to select any options under such policies; to increase coverage under any such policy; to borrow against any such policy; to pursue all insurance claims on my behalf; to adjust insurance losses; to apply the foregoing powers to private and public plans, including but not limited to Medicare, Medicaid, SSI and Worker's Compensation; [to designate and change beneficiaries of insurance policies insuring my life and beneficiaries under any annuity contract in which I have an interest]; to decrease coverage under or cancel any of the policies described herein; to receive and make such disposition of the cash value upon termination of any such policy as my Agent shall deem appropriate;

(18) to renounce and disclaim any property or interest in property or powers to which for any reason and by any means I may become entitled, whether by gift, testate or intestate succession; to release or abandon any property or interest in property or powers which I may now or hereafter own, [including any interests in or rights over trusts (including the right to alter, amend, revoke or terminate)] and to exercise any right to claim an elective share in any estate or under any will. In exercising such discretion, my Agent may take into account such matters as shall include, but shall not be limited to any reduction in estate or inheritance taxes on my estate, and the effect of such renunciation or disclaimer upon persons interested in my estate and persons who would receive the renounced or disclaimed property; provided, however, that my Agent shall make no disclaimer that is expressly prohibited by other provisions of this instrument;

(19) to access and control all digital information and digital assets of mine, including but not limited to: (a) any electronically stored information of mine; (b) the contents of any electronic communications; (c) any digital asset; (d) any user account; (e) any electronic device; (f) any data storage or medium; and (g) any similar assets that may exist as technology develops;

(20) to exercise all the powers and authority granted in South Carolina Code Sections 62-8-204 through 62-8-216, as amended, except as otherwise provided in this document.

DRAFTING NOTE: GENERAL POWERS GRANTED BY THE POWER OF ATTORNEY

A principal can grant certain powers by a general grant of power and others only if the power of attorney specifically grants the power to the

agent (S.C. Code Ann. § 62-8-201 and see Drafting Note, Specific Powers Granted by the Power of Attorney).

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If the power of attorney grants the agent the authority to do all acts the principal could do, the agent has the general authority described under S.C. Code Ann. §§ 62-8-204 to 62-8-216, excluding or subject to the provisions of S.C. Code Ann. § 62-8-201(a), (b), (d), and (e) (S.C. Code Ann. § 62-8-201(c)).

The power of attorney can, and this power of attorney does, incorporate entire agent power sections from the South Carolina Code by referencing the sections which counsel wants to incorporate in the power of attorney (S.C. Code Ann. §§ 62-8-202 and 62-8-204 to 62-8-217). Even so, to avoid confusion and provide clarity, it is common practice in South Carolina to set out in reasonable detail the nature and extent of each property power granted to the agent. Third parties, such as banks or other financial institutions, generally prefer to see the power the agent wants to exercise specifically granted to the agent in the power of attorney, rather than as a reference to a statutory section.

The language included in this portion of the power of attorney specifically addresses the following agent powers:

- **Real Property.** Powers related to real property, which generally include the power to buy, sell, exchange, lease, mortgage, assign, manage, insure, and develop (S.C. Code Ann. § 62-8-204).
 - **Personal Property.** Powers related to tangible personal property, which generally include the power to buy, sell, manage, insure, possess, move, store, and other actions needed to manage or secure the personal property (S.C. Code Ann. § 62-8-205).
 - **Stocks and Bonds.** Powers related to stocks and bonds, which generally include the power to buy, sell, pledge, open and close accounts, and exercise voting rights (S.C. Code Ann. § 62-8-206).
 - **Commodities and Options.** Powers for commodities and options, which generally include the power to buy and sell them (S.C. Code Ann. § 62-8-207).
 - **Banks and Financial Institutions.** Powers related to banks and other financial institutions, which generally include the power to continue, terminate, or modify an existing account, create a new account, make withdrawals from an account, receive statements for an account, borrow money, and pledge an account (S.C. Code Ann. § 62-8-208). Paragraph 9 authorizes the agent to access and otherwise deal with the principal's safe deposit boxes, which authorization (if desired) the power of attorney must specifically include (see Drafting Note, Specific Powers Granted by the Power of Attorney).
- **Operation of Business.** Powers for operation of a business, which generally include operating, buying, selling, voting stock, and other acts necessary in the course of the business (S.C. Code Ann. § 62-8-209).
 - **Insurance and Annuities.** Powers for insurance and annuities, which generally include the power to continue to pay the premiums, exchange, modify, terminate, secure new or additional contracts of insurance or annuities, obtain a loan against the contract of insurance or annuity, exercise investment options and determine how and when the contract of insurance or annuity will be paid out (S.C. Code Ann. § 62-8-210). Optional bracketed language is included in Paragraph 17 to give the agent the power to designate and change beneficiaries of the principal's insurance policies and annuity contract, which power (if desired) must be specifically authorized in the power of attorney (S.C. Code Ann. § 62-8-201(a)(4)). However, the principal may want to limit or remove this specific power.
 - **Estates, Trusts, and Other Beneficial Interests.** Powers over estates, trusts, and other beneficial interests, which generally include the ability to accept an interest for the principal, to make demands for payment, to participate in alternative dispute resolution, and take other actions necessary to protect the principal's interest in the trust and/or estate (S.C. Code Ann. § 62-8-211). Optional bracketed language is included in Paragraph 18 to give the agent the power to amend or revoke any trust in which the principal has an interest, which power (if desired) must be specifically authorized in the power of attorney (S.C. Code Ann. § 62-8-201(a)(1), (4), and (11)). However, the principal may want to limit or remove this specific power.

