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SENATE BILL DRS45265-MQ-46 (02/24)

Short Title: Uniform Power of Attorney Act. (Public)

Sponsors: Senators Daniel and Newton (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ADOPT THE UNIFORM POWER OF ATTORNEY ACT IN THIS STATE.
3 The General Assembly of North Carolina enacts:

4
5 **PART I. REVISED VERSION OF THE UNIFORM POWER OF ATTORNEY ACT**

6 **SECTION 1.** The General Statutes are amended by adding a new Chapter to read:

7 **"Chapter 32C.**

8 **"North Carolina Uniform Power of Attorney Act.**

9 **"Article 1.**

10 **"Definitions and General Provisions.**

11 **"§ 32C-1-101. Short title.**

12 This Chapter may be cited as the North Carolina Uniform Power of Attorney Act.

13 **"§ 32C-1-102. Definitions.**

14 The following definitions apply in this Chapter:

- 15 (1) Agent. – A person granted authority to act for a principal under a power of
16 attorney, whether denominated an agent, attorney-in-fact, or otherwise. The
17 term includes an original agent, coagent, successor agent, and a person to
18 which an agent's authority is delegated.
- 19 (2) Durable. – With respect to a power of attorney, the incapacity of the
20 principal does not terminate the power of attorney.
- 21 (3) Electronic. – Relating to technology having electrical, digital, magnetic,
22 wireless, optical, electromagnetic, or similar capabilities.
- 23 (4) Entity. – A sole proprietorship, corporation, business trust, estate, trust,
24 partnership, limited liability company, association, joint venture, or any
25 other legal or commercial entity whether or not organized for business
26 purposes.
- 27 (5) Good faith. – Honesty in fact.
- 28 (6) Incapacity. – The inability of an individual to manage property or business
29 affairs because the individual has any of the following statuses:
- 30 a. An impairment in the ability to receive and evaluate information or
31 make or communicate decisions even with the use of technological
32 assistance.
- 33 b. Is missing, detained, including incarcerated in a penal system, or
34 outside the United States and unable to return.



- 1 (7) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended
2 from time to time. Each reference to a provision of the Internal Revenue
3 Code shall include any successor to that provision.
- 4 (8) Person. – An individual, corporation, business trust, estate, trust, partnership,
5 limited liability company, association, joint venture, public corporation,
6 government or governmental subdivision, agency, or instrumentality, or any
7 other legal or commercial entity.
- 8 (9) Power of attorney. – A writing or other record that grants authority to an
9 agent to act in the place of the principal, whether or not the term power of
10 attorney is used.
- 11 (10) Reserved.
- 12 (11) Principal. – An individual who grants authority to an agent in a power of
13 attorney.
- 14 (12) Property. – Anything that may be the subject of ownership, whether real or
15 personal, or legal or equitable, or any interest or right therein.
- 16 (13) Record. – Information that is inscribed on a tangible medium or that is stored
17 in an electronic or other medium and is retrievable in perceivable form.
- 18 (14) Sign. – With the present intent to authenticate or adopt a record, (i) to
19 execute or adopt a tangible symbol or (ii) to attach to or logically associate
20 with the record an electronic sound, symbol, or process.
- 21 (15) State. – A state of the United States, the District of Columbia, Puerto Rico,
22 the United States Virgin Islands, or any territory or insular possession
23 subject to the jurisdiction of the United States.
- 24 (16) Stocks and bonds. – Stocks, bonds, mutual funds, and all other types of
25 securities and financial instruments, whether held directly, indirectly, or in
26 any other manner. The term does not include commodity futures contracts
27 and call or put options on stocks or stock indexes.

28 **"§ 32C-1-103. Applicability.**

29 This Chapter applies to all powers of attorney except the following:

- 30 (1) A power to the extent it is coupled with an interest in the subject of the
31 power, including a power given to or for the benefit of a creditor in
32 connection with a credit transaction.
- 33 (2) A power to make health care decisions.
- 34 (3) A proxy or other delegation to exercise voting rights or management rights
35 with respect to an entity.
- 36 (4) A power created on a form prescribed by a government or governmental
37 subdivision, agency, or instrumentality for a governmental purpose.

38 **"§ 32C-1-104. Power of attorney; durability.**

39 A power of attorney created pursuant to this Chapter is durable unless the instrument
40 expressly provides that it is terminated by the incapacity of the principal.

41 **"§ 32C-1-105. Execution of power of attorney.**

42 A power of attorney must be (i) signed by the principal or in the principal's conscious
43 presence by another individual directed by the principal to sign the principal's name on the
44 power of attorney and (ii) acknowledged. A signature on a power of attorney is presumed to be
45 genuine if the principal acknowledges the signature before a notary public or other individual
46 authorized by law to take acknowledgements.

47 **"§ 32C-1-106. Validity of power of attorney.**

48 (a) A power of attorney executed in this State on or after the effective date of this
49 Chapter is valid if its execution complies with G.S. 32C-1-105.

50 (b) A power of attorney executed in this State before the effective date of this Chapter
51 is valid if its execution complied with the law of this State as it existed at the time of execution.

1 (c) A power of attorney executed other than in this State is valid in this State if, when
2 the power of attorney was executed, the execution complied with any of the following:

3 (1) The law of the jurisdiction that determines the meaning and effect of the
4 power of attorney pursuant to G.S. 32C-1-107.

5 (2) The requirements for a military power of attorney pursuant to 10 U.S.C. §
6 1044b, as amended.

7 (d) Except as otherwise provided by statute other than this Chapter, a photocopy or
8 electronically transmitted copy of an original power of attorney has the same effect as the
9 original.

10 **"§ 32C-1-107. Meaning and effect of power of attorney.**

11 The meaning and effect of a power of attorney is determined by the law of the jurisdiction
12 indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the
13 law of the jurisdiction in which the power of attorney was executed.

14 **"§ 32C-1-108. Nomination of guardian; relation of agent to court-appointed fiduciary.**

15 (a) In a power of attorney, a principal may nominate a guardian of the principal's estate,
16 or guardian of the principal's person, or general guardian for consideration by the clerk of
17 superior court if protective proceedings for the principal's estate or person are begun after the
18 principal executes the power of attorney. Except for good cause shown or disqualification, the
19 clerk of superior court shall make its appointment in accordance with the principal's most
20 recent nomination. If a guardian of the principal's person is nominated in a health care power of
21 attorney, that nomination shall control over the nomination, if any, in a power of attorney.

22 (b) If, after a principal executes a power of attorney, a the clerk of superior court
23 appoints a guardian of the principal's estate, or general guardian or other fiduciary charged with
24 the management of some or all of the principal's property, the agent is accountable to the
25 guardian or the fiduciary as well as to the principal. The power of attorney is not terminated
26 and the agent's authority continues unless limited, suspended, or terminated by the court in
27 accordance with this Chapter.

28 **"§ 32C-1-109. When power of attorney effective.**

29 (a) A power of attorney is effective when executed unless the principal provides in the
30 power of attorney that it becomes effective at a future date or upon the occurrence of a future
31 event or contingency.

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

35 (c) If a power of attorney becomes effective upon the principal's incapacity and the
36 principal has not authorized a person to determine whether the principal is incapacitated, or the
37 person authorized is unable or unwilling to make the determination, the power of attorney
38 becomes effective upon a determination in a writing or other record in one of the following
39 manners:

40 (1) After a personal examination of the principal, by two individuals who are
41 either a physician, a licensed psychologist, or both, that the principal is
42 incapacitated within the meaning of G.S. 32C-1-102(5)a.

43 (2) By an attorney-at-law, a judge, or an appropriate governmental official that
44 the principal is incapacitated within the meaning of G.S. 32C-1-102(5)b.

45 Notwithstanding the subsequent capacity of the principal to manage property or business
46 affairs, a power of attorney which becomes effective under this subsection shall remain
47 effective until its termination pursuant to G.S. 32C-1-110(a) or the agent's authority terminates
48 pursuant to G.S. 32C-1-110(b).

49 (d) A person authorized by the principal in the power of attorney to determine that the
50 principal is incapacitated may act as the principal's personal representative pursuant to the
51 Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social

1 Security Act, 42 U.S.C. § 1320d, as amended, and applicable regulations, to obtain access to
2 the principal's health care information and communicate with the principal's health care
3 provider.

4 **"§ 32C-1-110. Termination of power of attorney.**

5 (a) A power of attorney terminates when any of the following occur:

6 (1) The principal dies.

7 (2) If the power of attorney is not durable, the principal becomes incapacitated.

8 (3) The principal revokes the power of attorney.

9 (4) The power of attorney provides that it terminates.

10 (5) The purpose of the power of attorney is accomplished.

11 (6) The principal revokes the agent's authority or the agent dies, becomes
12 incapacitated, or resigns, and the power of attorney does not provide for
13 another agent to act under the power of attorney.

14 (7) A guardian of the principal's estate or general guardian terminates it.

15 (b) An agent's authority terminates when any of the following occur:

16 (1) The principal revokes the authority in writing.

17 (2) The agent dies, becomes incapacitated, resigns, or is removed.

18 (3) The court enters a decree of divorce between the principal and the agent,
19 unless the power of attorney otherwise provides.

20 (4) The power of attorney terminates.

21 (5) A guardian of the principal's estate or general guardian terminates the
22 authority.

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

26 (d) Termination of an agent's authority or of a power of attorney is not effective as to
27 the agent or another person that, without actual knowledge of the termination, acts in good faith
28 under the power of attorney. An act so performed, unless otherwise invalid or unenforceable,
29 binds the principal and the principal's successors in interest.

30 (e) Incapacity of the principal of a power of attorney that is not durable does not revoke
31 or terminate the power of attorney as to an agent or other person that, without actual knowledge
32 of the incapacity, acts in good faith under the power of attorney. An act so performed, unless
33 otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

34 (f) The execution of a power of attorney does not revoke a power of attorney
35 previously executed by the principal unless the subsequent power of attorney provides that the
36 previous power of attorney is revoked or that all other powers of attorney are revoked.

37 (g) A principal may revoke a power of attorney in one of the following manners:

38 (1) If the power of attorney has been registered in an office of the register of
39 deeds in this State, it shall be revoked by registration in that office by an
40 instrument of revocation executed and acknowledged by the principal while
41 the principal is not incapacitated with proof of service on the agent in the
42 manner prescribed for service under Rule 5 of the North Carolina Rules of
43 Civil Procedure.

44 (2) If the power of attorney has not been registered in an office of the register of
45 deeds in this State, it may be revoked by one of the following methods:

46 a. Being burnt, torn, canceled, obliterated, or destroyed, with the intent
47 and for the purpose of revoking it, by the principal or by another
48 person in the principal's presence and at the principal's direction,
49 while the principal is not incapacitated.

50 b. A subsequent written revocatory document executed and
51 acknowledged while not incapacitated.

1 (h) A guardian of the principal's estate or general guardian terminates a power of
2 attorney that has been registered in an office of the register of deeds in this State by registering
3 in that office an instrument of revocation executed and acknowledged by such guardian and
4 with proof of service on the agent in the manner prescribed for service under Rule 5 of the
5 North Carolina Rules of Civil Procedure.

6 **"§ 32C-1-111. Coagents and successor agents.**

7 (a) A principal may designate two or more persons to act as coagents. A principal may
8 expressly require in the power of attorney that coagents act jointly. If a principal does not
9 expressly require that coagents act jointly, each coagent may exercise the coagents' authority
10 independently without the knowledge, consent, or joinder of any other coagent or coagents.
11 Unless the power of attorney otherwise provides and if any one or more coagents resigns, dies,
12 becomes incapacitated, or otherwise fails to act, the remaining agent or coagents may continue
13 to act.

14 (b) A principal may designate one or more successor agents to act if an agent resigns,
15 dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may
16 grant authority to designate one or more successor agents to an agent or other person
17 designated by name, office, or function. Unless the power of attorney otherwise provides, a
18 successor agent shall have the following powers and limitations:

19 (1) The successor agent has the same authority as that granted to the original
20 agent.

21 (2) The successor agent may not act until all predecessor agents have resigned,
22 died, become incapacitated, are no longer qualified to serve, or have
23 declined to serve.

24 (c) Except as otherwise provided in the power of attorney, an agent that does not
25 participate in or conceal a breach of fiduciary duty committed by another agent, including a
26 predecessor agent, is not liable for the actions of the other agent.

27 (d) Notwithstanding the terms of a power of attorney that require coagents to act jointly,
28 a bank or financial institution may rely on an action of any coagent without the joinder of any
29 other coagent.

30 **"§ 32C-1-112. Reimbursement and compensation of agent.**

31 (a) If the terms of the power of attorney specify the amount or the way the
32 compensation is to be determined, the agent is entitled to the compensation as specified.

33 (b) If the terms of the power of attorney do not specify the amount or the way the
34 compensation is to be determined, and the principal thereafter becomes incapacitated, then
35 subsequent to the principal's incapacity the agent is entitled to receive reasonable compensation
36 as determined by the clerk of superior court in accordance with G.S. 32-59.

37 (c) Unless the power of attorney otherwise provides, an agent is entitled to be
38 reimbursed for expenses properly incurred on behalf of the principal.

39 **"§ 32C-1-113. Agent's acceptance.**

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

43 **"§ 32C-1-114. Agent's duties.**

44 (a) Notwithstanding provisions in the power of attorney, an agent that has accepted
45 appointment, when exercising a power under the power of attorney shall do all of the
46 following:

47 (1) Act in accordance with the principal's reasonable expectations to the extent
48 actually known by the agent and, otherwise, in the principal's best interest.

49 (2) Act in good faith.

50 (3) Act only within the scope of authority granted in the power of attorney.

1 **(b)** Except as otherwise provided in the power of attorney, an agent that has accepted
2 appointment has no affirmative duty to exercise the powers or to continue to exercise the
3 powers granted to the agent by the power of attorney, but if the agent exercises any of the
4 granted powers, the agent shall, in the exercise of such powers, do all of the following:

5 **(1)** Act loyally for the principal's benefit.

6 **(2)** Act so as not to create a conflict of interest that impairs the agent's ability to
7 act impartially in the principal's best interest.

8 **(3)** Act with the care, competence, and diligence ordinarily exercised by agents
9 in similar circumstances.

10 **(4)** Keep a record of all receipts, disbursements, and transactions made on
11 behalf of the principal.

12 **(5)** Cooperate with a person that has authority to make health care decisions for
13 the principal to carry out the principal's reasonable expectations to the extent
14 actually known by the agent and, otherwise, act in the principal's best
15 interest.

16 **(6)** Attempt to preserve the principal's estate plan, to the extent actually known
17 by the agent, if preserving the plan is consistent with the principal's best
18 interest based on all relevant factors, including the following:

19 **a.** The value and nature of the principal's property.

20 **b.** The principal's foreseeable obligations and need for maintenance.

21 **c.** Minimization of taxes, including income, estate, inheritance,
22 generation-skipping transfer, and gift taxes.

23 **d.** Eligibility for a benefit, a program, or assistance under a statute or
24 regulation.

25 **(c)** When exercising a power under the power of attorney, an agent that acts in good
26 faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

27 **(d)** When exercising a power under the power of attorney, an act by an agent that is in
28 good faith for the best interest of the principal is not voidable and the agent is not liable solely
29 because the agent also benefits from the act or has an individual or conflicting interest in
30 relation to the property or affairs of the principal.

31 **(e)** Reserved.

32 **(f)** Absent a breach of duty to the principal, an agent is not liable if the value of the
33 principal's property declines.

34 **(g)** An agent that exercises authority to delegate to another person the authority granted
35 by the principal or that engages another person on behalf of the principal is not liable for an act,
36 error of judgment, or default of that person if the agent exercises care, competence, and
37 diligence in selecting and monitoring the person.

38 **(h)** Except as otherwise provided in the power of attorney, an agent is not required to
39 disclose receipts, disbursements, or transactions conducted on behalf of the principal unless
40 ordered by a court or requested by the principal, a guardian of the estate, general guardian, or,
41 upon the death of the principal, by the personal representative or successor in interest of the
42 principal's estate.

43 **"§ 32C-1-115. Exoneration of agent.**

44 A provision in a power of attorney relieving an agent of liability for breach of duty is
45 binding on the principal and the principal's successors in interest except to the extent the
46 provision relieves the agent of liability for breach of duty committed (i) in bad faith or (ii) with
47 reckless indifference to the purposes of the power of attorney or the best interest of the
48 principal.

49 **"§ 32C-1-116. Judicial relief.**

1 (a) The clerks of superior court of this State shall have original jurisdiction of
2 proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the
3 clerk of superior court's jurisdiction is exclusive. The following proceedings are included:

4 (1) To compel an accounting by the agent, including the power to compel the
5 production of evidence substantiating any expenditure made by the agent
6 from the principal's assets.

7 (2) To terminate a power of attorney or to limit, suspend, or terminate the
8 authority of an agent where a guardian of the estate or a general guardian has
9 been appointed.

10 (3) To determine compensation for an agent under G.S. 32C-1-112(b).

11 (4) To determine an agent's authority and powers, to construe the terms of a
12 power of attorney created or governed by this Chapter, and to determine any
13 question arising in the performance by an agent of the agent's powers and
14 authority under a power of attorney governed by this Chapter, including, but
15 not limited to, the following proceedings:

16 a. To determine whether and to what extent an agent holds a specific
17 grant of authority under G.S. 32C-2-201.

18 b. To approve an agent's ability to make a gift on behalf of the principal
19 where the gift is governed by G.S. 32C-2-217 because the power of
20 attorney grants the agent only general authority with respect to gifts.

21 c. To authorize the agent to make a gift of the principal's property under
22 G.S. 32C-2-218.