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- **Claims and Litigation.** Powers over claims and litigation, which generally authorize the agent to start litigation and to participate in ongoing litigation for the principal, including making or accepting settlement offers, paying judgments, settlement amounts, or other awards, and receiving money or other valuables in settlement or as a result of a judgment or other award (S.C. Code Ann. § 62-8-212).
- **Personal and Family Maintenance.** Powers over personal and family maintenance, which generally include maintaining the current standard of living of the principal and those that the principal supported or who were legally entitled to support by the principal, paying child support of the principal, providing proper living quarters for the principal and those entitled to the support of the principal, cooperating with the Health Care Power of Attorney agent regarding health care payments, paying expenses related to the health care and custodial care of the principal and those entitled to the support of the principal, making payments for transportation, maintaining credit or debit cards, and making payments for religious or social purposes (S.C. Code Ann. § 62-8-213). These maintenance powers are separate from any gifting powers under the power of attorney (see Drafting Note, Gifts).
- **Government Benefits and Civil or Military Benefits.** Powers over benefits from governmental programs or civil or military service, to handle matters related to government, military, or civil benefits (S.C. Code Ann. § 62-8-214). However, despite these powers, government agencies, such as the Social Security Administration and Office of Military Personnel Management, sometimes do not honor powers of attorney based on state law, like this one, but 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 and forms specific to social security and military benefits, see:
 - [Social Security, Form SSA-1696-U4 Appointment of Representative](#);
 - [US Department of Veterans Affairs: General Information on Power of Attorney \(POA\)](#); and
 - [United States Office of Personnel Management: Retirement Services](#).
- **Retirement Plans.** Powers over retirement benefits and deferred compensation, which generally authorize the agent to determine the form and timing of payments, withdraw benefits, make rollovers, establish a retirement plan for the principal, make contributions to a retirement plan, exercise investment options regarding a retirement plan, and borrow from a retirement plan (S.C. Code Ann. § 62-8-215).
- **Taxes.** Powers regarding taxes, which generally include the authority for the agent to prepare, sign, and file the principal's tax returns, make claims for refunds, make requests for extensions of time, and pay the principal's taxes and collect refunds (S.C. Code Ann. § 62-8-216). Despite a grant of this power in this power of attorney:
 - The Internal Revenue Service requires an agent to complete Form 2848, which allows the agent to represent the principal in certain federal tax matters (see [IRS Form 2848, Power of Attorney and Declaration of Representative](#)).
 - The South Carolina Department of Revenue may require the South Carolina Power of Attorney and Declaration of Representative form ([SC2848](#)).
- **Digital Information and Assets.** South Carolina includes, as part of the scope of authority when an agent is acting for the principal under a general authority, the ability to access the principal's related electronic communications, files, user names, and passwords (S.C. Code Ann. § 62-8-203(9)). However, counsel should include specific language authorizing the agent to access the principal's digital information and assets for clarity, so that third parties might be more likely to grant this access.