23 d. To authorize the agent to do an act described in G.S. 32C-2-201(a),
24 other than the act to make a gift, under G.S. 32C-2-219.

25 e. To determine whether and to what extent acceptance of a power of
26 attorney shall be mandated under G.S. 32C-1-120(f).

27 Any party may file a notice of transfer of a proceeding pursuant to this
28 subdivision to the superior court division of the General Court of Justice as
29 provided in G.S. 28A-2-6(h). In the absence of a removal to superior court,
30 Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding
31 commenced under this Chapter to the extent consistent with this subsection.

32 (b) Without otherwise limiting the jurisdiction of the superior court division of the
33 General Court of Justice, the clerk of superior court shall not have jurisdiction under this
34 subsection over the following actions:

35 (1) To modify or amend a power of attorney instrument.

36 (2) By or against creditors or debtors of an agent or principal.

37 (3) Involving claims for monetary damages, including claims for breach of
38 fiduciary duty, fraud, and negligence.

39 (4) To set aside a power of attorney based on undue influence or lack of
40 capacity.

41 (5) For the recovery of property transferred or conveyed by an agent on behalf
42 of a principal with intent to hinder, delay, or defraud the principal's creditors.

43 (c) Proceedings brought under the provisions of subsection (a) of this section shall be
44 commenced as prescribed for in estate proceedings under G.S. 28A-2-6 and may be brought by
45 the following persons:

46 (1) The principal or the agent.

47 (2) A general guardian, guardian of the principal's estate, or guardian of the
48 principal's person.

49 (3) The personal representative of the estate of a deceased principal.

50 (4) A person authorized to make health care decisions for the principal.

51 (5) Any other interested person.

- 1 (d) Venue of any proceeding brought under subsection (a) of this section, is proper in
2 any of the following:
- 3 (1) The county in which the principal resides or domiciled.
4 (2) Any county in which an agent resides.
5 (3) Any county in which property of the principal is located.
- 6 (e) Nothing in this section shall affect the right of a person to file an action in the
7 Superior Court Division of the General Court of Justice for declaratory relief under Article 26
8 of Chapter 1 of the General Statutes.
- 9 (f) Upon motion by the principal, the clerk of superior court shall dismiss a petition
10 filed under subsection (a) of this section, unless the clerk of superior court determines the
11 principal is incapacitated within the meaning of G.S. 32C-1-102(5).
- 12 (g) Any party adversely affected by an order of the clerk of superior court in a
13 proceeding commenced under subsection (a) of this section may appeal the clerk's order as
14 provided in G.S. 1-301.3.
- 15 **§ 32C-1-117. Agent's liability.**
- 16 (a) A violation by an agent of this Chapter is a breach of fiduciary duty.
- 17 (b) To remedy a breach of fiduciary duty that has occurred or may occur involving a
18 power of attorney, the court may do the following:
- 19 (1) Enjoin an agent from committing a breach of fiduciary duty.
20 (2) Compel an agent to redress a breach of fiduciary duty by paying money,
21 restoring property, or other means.
22 (3) Order an agent to account.
23 (4) Appoint a special fiduciary to take possession of the property subject to the
24 power of attorney and administer that property.
25 (5) Suspend an agent.
26 (6) Remove an agent.
27 (7) Reduce or deny compensation to or reimbursement of an agent.
28 (8) Subject to G.S. 32C-1-119 and other laws governing the rights of third
29 persons dealing in good faith with an agent, void an act of an agent, impose
30 a lien or a constructive trust on property subject to the power of attorney, or
31 trace property wrongfully disposed by an agent and recover the property or
32 its proceeds.
33 (9) Order any other appropriate relief.
- 34 (c) The court may, for cause shown, relieve an agent from liability for any breach of
35 fiduciary duty under a power of attorney, or wholly or partly excuse an agent who has acted
36 honestly and reasonably from liability for a breach of fiduciary duty under a power of attorney.
- 37 (d) An agent who commits a breach of fiduciary duty under a power of attorney is liable
38 for the greater of the following:
- 39 (1) The amount required to restore the value of the property subject to the power
40 of attorney and distributions from that property to what they would have
41 been had the breach not occurred.
42 (2) The profit the agent made by reason of the breach.
- 43 (e) Except as otherwise provided in this subsection, if more than one agent is liable for
44 a breach of fiduciary duty under a power of attorney, an agent is entitled to contribution from
45 the other agent or agents. An agent is not entitled to contribution if the agent was substantially
46 more at fault than another agent or if the agent committed the breach of fiduciary duty in bad
47 faith or with reckless indifference to the purposes of the power of attorney or the best interests
48 of the principal. An agent who received a benefit from the breach of fiduciary duty is not
49 entitled to contribution from another agent to the extent of the benefit received.

1 (f) An agent is accountable for any profit made by the agent arising from dealings with
2 property subject to the power of attorney, even absent a breach of fiduciary duty. Nothing in
3 this section limits an agent's right to compensation under G.S. 32C-1-112.

4 (g) Absent a breach of fiduciary duty under a power of attorney, an agent is not liable
5 for a loss or depreciation in the value of property subject to the power of attorney or for not
6 having made a profit.

7 (h) In a judicial proceeding involving a claim for breach of fiduciary duty under a
8 power of attorney, the court may award costs and expenses, including reasonable attorneys'
9 fees, as provided in G.S. 6-21(2).

10 **"§ 32C-1-118. Agent's resignation; notice.**

11 Unless the power of attorney provides a different method for an agent's resignation, an
12 agent may resign by giving written notice of resignation to the following:

13 (1) To the principal if the principal is not incapacitated.

14 (2) If the principal is incapacitated, to (i) the guardian of the principal's estate,
15 the guardian of the principal's person, or general guardian, if one has been
16 appointed, and (ii) any coagent or, if none, the successor agent next
17 designated.

18 **"§ 32C-1-119. Acceptance of and reliance upon power of attorney.**

19 (a) For purposes of this section and G.S. 32C-1-120, the term "acknowledged" means
20 purportedly verified before a notary public or other individual authorized to take
21 acknowledgements.

22 (b) A person that in good faith accepts an acknowledged power of attorney without
23 actual knowledge that the signature is not genuine may rely upon the presumption under
24 G.S. 32C-1-105 that the signature is genuine.

25 (c) A person that in good faith accepts a power of attorney without actual knowledge
26 that the power of attorney is void, invalid, or terminated, that the purported agent's authority is
27 void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's
28 authority (i) may rely upon the power of attorney as if the power of attorney were genuine,
29 valid and still in effect, the agent's authority were genuine, valid and still in effect, and the
30 agent had not exceeded and had properly exercised the authority and (ii) shall not be held
31 responsible for any breach of fiduciary duty by the agent, including any breach of loyalty, any
32 act of self-dealing, or any misapplication of money or other property paid or transferred as
33 directed by the agent. This subsection applies without regard to whether or not the person
34 dealing with the agent demands or receives a certification under subsection (d) of this section.

35 (d) A person that is asked to accept a power of attorney may request, and rely upon,
36 without further investigation, any one or more of the following:

37 (1) A certification executed by the agent to the effect that the agent did not have
38 actual knowledge at the time of the presentation of the power of attorney to
39 the person (i) that the power of attorney is void, invalid, or terminated; (ii)
40 that the agent's authority is void, invalid, or terminated; or (iii) of facts that
41 would cause the agent to question the authenticity or validity of the power of
42 attorney. A certification meeting the requirements of this subdivision shall
43 be sufficient proof to the requesting person that (i) the power of attorney is
44 authentic and valid and has not been terminated, (ii) the agent's authority is
45 valid and has not been terminated, and (iii) other factual matters stated in the
46 certification regarding the principal, agent, or power of attorney are true. If
47 the exercise of the power of attorney requires execution and delivery of an
48 instrument that is recordable, the person accepting the certification may
49 require that the certification be prepared and executed so as to be recordable.
50 A certification in the form described in G.S. 32C-3-302 shall be deemed to