GIFTS

My Agent has the authority to make gifts, grants, or other transfers without consideration either outright or in trust, (including the forgiveness of indebtedness and the completion of any charitable pledges I may have made) to such person or organizations as my Agent shall select; to make payments for the college and post-graduate

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tuition and medical care of my spouse and dependents; to consent to the splitting of gifts under Sections 2513 of the Internal Revenue Code and any successor sections thereto and/or similar provisions of any state or local gift tax laws; to pay any gift tax that may arise by reason of such gift; provided, however, that my Agent and any donee of a gift shall be responsible as equity and justice may require to the extent that a gift made by my Agent is inconsistent with prudent estate planning or financial management principles or with my known or probable intent with respect to the disposition of my estate.]

DRAFTING NOTE: SPECIFIC POWERS GRANTED BY THE POWER OF ATTORNEY

In addition to the general powers granted in a power of attorney, certain powers can only be granted if the power of attorney specifically grants the power to the agent (S.C. Code Ann. § 62-8-201). Powers that must be specifically stated in the power of attorney include the power to:

- Create, amend, revoke, or terminate a trust.
- Make a gift.
- Create or change rights of survivorship.
- Create or change beneficiary designations.
- Delegate authority granted under the 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 fiduciary powers that the principal has authority to delegate.
- Disclaim property, including a power of appointment.
- Access a safe deposit box or vault leased by the principal.
- Exercise a power of appointment in favor of someone other than the principal.
- Reject, renounce, disclaim, release, or consent to the reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.
- Deal with commodity futures contracts and call or put options on stocks or stock indexes.

(S.C. Code Ann. §62-8-201(a)(1) to (12).) This Standard Document includes some of the more common specific powers in the language of the

section setting forth the relevant general powers granted by the power of attorney (see General Powers Granted by the Power of Attorney).

Gifts

Unless the power of attorney provides otherwise, and subject to S.C. Code Ann. § 62-8-201, language in the power of attorney granting general authority to make gifts allows the agent to:

- Make outright gifts within the limits of the federal gift tax exclusion under 28 U.S.C. § 2503(b).
- Consent to gift splitting under 28 U.S.C. § 2513.
- Make a gift of the principal's property only if consistent with the principal's objectives if known by the agent and, if unknown, as the agent determines to be in the principal's best interest, considering the property's value and nature, the principal's obligations and need for maintenance, minimization of taxes, eligibility for public benefits or programs, and the principal's personal history of making gifts.

(S.C. Code Ann. § 62-8-217.) However, the principal should include clear and specific direction about the agent's ability to make gifts in the power of attorney.

In any case, if the principal wants to include the following gifting authority, the principal must include specific authorizing language in the power of attorney:

- For the agent to make gifts to the agent or to anyone to whom the agent owes a duty of support. Otherwise, these gifts may be considered conflicts of interest and voidable

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transactions (*Loftis v. Eck*, 341 S.E.2d 641, 642-43 (S.C. Ct. App. 1986)). Most principals do not authorize the agent to make these gifts except in rare cases to allow for Medicaid planning for the principal (where, most frequently, the agent is a surviving spouse).

- To make gifts in excess of the federal gift tax exclusion (or in any way that is different from the power to make gifts provided in the general gifting authority statute).

It is important for the drafting attorney to consult with the principal before preparing the draft power of attorney to determine if the principal wants to include gifting powers. A principal may not want the agent to be able to make gifts. Some principals want to ensure the agent can make gifts if they might be needed for future tax planning or Medicaid planning.

CARE AND CONTROL OF MY PERSON

My Agent is authorized:

To do all acts necessary for maintaining my customary standard of living, to provide living quarters by purchase, lease or other arrangement, or by payment of the operating costs of my existing living quarters, including interest, amortization payments, repairs and taxes, to provide normal domestic help for the operation of my household, to provide clothing, transportation, medicine, food and incidentals, and if necessary to make all necessary arrangements, contractual or otherwise, for me at any hospital, hospice, nursing home, convalescent home, or similar establishment.

DRAFTING NOTE: CARE AND CONTROL OF THE PRINCIPAL

The principal may want to set out instructions related to the principal's care in the document. This section provides that the agent is authorized to act to maintain the principal's standard of living, including:

- Maintaining suitable housing for the principal.

- Providing for the principal's expenses, including clothing, food, medicine, and other necessities.
- Making certain arrangements for hospital or nursing home care.

Counsel can customize this section according to the principal's desires.