- 1 meet the requirements of this subsection but shall not be the sole means of
2 meeting those requirements.
- 3 (2) An English translation of the power of attorney if the power of attorney
4 contains, in whole or in part, language other than English.
- 5 (3) An opinion of counsel as to any matter of law concerning the power of
6 attorney if the person making the request provides in a writing or other
7 record the reason for the request.
- 8 (e) An English translation or an opinion of counsel requested under this section must be
9 provided at the principal's expense unless the request is made more than seven business days
10 after the power of attorney is presented for acceptance.
- 11 (f) For purposes of this section and G.S. 32C-1-120, a person that conducts activities
12 through employees is without actual knowledge of a fact relating to a power of attorney, a
13 principal, or an agent if the employee conducting the transaction involving the power of
14 attorney is without actual knowledge of the fact.
- 15 (g) This section does not affect any provision in a power of attorney for its termination
16 by expiration of time or occurrence of an event other than an express revocation or a change in
17 the principal's capacity.
- 18 **§ 32C-1-120. Liability for refusal to accept acknowledged power of attorney.**
- 19 (a) A person is not required to accept, and is not liable for refusing to accept, a power
20 of attorney that has not been duly acknowledged.
- 21 (b) Except as otherwise provided in this section:
- 22 (1) No later than seven business days after presentation of an acknowledged
23 power of attorney for acceptance, a person shall (i) accept the power of
24 attorney; (ii) refuse to accept the power of attorney pursuant to subsections
25 (c) and (d) of this section; or (iii) request a certification, a translation, or an
26 opinion of counsel pursuant to G.S. 32C-1-119(d).
- 27 (2) If a person requests a certification, a translation, or an opinion of counsel
28 pursuant to G.S. 32C-1-119(d), then within five business days after receipt
29 of the requested items in reasonably satisfactory form, the person shall either
30 (i) accept the power of attorney or (ii) refuse to accept the power of attorney
31 pursuant to subsections (c) and (d) of this section.
- 32 (3) A person may not require an additional or different form of power of
33 attorney if the power of attorney presented reasonably appears to authorize
34 the agent to conduct the business the agent desires to conduct.
- 35 (c) A person is not required to accept an acknowledged power of attorney if any of the
36 following circumstances exist:
- 37 (1) The person is not otherwise required to engage in a transaction with the
38 principal in the same circumstances.
- 39 (2) Engaging in a transaction with the agent or the principal in the same
40 circumstances would be inconsistent with applicable federal law.
- 41 (3) The person has actual knowledge of the termination of the agent's authority
42 or of the power of attorney before exercise of the power.
- 43 (4) A request for a certification, a translation, or an opinion of counsel pursuant
44 to G.S. 32C-1-119(d) is refused.
- 45 (5) The person requesting a certification, a translation, or an opinion of counsel
46 pursuant to G.S. 32C-1-119(d) does not receive the requested items in
47 reasonably satisfactory form within a reasonable period of time.
- 48 (6) The person in good faith believes that the power is not valid or that the agent
49 does not have the authority to perform the act requested, whether or not a
50 certification, a translation, or an opinion of counsel pursuant to
51 G.S. 32C-1-119(d) has been requested or provided.

- 1 (1) An agent may do the following on behalf of the principal or with the
2 principal's property only if the power of attorney expressly grants the agent
3 that authority:
- 4 a. Make a gift.
5 b. Create or change rights of survivorship.
6 c. Create or change a beneficiary designation.
7 d. Delegate authority granted under the power of attorney.
8 e. Waive the principal's right to be a beneficiary of a joint and survivor
9 annuity, including a survivor benefit under a retirement plan.
10 f. Exercise fiduciary powers that the principal has authority to delegate.
11 g. Renounce or disclaim property, including a power of appointment.
- 12 (2) An agent may do the following only if the power of attorney or terms of the
13 trust expressly grants the agent that authority:
- 14 a. Exercise the powers of the principal as settlor of a revocable trust in
15 accordance with G.S. 36C-6-602.1.
16 b. Exercise the powers of the principal as settlor of an irrevocable trust
17 to consent to the trust's modification or termination in accordance
18 with G.S. 36C-4-411(a).
- 19 (b) Notwithstanding a grant of authority to do an act described in subsection (a) of this
20 section, an agent may exercise such authority only as the agent determines is consistent with
21 the principal's objectives if actually known by the agent and, if unknown, as the agent
22 determines is consistent with the principal's best interest based on all relevant factors, which
23 may include the following:
- 24 (1) The value and nature of the principal's property.
25 (2) The principal's foreseeable obligations and need for maintenance.
26 (3) Minimization of taxes, including income, estate, inheritance,
27 generation-skipping transfer, and gift taxes.
28 (4) Eligibility for a benefit, a program, or assistance under a statute or
29 regulation.
30 (5) The principal's personal history of making or joining in making gifts.
31 (6) The principal's existing estate plan.
- 32 (c) Notwithstanding a grant of authority to do an act described in subsection (a) of this
33 section, unless the power of attorney otherwise provides, an agent may not exercise authority
34 under a power of attorney to create in the agent, or in an individual to whom the agent owes a
35 legal obligation of support, an interest in the principal's property, whether by gift, right of
36 survivorship, beneficiary designation, disclaimer, or otherwise.
- 37 (d) Subject to subsections (a), (b), (c), (e), and (f) of this section, if a power of attorney
38 grants to an agent authority to do all acts that a principal could do, the agent has the general
39 authority described in G.S. 32C-2-204 through G.S. 32C-2-216 and G.S. 32C-2-220.
- 40 (e) Unless the power of attorney otherwise provides, a grant of authority to make a gift
41 is subject to subsections (b) and (c) of this section and G.S. 32C-2-217.
- 42 (f) Subject to subsections (a), (b), (c), and (e) of this section, if the subjects over which
43 authority is granted in a power of attorney are similar or overlap, the broadest authority
44 controls.
- 45 (g) Authority granted in a power of attorney is exercisable with respect to property that
46 the principal has when the power of attorney is executed or acquires later, whether or not the
47 property is located in this State and whether or not the authority is exercised or the power of
48 attorney is executed in this State.
- 49 (h) An act performed by an agent pursuant to a power of attorney has the same effect
50 and inures to the benefit of and binds the principal and the principal's successors in interest as if
51 the principal had performed the act.

"§ 32C-2-202. Incorporation of authority.

(a) An agent has authority described in this Chapter if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 or cites the section in which the authority is described.

(b) A reference in a power of attorney to general authority with respect to the descriptive term for a subject in G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 or a citation to G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 incorporates the entire section as if it were set out in full in the power of attorney.

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

"§ 32C-2-203. Construction of authority, generally.

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in G.S. 32C-2-204 through G.S. 32C-2-217 and G.S. 32C-2-220 or that grants to an agent authority to do all acts that a principal could do pursuant to G.S. 32C-2-201(d), a principal authorizes the agent, with respect to that subject, to do all of the following:

- (1) Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended.
- (2) Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal.
- (3) Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney.
- (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim.
- (5) Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney.
- (6) Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor.
- (7) Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation.
- (8) Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal.
- (9) Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means.
- (10) Do any lawful act with respect to the subject and all property related to the subject.

"§ 32C-2-204. Real property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to do all of the following:

- (1) Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property.

- 1 (2) Sell; exchange; convey with or without covenants, representations, or
2 warranties; quitclaim; release; surrender; retain title for security; encumber;
3 partition; consent to partitioning; subject to an easement or covenant;
4 subdivide; apply for zoning or other governmental permits; plat or consent to
5 platting; develop; grant an option concerning; lease; sublease; contribute to
6 an entity in exchange for an interest in that entity; or otherwise grant or
7 dispose of an interest in real property or a right incident to real property.
8 (3) Pledge or encumber an interest in real property or right incident to real
9 property as security for the principal or any entity in which the principal has
10 an ownership interest to borrow money or to pay, renew, or extend the time
11 of payment of (i) a debt of the principal, (ii) or a debt guaranteed by the
12 principal, (iii) a debt of any entity in which the principal has an ownership
13 interest, or (iv) a debt guaranteed by any entity in which the principal has an
14 ownership interest.
15 (4) Release, assign, satisfy, or enforce by litigation or otherwise a mortgage,
16 deed of trust, conditional sale contract, encumbrance, lien, or other claim to
17 real property which exists or is asserted.
18 (5) Manage or conserve an interest in real property or a right incident to real
19 property owned or claimed to be owned by the principal or to be acquired by
20 the principal, including all of the following:
21 a. Insuring against liability or casualty or other loss.
22 b. Obtaining or regaining possession of or protecting the interest or
23 right by litigation or otherwise.
24 c. Paying, assessing, compromising, or contesting taxes or assessments
25 or applying for and receiving refunds in connection with them.
26 d. Purchasing supplies, hiring assistance or labor, and making repairs or
27 alterations to the real property.
28 e. Obtaining title insurance for the benefit of the principal and/or any
29 lender that has or will obtain a mortgage or deed of trust
30 encumbering the real property.
31 (6) Use, develop, alter, replace, remove, erect, or install structures or other
32 improvements upon real property in or incident to which the principal has, or
33 claims to have, an interest or right.
34 (7) Participate in a reorganization with respect to real property or an entity that
35 owns an interest in or right incident to real property and receive, hold, and
36 act with respect to stocks and bonds or other property received in a plan of
37 reorganization, including all of the following:
38 a. Selling or otherwise disposing of them.
39 b. Exercising or selling an option, right of conversion, or similar right
40 with respect to them.
41 c. Exercising any voting rights in person or by proxy.
42 (8) Change the form of title of an interest in or right incident to real property.
43 (9) Dedicate to public use, with or without consideration, easements or other
44 real property in which the principal has, or claims to have, an interest.
45 (10) With respect to any real property owned or claimed to be owned by the
46 principal's spouse and in which the principal's only interest is a marital
47 interest, waive, release, or subordinate the principal's inchoate right pursuant
48 to G.S. 29-30 to claim an elective life estate in the real property, regardless
49 of whether the waiver, release, or subordination will benefit the agent or a
50 person to whom the agent owes an obligation of support.

51 "§ 32C-2-205. Tangible personal property.

1 Unless the power of attorney otherwise provides, language in a power of attorney granting
2 general authority with respect to tangible personal property authorizes the agent to do all of the
3 following:

- 4 (1) Demand, buy, receive, accept as a gift or as security for an extension of
5 credit, or otherwise acquire or reject ownership or possession of tangible
6 personal property or an interest in tangible personal property.
- 7 (2) Sell; exchange; convey with or without covenants, representations, or
8 warranties; quitclaim; release; surrender; create a security interest in; grant
9 options concerning; lease; sublease; or, otherwise dispose of tangible
10 personal property or an interest in tangible personal property.
- 11 (3) Grant a security interest in tangible personal property or an interest in
12 tangible personal property as security for the principal or any entity in which
13 the principal has an ownership interest to borrow money or to pay, renew, or
14 extend the time of payment of (i) a debt of the principal, (ii) a debt
15 guaranteed by the principal, (iii) a debt of any entity in which the principal
16 has an ownership interest, or (iv) a debt guaranteed by any entity in which
17 the principal has an ownership interest.
- 18 (4) Release, assign, satisfy, or enforce by litigation or otherwise, a security
19 interest, lien, or other claim on behalf of the principal, with respect to
20 tangible personal property or an interest in tangible personal property.
- 21 (5) Manage or conserve tangible personal property or an interest in tangible
22 personal property on behalf of the principal, including all of the following:
- 23 a. Insuring against liability or casualty or other loss.
- 24 b. Obtaining or regaining possession of or protecting the property or
25 interest, by litigation or otherwise.
- 26 c. Paying, assessing, compromising, or contesting taxes or assessments
27 or applying for and receiving refunds in connection with taxes or
28 assessments.
- 29 d. Moving the property from place to place.
- 30 e. Storing the property for hire or on a gratuitous bailment.
- 31 f. Using and making repairs, alterations, or improvements to the
32 property.
- 33 (6) Change the form of title of an interest in tangible personal property.

34 **"§ 32C-2-206. Stocks and bonds.**

35 Unless the power of attorney otherwise provides, language in a power of attorney granting
36 general authority with respect to stocks and bonds authorizes the agent to do all of the
37 following:

- 38 (1) Buy, sell, and exchange stocks and bonds.
- 39 (2) Establish, continue, modify, or terminate an account with respect to stocks
40 and bonds.
- 41 (3) Pledge stocks and bonds as security for the principal or any entity in which
42 the principal has an ownership interest to borrow money, or to pay, renew, or
43 extend the time of payment of (i) a debt of the principal, (ii) a debt
44 guaranteed by the principal, (iii) a debt of any entity in which the principal
45 has an ownership interest, or (iv) a debt guaranteed by any entity in which
46 the principal has an ownership interest.
- 47 (4) Receive certificates and other evidences of ownership with respect to stocks
48 and bonds.
- 49 (5) Exercise voting rights with respect to stocks and bonds in person or by
50 proxy, enter into voting trusts, and consent to limitations on the right to vote.

51 **"§ 32C-2-207. Commodities and options.**

1 Unless the power of attorney otherwise provides, language in a power of attorney granting
2 general authority with respect to commodities and options authorizes the agent to do all of the
3 following:

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

8 **"§ 32C-2-208. Banks and other financial institutions.**

9 Unless the power of attorney otherwise provides, language in a power of attorney granting
10 general authority with respect to banks and other financial institutions authorizes the agent to
11 do all of the following:

- 12 (1) Continue, modify, and terminate an account or other banking arrangement
13 made by or on behalf of the principal.
- 14 (2) Establish, modify, and terminate an account or other banking arrangement
15 with a bank, trust company, savings and loan association, credit union, thrift
16 company, brokerage firm, or other financial institution selected by the agent.
- 17 (3) Contract for services available from a financial institution, including renting
18 a safe deposit box or space in a vault, and continue, modify, and terminate
19 any such services.
- 20 (4) Withdraw, by check, order, electronic funds transfer, or otherwise, money or
21 property of the principal deposited with or left in the custody of a financial
22 institution.
- 23 (5) Receive statements of account, vouchers, notices, and similar documents
24 from a financial institution and act with respect to them.
- 25 (6) Enter a safe deposit box or vault and withdraw or add to the contents.
- 26 (7) Borrow money and pledge as security personal property of the principal
27 necessary to borrow money or pay, renew, or extend the time of payment of
28 a debt of the principal or a debt guaranteed by the principal.
- 29 (7a) Guarantee any obligation necessary for any entity in which the principal has
30 an ownership interest to borrow money or to pay, renew, or extend the time
31 of payment of a debt.
- 32 (7b) Pledge as security personal property of the principal necessary for any entity
33 in which the principal has an ownership interest to borrow money or to pay,
34 renew, or extend the time of payment of a debt.
- 35 (8) Make, assign, draw, endorse, discount, guarantee, and negotiate promissory
36 notes, checks, drafts, and other negotiable or nonnegotiable paper of the
37 principal or payable to the principal or the principal's order, transfer money,
38 receive the cash or other proceeds of those transactions, and accept a draft
39 drawn by a person upon the principal and pay it when due.
- 40 (9) Receive for the principal and act upon a sight draft, warehouse receipt, or
41 other document of title, whether tangible or electronic, or other negotiable or
42 nonnegotiable instrument.
- 43 (10) Apply for, receive, and use letters of credit, credit and debit cards, electronic
44 transaction authorizations, and traveler's checks from a financial institution
45 and give an indemnity or other agreement in connection with letters of
46 credit.
- 47 (11) Consent to an extension of the time of payment with respect to commercial
48 paper or a financial transaction with a financial institution.
- 49 (12) Establish, modify, and terminate an ABLE account as defined under section
50 529A of the Internal Revenue Code with any State or financial institution
51 selected by the agent and have the same authority over the ABLE account as

1 the agent has with regard to any other account with a bank or other financial
2 institution.

3 **"§ 32C-2-209. Operation of entity.**

4 Subject to the terms of a document or an agreement governing an entity or an entity
5 ownership interest, and unless the power of attorney otherwise provides, language in a power of
6 attorney granting general authority with respect to operation of an entity authorizes the agent to
7 do all of the following:

- 8 (1) Operate, buy, sell, enlarge, reduce, or terminate an ownership interest.
9 (2) Perform a duty or discharge a liability and exercise in person or by proxy a
10 right, power, privilege, or option that the principal has, may have, or claims
11 to have.
12 (3) Enforce the terms of an ownership agreement.
13 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,
14 or propose or accept a compromise with respect to litigation to which the
15 principal is a party because of an ownership interest.
16 (5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right,
17 power, privilege, or option the principal has or claims to have as the holder
18 of stocks and bonds.
19 (6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,
20 or propose or accept a compromise with respect to litigation to which the
21 principal is a party concerning stocks and bonds.
22 (7) With respect to an entity owned solely by the principal:
23 a. Continue, modify, renegotiate, extend, and terminate a contract made
24 by or on behalf of the principal with respect to the entity before
25 execution of the power of attorney.
26 b. Determine all of the following:
27 1. The location of its operation.
28 2. The nature and extent of its business.
29 3. The methods of manufacturing, selling, merchandising,
30 financing, accounting, and advertising employed in its
31 operation.
32 4. The amount and types of insurance carried.
33 5. The mode of engaging, compensating, and dealing with its
34 employees and accountants, attorneys, or other advisors.
35 c. Change the name or form of organization under which the entity is
36 operated and enter into an ownership agreement with other persons to
37 take over all or part of the operation of the entity.
38 d. Demand and receive money due or claimed by the principal or on the
39 principal's behalf in the operation of the entity and control and
40 disburse the money in the operation of the entity.
41 (8) Put additional capital into an entity in which the principal has an interest.
42 (9) Join in a plan of reorganization, consolidation, conversion, domestication, or
43 merger of the entity.
44 (10) Sell or liquidate all or part of an entity.
45 (11) Establish the value of an entity under a buyout agreement to which the
46 principal is a party.
47 (12) Prepare, sign, file, and deliver reports, compilations of information, returns,
48 or other papers with respect to an entity and make related payments.
49 (13) Pay, compromise, or contest taxes, assessments, fines, or penalties and
50 perform any other act to protect the principal from illegal or unnecessary
51 taxation, assessments, fines, or penalties, with respect to an entity, including

1 attempts to recover, in any manner permitted by law, money paid before or
2 after the execution of the power of attorney.