ADMINISTRATIVE PROVISIONS

The following provisions shall apply to this power of attorney:

(1) To the extent that I am permitted by law to do so, I herewith nominate, constitute, and appoint my Agent to serve as my guardian or conservator and/or in any similar representative capacity, and if I am not permitted by law to so nominate, constitute, and appoint, then I request in the strongest possible terms that any court of competent jurisdiction which may receive and be asked to act upon a petition by any person to appoint a guardian, conservator, or similar representative for me give the greatest possible weight to this request.

DRAFTING NOTE: GUARDIAN OR CONSERVATOR NOMINATION

The principal may want to nominate the named agent to be appointed by the probate court to serve as guardian or conservator if that appointment is necessary (for example, if there is no agent or successor agent under this power of attorney willing or able to serve).

In South Carolina:

- A guardianship proceeding is a formal proceeding to determine if a person is incapacitated or to appoint a guardian for an incapacitated person (S.C. Code Ann. § 62-5-101(f)).
- A conservatorship proceeding is a formal proceeding to appoint a conservator to handle the financial affairs of an incapacitated person (S.C. Code Ann. § 62-5-403).

The principal may revise this section to name another person as the principal's guardian or conservator. But usually, a principal names the principal's agent.

The principal must be sure that any guardian or conservator nominations in this document do not conflict with those included in any other document executed by the principal, such as in the principal's health care power of attorney. The court appoints the most recent nominee of the principal as conservator or guardian, except for good cause shown or disqualification (S.C. Code Ann. § 62-8-108(a)).

If the court appoints a conservator or guardian, the agent in any valid power of attorney is accountable to that individual as well as the principal. Unless the power of attorney provides otherwise, appointment of a conservator or guardian terminates the part of the power of attorney relating to matters within the scope of the conservatorship or guardianship, as applicable. (S.C. Code Ann. § 62-8-108(b)).

(2) If any part of any provision of this instrument shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only, without in any way affecting the remaining parts of such provision or the remaining provision of this instrument unless retaining the remaining provisions would be contrary to the purposes of this instrument.

(3) This instrument shall be governed by the laws of the state of South Carolina in all respects, including its validity, construction, interpretation and termination, and to the extent permitted by law shall be applicable to all property of mine, real or personal, tangible, intangible or mixed, wherever and in whatever state of the United States or foreign country the situs of such property is at any time located and whether such property is now owned by me or hereafter acquired by me or for me by my Agent.

(4) Whenever one of the following words appears in this power of attorney, the word shall have the meaning set forth below:

(a) "Agent" or any modifying or equivalent word or substituted pronoun therefor is used in this instrument, such word or words shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof; and

(b) "Guardian" or "Conservator" or any modifying or equivalent word or substituted pronoun is used in this instrument, such word or words shall be held and taken to mean respectively the fiduciary (appointed by a court of competent jurisdiction or by other lawful means) responsible for the person and/or the property of an individual.

(5) This instrument may be amended or revoked by me, and my Agent and any successor agent may be removed by me at any time by the execution by me of a written instrument of revocation, amendment, or removal delivered to my Agent and to all successor agents. If this instrument has been recorded in the public records, then the instrument of revocation, amendment or removal shall be filed or recorded in the same public records.

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DRAFTING NOTE: AMENDMENT OR REVOCATION OF POWER OF ATTORNEY

A principal may amend or revoke this power of attorney at any time for any reason so long as the principal has the capacity to understand the nature and consequences of revoking the power

of attorney (S.C. Code Ann. § 62-8-110 and see *Thames*, 544 S.E.2d at 857-58).

For more information on revocation, see Drafting Note, Revocation of Prior Power of Attorney.

(6) My Agent and any successor agent may resign or refuse to act by the execution of a written resignation or refusal to act delivered to me or, if I am incapacitated, by delivery to any person with whom I am residing or who has the care and custody of me and to the acting Agent, if any, or if none, by delivery to the next named successor agent.

DRAFTING NOTE: RESIGNATION OF AGENT

A named agent can resign under the terms of the power of attorney. If the power of attorney does not provide a different method for resignation, a named agent can resign by giving written notice of the resignation to:

- The principal.
- A co-agent or successor agent.
- The principal's conservator and guardian, if appointed.

(S.C. Code Ann. § 62-8-118(a).) If none of these persons is available (for example, if the principal is incapacitated, no co-agent or successor

agent can be reasonably located, and there is no appointed conservator or guardian), the agent can give written notice to the principal's health care agent or, if none, to another person reasonably believed to have sufficient interest in the principal's welfare (S.C. Code Ann. § 62-8-118(b)).