3 **"§ 32C-2-210. Insurance and annuities.**

4 Unless the power of attorney otherwise provides, language in a power of attorney granting
5 general authority with respect to insurance and annuities authorizes the agent to do all of the
6 following:

- 7 (1) Continue, pay the premium or make a contribution on, modify, exchange,
8 rescind, release, or terminate a contract procured by or on behalf of the
9 principal which insures or provides an annuity to either the principal or
10 another person, whether or not the principal is a beneficiary under the
11 contract.
- 12 (2) Procure new, different, and additional contracts of insurance and annuities
13 for the principal and the principal's spouse, children, and other dependents,
14 and select the amount, type of insurance or annuity, and mode of payment.
- 15 (3) Pay the premium or make a contribution on, modify, exchange, rescind,
16 release, or terminate a contract of insurance or annuity procured by the
17 agent.
- 18 (4) Apply for and receive a loan secured by a contract of insurance or annuity.
- 19 (5) Surrender and receive the cash surrender value on a contract of insurance or
20 annuity.
- 21 (6) Exercise an election.
- 22 (7) Exercise investment powers available under a contract of insurance or
23 annuity.
- 24 (8) Change the manner of paying premiums on a contract of insurance or
25 annuity.
- 26 (9) Change or convert the type of insurance or annuity with respect to which the
27 principal has or claims to have authority described in this section.
- 28 (10) Apply for and procure a benefit or assistance under a statute or regulation to
29 guarantee or pay premiums of a contract of insurance on the life of the
30 principal.
- 31 (11) Collect, sell, assign, hypothecate, borrow against, or pledge the interest of
32 the principal in a contract of insurance or annuity.
- 33 (12) Select the form and timing of the payment of proceeds from a contract of
34 insurance or annuity.
- 35 (13) Pay, from proceeds or otherwise, compromise or contest, and apply for
36 refunds in connection with a tax or assessment levied by a taxing authority
37 with respect to a contract of insurance or annuity or its proceeds or liability
38 accruing by reason of the tax or assessment.
- 39 (14) Change the beneficiary to a state or other government entity to qualify the
40 principal for medical assistance or other benefits notwithstanding
41 G.S. 32C-2-201(a)(4) requiring an express grant of authority to change a
42 beneficiary.

43 **"§ 32C-2-211. Estates, trusts, and other beneficial interests.**

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

47 (b) Unless the power of attorney otherwise provides, language in a power of attorney
48 granting general authority with respect to estates, trusts, and other beneficial interests
49 authorizes the agent to do all of the following:

- 50 (1) Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or
51 payment from an estate, trust, or other beneficial interest.

- 1 (2) Demand or obtain money or another thing of value to which the principal is,
2 may become, or claims to be, entitled by reason of an estate, trust, or other
3 beneficial interest, by litigation or otherwise.
- 4 (3) Exercise for the benefit of the principal a presently exercisable general
5 power of appointment held by the principal.
- 6 (4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,
7 or propose or accept a compromise with respect to litigation to ascertain the
8 meaning, validity, or effect of a deed, will, declaration of trust, or other
9 instrument or transaction affecting the interest of the principal.
- 10 (5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,
11 or propose or accept a compromise with respect to litigation to remove,
12 substitute, or surcharge a fiduciary.
- 13 (6) Conserve, invest, disburse, or use anything received for an authorized
14 purpose.
- 15 (7) Transfer an interest of the principal in real property, stocks and bonds,
16 accounts with financial institutions or securities intermediaries, insurance,
17 annuities, and other property to the trustee of a revocable trust created by the
18 principal as settlor.

19 **"§ 32C-2-212. Claims and litigation.**

20 Unless the power of attorney otherwise provides, language in a power of attorney granting
21 general authority with respect to claims and litigation authorizes the agent to do all of the
22 following:

- 23 (1) Assert and maintain before a court or administrative agency a claim, claim
24 for relief, cause of action, counterclaim, offset, recoupment, or defense,
25 including an action to recover property or other thing of value, recover
26 damages sustained by the principal, eliminate or modify tax liability, or seek
27 an injunction, specific performance, or other relief.
- 28 (2) Bring an action to determine adverse claims or intervene or otherwise
29 participate in litigation.
- 30 (3) Seek an attachment, garnishment, order of arrest, or other preliminary,
31 provisional, or intermediate relief and use an available procedure to effect or
32 satisfy a judgment, order, or decree.
- 33 (4) Make or accept a tender, offer of judgment, or admission of facts, submit a
34 controversy on an agreed statement of facts, consent to examination, and
35 bind the principal in litigation.
- 36 (5) Submit to alternative dispute resolution, settle, and propose or accept a
37 compromise.
- 38 (6) Waive the issuance and service of process upon the principal, accept service
39 of process, appear for the principal, designate persons upon which process
40 directed to the principal may be served, execute and file or deliver
41 stipulations on the principal's behalf, verify pleadings, seek appellate review,
42 procure and give surety and indemnity bonds, contract and pay for the
43 preparation and printing of records and briefs, receive, execute, and file or
44 deliver a consent, waiver, release, confession of judgment, satisfaction of
45 judgment, notice, agreement, or other instrument in connection with the
46 prosecution, settlement, or defense of a claim or litigation.
- 47 (7) Act for the principal with respect to bankruptcy or insolvency, whether
48 voluntary or involuntary, concerning the principal or some other person, or
49 with respect to a reorganization, receivership, or application for the
50 appointment of a receiver or trustee which affects an interest of the principal
51 in property or other thing of value.

- 1 (8) Pay a judgment, award, or order against the principal or a settlement made in
2 connection with a claim or litigation.
3 (9) Receive money or other thing of value paid in settlement of or as proceeds of
4 a claim or litigation.

5 **§ 32C-2-213. Personal and family maintenance.**

6 (a) Unless the power of attorney otherwise provides, language in a power of attorney
7 granting general authority with respect to personal and family maintenance authorizes the agent
8 to do all of the following:

- 9 (1) Perform the acts necessary to maintain the customary standard of living of
10 the principal, the principal's spouse, and the following individuals, whether
11 living when the power of attorney is executed or later born:
12 a. The principal's children who are legally entitled to be supported by
13 the principal.
14 b. Other individuals legally entitled to be supported by the principal.
15 c. The individuals whom the principal has customarily supported or
16 indicated the intent to support.
17 (2) Make periodic payments of child support and other family maintenance
18 required by a court or governmental agency or an agreement to which the
19 principal is a party.
20 (3) Provide living quarters for the individuals described in subdivision (1) of
21 this subsection by the following means:
22 a. Purchase, lease, or other contract.
23 b. Paying the operating costs, including interest, amortization payments,
24 repairs, improvements, and taxes, for premises owned by the
25 principal or occupied by those individuals.
26 (4) Provide normal domestic help, usual vacations and travel expenses, and
27 funds for shelter, clothing, food, appropriate education, including
28 postsecondary and vocational education, and other current living costs for
29 the individuals described in subdivision (1) of this subsection.
30 (5) Pay expenses for necessary health care and custodial care on behalf of the
31 individuals described in subdivision (1) of this subsection.
32 (6) Act as the principal's personal representative pursuant to the Health
33 Insurance Portability and Accountability Act, §§ 1171 through 1179 of the
34 Social Security Act, 42 U.S.C. § 1320d, as amended, and applicable
35 regulations, in making decisions related to the past, present, or future
36 payment for the provision of health care consented to by the principal or
37 anyone authorized under the law of this state to consent to health care on
38 behalf of the principal.
39 (7) Continue any provision made by the principal for automobiles or other
40 means of transportation, including registering, licensing, insuring, and
41 replacing them, for the individuals described in subdivision (1) of this
42 subsection.
43 (8) Maintain credit and debit accounts for the convenience of the individuals
44 described in subdivision (1) of this subsection and open new accounts.
45 (9) Continue payments incidental to the membership or affiliation of the
46 principal in a religious institution, club, society, order, or other organization
47 or to continue contributions to those organizations.

48 (b) Authority with respect to personal and family maintenance is neither dependent
49 upon, nor limited by, authority that an agent may or may not have with respect to gifts under
50 this Chapter.

51 **§ 32C-2-214. Benefits from governmental programs or civil or military service.**

1 (a) In this section, the term "benefits from governmental programs or civil or military
2 service" means any benefit, program, or assistance provided under a statute or regulation
3 including Social Security, Medicare, and Medicaid.

4 (b) Unless the power of attorney otherwise provides, language in a power of attorney
5 granting general authority with respect to benefits from governmental programs or civil or
6 military service authorizes the agent to do all of the following:

7 (1) Execute vouchers in the name of the principal for allowances and
8 reimbursements payable by the United States or a foreign government or by
9 a state or subdivision of a state to the principal, including allowances and
10 reimbursements for transportation of the individuals described in
11 G.S. 32C-2-213(a)(1), and for shipment of their household effects.

12 (2) Take possession and order the removal and shipment of property of the
13 principal from a post, warehouse, depot, dock, or other place of storage or
14 safekeeping, either governmental or private, and execute and deliver a
15 release, voucher, receipt, bill of lading, shipping ticket, certificate, or other
16 instrument for that purpose.

17 (3) Enroll in, apply for, select, reject, change, amend, or discontinue, on the
18 principal's behalf, a benefit or program.