If the power of attorney is recorded, the resignation must also be recorded in the same jurisdiction as the power of attorney (S.C. Code Ann. § 62-8-118(c)). To be recordable, the resignation should be executed with the same formalities as the Power of Attorney (see Drafting Note, Execution).

(7) My Agent is entitled to reimbursement for expenses incurred while acting on my behalf and to compensation that is reasonable under the circumstances.

DRAFTING NOTE: COMPENSATING THE AGENT

As of January 1, 2017, unless the power of attorney otherwise provides, an agent is entitled to both:

- Reimbursement for expenses incurred while acting for the principal.
- Compensation that is reasonable under the circumstances.

(S.C. Code Ann. § 62-8-112.) Previously, the agent was not entitled to compensation for services rendered unless the power of attorney specifically provided for compensation.

The principal should specify in the power of attorney whether or not the agent receives compensation.

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(8) My Agent is authorized to make photocopies of this instrument as frequently and in such quantity as my Agent shall deem appropriate. All photocopies shall have the same force and effect as an original.

DRAFTING NOTE: COPIES OF POWER OF ATTORNEY

A copy of a power of attorney has the same force and effect as the original power of attorney except as otherwise provided by statute (S.C. Code Ann. § 62-8-106(d)). However, the register of deeds requires an original power of attorney for recording.

Third parties dealing with the agent on real property matters generally only require a

copy of the power of attorney that shows it was recorded with the register of deeds office where the affected real property is located or where the principal resides. For more information on recording the power of attorney, see Drafting Note, Recording the Power of Attorney.

THIRD PARTY RELIANCE

For the purpose of inducing all persons, organizations, corporations, and entities including but not limited to any physician, hospital, bank, broker, custodian, insurer, lender, transfer agent, taxing authority, governmental agency, or any other third party to act in accordance with the instructions of my Agent given in this instrument, I hereby represent, warrant and agree that:

(1) If this instrument is revoked or amended for any reason, I, my estate, my heirs, successors, and assigns will hold any person, organization, corporation, or entity (hereinafter referred to in the aggregate as "Person") harmless from any loss suffered, or liability incurred by such Person in acting in accordance with the instructions of my Agent acting under this instrument prior to the receipt by such Person of actual knowledge of any such revocation or amendment.

(2) No person who may act in reliance upon the representations of my Agent for the scope of authority granted to the Agent shall incur any liability as to me or to my estate as a result of permitting the Agent to exercise this authority, nor is any such person who deals with my Agent responsible to determine or ensure the proper application of funds or property.

(3) The powers conferred on my agent by this instrument may be exercised by my Agent alone and my Agent's signature or act under the authority granted in this instrument may be accepted by Persons as fully authorized by me and with the same force and effect as if I were personally present, competent, and acting on my own behalf. Consequently, all acts lawfully done by my Agent hereunder are done with my consent and shall have the same validity and effect as if I were personally present and personally exercised the powers myself, and shall inure to the benefit of and bind me and my heirs, assigns and personal representatives.

(4) All Persons from whom my Agent may request information regarding me, my personal or financial affairs or any information which I am entitled to receive are hereby authorized to provide such information to my Agent without limitation and are released from any legal liability whatsoever to me, my estate, my heirs and assigns for complying with my Agent's requests.

DRAFTING NOTE: THIRD PARTY RELIANCE

Third parties without actual knowledge that the power of attorney or the agent's authority is invalid, or that the agent is not exercising proper authority under the power of attorney, may rely

on the power of attorney as valid and in effect and as the agent as properly exercising the agent's authority (S.C. Code Ann. § 62-8-119(b)). A person asked to accept an acknowledged

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power of attorney may generally request and rely on, without further investigation, any of the following:

- The agent's certification under penalty of perjury of facts about the principal, agent, or power of attorney. South Carolina provides a statutory form for the agent's certification of the validity of the power of attorney and the agent's authority (S.C. Code Ann. § 62-8-119(f)).
- An English translation of the power of attorney.
- An opinion of counsel about a matter of law about the power of attorney if the power of attorney does not appear to be effective. This request must provide a reason for the inquiry and be in writing.

(S.C. Code Ann. §§ 62-8-119(c) and 62-8-120(a).)

A third party must, within seven business days after the agent presents an acknowledged power of attorney, either:

- Accept the power of attorney.
- Request the certification, translation, or counsel opinion regarding the power of attorney. If the person requests the certification, translation, or counsel opinion, the person must accept the power of attorney no later than five business days after receipt of the certification, translation, or counsel opinion.

(S.C. Code Ann. § 62-8-120(a).) However, a third party does not have to accept an acknowledged power of attorney if:

- The third party is not otherwise required to transact with the principal in the same circumstances.
- Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law

- The third party has actual knowledge of the termination of the agent's authority or the power before exercise of the power.
- A proper request for a certification, translation, or counsel opinion is refused.
- The person has good faith belief that the power is not valid or that the agent does not have the authority to perform the requested act.
- The person makes, or has actual knowledge that another person made, a report to the appropriate state agency stating a good faith belief the principal may be subject to abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.
- The power does not contain the following language or substantially similar language:

"No person who may act in reliance upon any representation of my agent for the scope of authority granted to the agent shall incur any liability to me or to my estate as a result of permitting the agent to exercise this authority, nor is any person who deals with my agent responsible to determine or ensure the proper application of funds or property."

(S.C. Code Ann. § 62-8-120(b).) It is crucial to include this reliance language in every power of attorney document to better ensure that the third party accepts the document.

The liability of a third party who wrongfully refuses to accept an acknowledged power of attorney is set by statute. This liability includes liability for reasonable attorney's fees and costs incurred in an action or proceeding that either:

- Confirms the validity of the power of attorney.
- Mandates the acceptance of the power of attorney.

(S.C. Code Ann. § 62-8-120(c).)

EXECUTION

[PRINCIPAL NAME]

The foregoing Durable Power of Attorney consisting of [NUMBER OF PAGES] typewritten pages, this included, each page thereof bearing on the margin the signature of the Principal, was this [DAY] day of [MONTH], [YEAR],

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signed, sealed, published and declared by the said Principal as and for [his/her] Durable Power of Attorney in our presence, and we, at the request of the Principal and in the presence of the Principal, and in the presence of each other, have hereunto subscribed our names as witnesses on the above date.

_____ of _____ City,

[FIRST WITNESS NAME]

State _____

_____ of _____ City,

[SECOND WITNESS NAME]

State _____

STATE OF SOUTH CAROLINA

)

PROBATE

COUNTY OF [COUNTY NAME]

)

{ [NUMBER]}

)

{ [NUMBER]}

Personally appeared before me [FIRST WITNESS NAME] and [SECOND WITNESS NAME], the undersigned witnesses and made oath that the witness was present and saw the within named [PRINCIPAL NAME], sign, seal, and as [his/her] act and deed, deliver the within foregoing DURABLE POWER OF ATTORNEY; that the witness, with the other witness whose name is subscribed above, witnessed the execution thereof, and that each subscribing witness is not a party to or beneficiary of the transaction.

Signature: _____

Date: _____

Print Name: [FIRST WITNESS NAME]

Signature: _____

Date: _____

Print Name: [SECOND WITNESS NAME]

SWORN TO before me this

[DAY] day of [MONTH], [YEAR].

Notary Public for South Carolina

My Commission Expires: _____

DRAFTING NOTE: EXECUTION

To be valid, a power of attorney must be:

- Signed by the principal or in the principal's presence by another individual directed by the principal to sign the principal's name on the power of attorney. The principal does not have

to date the principal's signature. The witnesses' attestations and the notary's acknowledgment include the date.

- Attested with the same formality and with the same requirements as for witnesses to a will

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in South Carolina (under S.C. Code § 62-2-502, signed by at least two witnesses each of whom witnessed the testator's signing or testator's acknowledgment of the signature or of the will).

- Acknowledged or proved under S.C. Code § 30-5-30, which sets the requirements for recording documents, by:
 - an acknowledged affidavit of a subscribing witnesses; or
 - acknowledgement by the grantor in the presence of two witnesses.

(S.C. Code § 62-8-105.) The acknowledgment must also contain any language required by the

county where the document is being recorded (such as the probate numbers listed above the notary acknowledgment paragraph). Counsel should check with the recorder's office in the county where the document is to be recorded for any required language.

After the principal properly executes the power of attorney, the instrument should be filed with the Register of Deeds Office in the county in which the principal resides. Third parties will likely reject a power of attorney that cannot be recorded in South Carolina. Therefore, a power of attorney must be drafted and executed under these South Carolina's statutory requirements.

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