19 (4) Prepare, file, and maintain a claim of the principal for a benefit or assistance,
20 financial or otherwise, to which the principal may be entitled under a statute
21 or regulation.

22 (5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose,
23 or propose or accept a compromise with respect to litigation concerning any
24 benefit or assistance the principal may be entitled to receive under a statute
25 or regulation.

26 (6) Receive the financial proceeds of a claim described in subdivision (4) of this
27 subsection and conserve, invest, disburse, or use for a lawful purpose
28 anything so received.

29 (7) Make elections under the Survivor Benefit Plan as defined under Subchapter
30 II of Title 10 of the United States Code, as amended, including the authority
31 to elect that benefits be paid to a supplemental or special needs trust for a
32 disabled child.

33 **§ 32C-2-215. Retirement plans.**

34 (a) In this section, the term "retirement plan" means a plan or account created by an
35 employer, the principal, or another individual to provide retirement benefits or deferred
36 compensation of which the principal is a participant, beneficiary, or owner, including a plan or
37 account under the following sections of the Internal Revenue Code:

38 (1) An individual retirement account under section 408 of the Internal Revenue
39 Code.

40 (2) A Roth individual retirement account under section 408A of the Internal
41 Revenue Code.

42 (3) A deemed individual retirement account under section 408(q) of the Internal
43 Revenue Code.

44 (4) An annuity or mutual fund custodial account under section 403(b) of the
45 Internal Revenue Code.

46 (5) A pension, profit sharing, stock bonus, or other retirement plan qualified
47 under section 401(a) of the Internal Revenue Code.

48 (6) A plan under sections 457(b) and (f) of the Internal Revenue Code.

49 (7) A nonqualified deferred compensation plan under section 409A of the
50 Internal Revenue Code.

1 **(b)** Unless the power of attorney otherwise provides, language in a power of attorney
2 granting general authority with respect to retirement plans authorizes the agent to do all of the
3 following:

- 4 **(1)** Select the form and timing of payments under a retirement plan and
5 withdraw benefits from a plan.
- 6 **(2)** Make a rollover, including a direct trustee-to-trustee rollover, of benefits
7 from one retirement plan to another.
- 8 **(3)** Establish a retirement plan in the principal's name.
- 9 **(4)** Make contributions to a retirement plan.
- 10 **(5)** Exercise investment powers available under a retirement plan.
- 11 **(6)** Borrow from, sell assets to, or purchase assets from a retirement plan.

12 **§ 32C-2-216. Taxes.**

13 Unless the power of attorney otherwise provides, language in a power of attorney granting
14 general authority with respect to taxes authorizes the agent to do all of the following:

- 15 **(1)** Prepare, sign, and file federal, State, local, and foreign income, gift, payroll,
16 property, Federal Insurance Contributions Act, and other tax returns, claims
17 for refunds, requests for extension of time, petitions regarding tax matters,
18 and any other tax-related documents, including receipts, offers, waivers,
19 consents, including consents and agreements under section 2032A of the
20 Internal Revenue Code, closing agreements, and any power of attorney
21 required by the Internal Revenue Service or other taxing authority with
22 respect to a tax year upon which the statute of limitations has not run and the
23 following 25 tax years.
- 24 **(2)** Pay taxes due, collect refunds, post bonds, receive confidential information,
25 and contest deficiencies determined by the Internal Revenue Service or other
26 taxing authority.
- 27 **(3)** Exercise any election available to the principal under federal, State, local, or
28 foreign tax law.
- 29 **(4)** Act for the principal in all tax matters for all periods before the Internal
30 Revenue Service, or other taxing authority.

31 **§ 32C-2-217. Gifts authorized by general authority.**

32 **(a)** In this section, a gift "for the benefit of" an individual includes a gift to a trust, an
33 account under the Uniform Transfers to Minors Act, a tuition savings account or prepaid tuition
34 plan as defined under section 529 of the Internal Revenue Code, and an ABLÉ account as
35 defined under section 529A of the Internal Revenue Code.

36 **(b)** Unless the power of attorney otherwise provides, language in a power of attorney
37 granting general authority with respect to gifts authorizes the agent only to do the following:

- 38 **(1)** Make a gift of any of the principal's property, including by the exercise of a
39 presently exercisable general power of appointment held by the principal for
40 the following purposes:
 - 41 **a.** To or for the benefit of an individual so long as the value of the gift
42 does not exceed the greater of (i) the amount determined to be in
43 accordance with the principal's history of making or joining in the
44 making of gifts or (ii) the annual dollar limit of the federal gift tax
45 exclusion under section 2503(b) of the Internal Revenue Code
46 without regard to whether the federal gift tax exclusion applies to the
47 gift, or if the principal's spouse agrees to consent to the split gift
48 pursuant to section 2513 of the Internal Revenue Code in an amount
49 per donee not to exceed twice the annual federal gift tax exclusion
50 limit.

b. To any organization described in sections 170(c) and 2522(a) of the Internal Revenue Code in accordance with the principal's history of making or joining in the making of gifts.

(2) Consent, pursuant to section 2513 of the Internal Revenue Code to the splitting of a gift made by the principal's spouse with respect to gifts described in subdivision (1) of this subsection.

"§ 32C-2-218. Gifts authorized by court order.

An agent may petition the court for an order authorizing the agent to make a gift of the principal's property, including a gift that is in addition to, or that otherwise differs from, the gifts authorized by the power of attorney.

"§ 32C-2-219. Certain acts authorized by the court.

(a) Except as provided in subsection (b) of this section, an agent under a power of attorney that does not expressly grant the agent the authority to do an act described in G.S. 32C-2-201(a) may petition the court for authority to do the act described in G.S. 32C-2-201(a).

(b) This section shall not apply to the authority of an agent to make a gift pursuant to G.S. 32C-2-218.

"§ 32C-2-220. Digital assets.

Unless the power of attorney otherwise provides, language in the power of attorney granting general authority with respect to digital assets authorizes the agent to do the following as provided in Chapter 36F of the General Statutes:

(1) Obtain any digital assets, including catalogues and content.

(2) Request and authorize disclosure of any digital assets, including catalogues and content.

"Article 3.

"Statutory Forms.

"§ 32C-3-301. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this Chapter:

"NORTH CAROLINA
STATUTORY SHORT FORM POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32C OF THE NORTH CAROLINA GENERAL STATUTES, WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

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

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 becomes effective immediately.

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 the following person as my agent:

(Name of Principal).

Name of Agent:

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:

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

Name of Second Successor Agent:

INITIAL below if you want to give an agent the power to name a successor agent.

() I give to my acting agent the full power to appoint another to act as my agent, and full power to revoke such appointment, if no agent named by me above is willing or able to act.

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 the North Carolina Uniform Power of Attorney Act, Chapter 32C of the General Statutes:

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

- () 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
- () Digital Assets
- () All Preceding Subjects

GRANT OF SPECIFIC AUTHORITY
(OPTIONAL)

My agent MAY 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.)

- () Make a gift, subject to the limitations provided in G.S. 32C-2-217
- () 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 my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- () Exercise fiduciary powers that I have authority to delegate
- () Disclaim or refuse an interest in property, including a power of appointment

EXERCISE OF SPECIFIC AUTHORITY IN FAVOR OF AGENT
(OPTIONAL)

() UNLESS INITIALED, an agent MAY NOT exercise any of the grants of specific authority initialed above in favor of the agent or an individual to whom the agent owes a legal obligation of support.

EFFECTIVE DATE

This power of attorney is effective immediately.

NOMINATION OF GUARDIAN
(OPTIONAL)

INITIAL below ONLY if you WANT your acting agent to be your Guardian.

() If it becomes necessary for a court to appoint a guardian of my estate or a general guardian, I nominate my agent acting under this power of attorney to be the guardian to serve without bond or other security.

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 knows it has terminated or is invalid.

MEANING AND EFFECT

The meaning and effect of this power of attorney shall for all purposes be determined by the law of the State of North Carolina.

SIGNATURE AND ACKNOWLEDGMENT

Your Signature

Date

Your Name Printed

State of , County of .

I certify that the following person personally appeared before me this day, acknowledging to me that he or she signed the foregoing document:

Date:

Signature of Notary Public

(Official Seal)

, Notary Public

Printed or typed name

My commission expires: "

§ 32C-3-302. Agent's certification.

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 (G.S. 32C-3-302)

I, (Name of Agent), do hereby state and affirm the following under penalty of perjury:

- (1) (Name of Principal) granted me authority as an agent or successor agent in a power of attorney dated .
(2) The powers and authority granted to me in the power of attorney are currently exercisable by me.
(3) I have no actual knowledge of any of the following:
(a) The principal is deceased.
(b) The power of attorney or my authority as agent under the power of attorney has been revoked or terminated, partially or otherwise.

(c) The principal lacked the understanding and capacity to make and communicate decisions regarding his estate and person at the time the power of attorney was executed.

(d) The power of attorney was not properly executed and is not a legal, valid power of attorney.

(e) (Insert other relevant statements)

(4) I agree not to exercise any powers granted under the power of attorney if I become aware that the principal is deceased, that the power of attorney has been revoked or terminated, or that my authority as agent under the power of attorney has been revoked or terminated.

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed

Agent's Address

Agent's Telephone Number

COUNTY OF _____, STATE OF _____.

Sworn to or affirmed and subscribed before me this day by _____.

Date: _____

Signature of Notary Public

(Official Seal)

_____, Notary Public

Printed or typed name

My commission expires: _____"

"§ 32C-3-303. Limited power of attorney for real property.

While no particular phrasing is required for a limited power of attorney for transactions involving the purchase, sale, or financing of real property or tangible personal property related to real property, the following form may be used to create a limited power of attorney for

1 transactions involving the purchase, sale, or financing of designated real property or tangible
2 personal property related to the designated real property. The following form has as the
3 meaning and effect prescribed by this Chapter:

4
5 "Return to:

6
7 NORTH CAROLINA
8 LIMITED POWER OF ATTORNEY FOR REAL PROPERTY
9

10 I, _____, name the following person as my
11 agent:
12 (Name of Principal)

13
14 Name of Agent: _____
15

16 For purposes of this power of attorney, the "Property" is all of that real property located in
17 _____ County, North Carolina, and known or identified as follows:
18

19
20 GRANT OF AUTHORITY
21

22 I grant my agent general authority to act for me with respect to the Property, all tangible
23 personal property related to the Property, and all financial transactions relating to the Property.
24 The authority granted to my agent pursuant to this power of attorney expressly includes the
25 following:

- 26
27 (1) The authority to act with respect to real property as set forth in Section 32C-2-204
28 of the North Carolina General Statutes;
29
30 (2) The authority to act with respect to tangible personal property as set forth in Section
31 32C-2-205 of the North Carolina General Statutes; and
32
33 (3) The authority to act with respect to banks and other financial institutions as set forth
34 in Section 32C-2-208 of the North Carolina General Statutes.
35

36 The authority granted to my agent pursuant to this power of attorney may be exercised by my
37 agent even though the exercise of that authority may benefit the agent or a person to whom the
38 agent owes an obligation of support.
39

40
41 EFFECTIVE DATE; AUTOMATIC EXPIRATION
42

43 This power of attorney is effective immediately. The authority of my agent to act on my behalf
44 pursuant to this power of attorney will automatically expire on _____
45 (or, if no date is specified, one year from the date of this power of attorney). Actions taken by
46 my agent on my behalf pursuant to this power of attorney while this power of attorney remains
47 in effect shall continue to bind me even after my agent's authority expires.
48

49
50 RELIANCE ON THIS POWER OF ATTORNEY
51

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

3
4
5 MEANING AND EFFECT

6
7 The meaning and effect of this power of attorney shall for all purposes be determined by the
8 law of the State of North Carolina.

9
10
11 SIGNATURE AND ACKNOWLEDGMENT

12
13
14
15 _____
16 Your Signature

_____ Date

17
18
19 _____
20 Your Name Printed

21
22 State of _____, County of _____.

23
24 I certify that the following person personally appeared before me this day, acknowledging to
25 me that he or she signed the foregoing document: _____

26
27
28 Date: _____

_____ Signature of Notary Public

29
30
31
32 (Official Seal)

_____ , Notary Public

_____ Printed or typed name

33
34
35
36 "Article 4.

37 "Miscellaneous Provisions.

38 **"§ 32C-4-401. Uniformity of application and construction.**

39 In applying and construing this Chapter, consideration shall be given to the need to promote
40 uniformity of the law with respect to its subject matter among the states that enact it.

41 **"§ 32C-4-402. Relation to Electronic Signatures in Global and National Commerce Act.**

42 The provisions of this Chapter governing the legal effect, validity, or enforceability of
43 electronic records or electronic signatures, and of contracts formed or performed with the use
44 of those records or signatures, conform to the requirements of Section 102 of the Electronic
45 Signatures in Global and National Commerce Act (15 U.S.C. § 7002) and supersede, modify,
46 and limit the requirements of the Electronic Signatures in Global and National Commerce Act.

47 **"§ 3C-4-403. Effect on existing powers of attorney.**

48 (a) Except as otherwise provided in this Chapter, the following apply on the effective
49 date of this Chapter:

50 (1) This Chapter applies to a power of attorney created before, on, or after the
51 effective date of this Chapter unless there is clear indication of a contrary

1 intent in the terms of a power of attorney or unless application of a particular
 2 provision of this Chapter would substantially impair rights of a party.

3 (2) This Chapter applies to a judicial proceeding concerning a power of attorney
 4 commenced on or after the effective date of this Chapter.

5 (3) This Chapter applies to a judicial proceeding concerning a power of attorney
 6 commenced before the effective date of this Chapter unless the court finds
 7 that application of a provision of this Chapter would substantially interfere
 8 with the effective conduct of the judicial proceeding or prejudice the rights
 9 of a party, in which case that the particular provision of this Chapter does
 10 not apply and the superseded law applies.

11 (4) A rule of construction or presumption provided by this Chapter applies to
 12 powers of attorney executed before the effective date of this Chapter unless
 13 there is a clear indication of a contrary intent in the terms of a power of
 14 attorney or unless the application of the rule of construction or presumption
 15 would substantially impair rights of a party created under North Carolina
 16 law in effect prior to the effective date of this Chapter in which case the rule
 17 of construction or presumption does not apply and the superseded rule of
 18 construction or presumption applies.

19 (b) If a right is acquired, extinguished, or banned upon the expiration of a prescribed
 20 period that commenced under law of this State other than this Chapter before the effective date
 21 of this Chapter, that statute continues to apply to the right even if it has been repealed or
 22 superseded.

23 (c) References to prior statutes and powers of attorney, whether executed on or after the
 24 adoption of this Chapter shall be deemed to refer to the corresponding provisions this Chapter
 25 unless application of the rule of construction would substantially impair substantial rights of a
 26 party.

27 (d) Notwithstanding the provisions of this Chapter, the powers conferred by former
 28 G.S. 32A-2 shall apply to a Statutory Short Form Power of Attorney that was created in
 29 accordance with former G.S. 32A-1 prior to January 1, 2018."

31 **PART II. CONFORMING CHANGES TO THE GENERAL STATUTES**

32 **SECTION 2.1.** G.S. 30-3.4 reads as rewritten:

33 **"§ 30-3.4. Procedure for determining the elective share.**

34 (a) **Exercisable Only During Lifetime.** – The right of the surviving spouse to file a
 35 claim for an elective share must be exercised during the lifetime of the surviving spouse, by the
 36 surviving spouse, by the surviving spouse's ~~attorney-in-fact-agent~~ if the surviving spouse's
 37 power of attorney expressly authorizes the ~~attorney-in-fact-agent~~ to do so or to generally
 38 engage in ~~estate transactions, estate, trusts, and other beneficial interests,~~ or, with approval of
 39 court, by the guardian of the surviving spouse's estate or general guardian. If a surviving spouse
 40 dies before the claim for an elective share has been settled, the surviving spouse's personal
 41 representative shall succeed to the surviving spouse's rights to an elective share.

42"

43 **SECTION 2.2.** G.S. 47-28 reads as rewritten:

44 **"§ 47-28. Powers of attorney.**

45 (a) Recording required for powers of attorney affecting real property:

46 (1) Before any transfer of real property executed by an ~~attorney-in-fact-agent~~
 47 empowered by a power of attorney governed by ~~Article 1, Article 2, or~~
 48 ~~Article 2A~~ of Chapter ~~32A-32C~~ of the General Statutes, the power of
 49 attorney or a certified copy of the power of attorney shall be registered in the
 50 office of the register of deeds of the county in which the principal is
 51 domiciled or where the real property lies. If the principal is not a resident of

1 North Carolina, the power of attorney or a certified copy of the power of
 2 attorney may be recorded in any county in the State wherein the principal
 3 owns real property or has a significant business reason for registering in the
 4 county.

5 ...
 6 (3) Any instrument subject to the provisions of G.S. 47-17.2, 47-18, or 47-20
 7 and signed by an ~~attorney-in-fact-agent~~ and recorded in a county other than
 8 the county where a power of attorney is recorded in this State shall include
 9 the recording information, including book, page, and county for the power of
 10 attorney.

11 ...
 12 (b) If the instrument of conveyance is recorded prior to the registration of the power of
 13 attorney or a certified copy of the power of attorney pursuant to subsection (a) of this section,
 14 the power of attorney or a certified copy of the power of attorney may be registered in the
 15 office of the register of deeds as provided in subsection (a) of this section thereafter provided
 16 that the ~~attorney-in-fact-agent~~ was empowered at the time of the original conveyance.
 17 Notwithstanding the provisions of subsection (a) of this section, no conveyance shall be
 18 rendered invalid by the recordation of the power of attorney or a certified copy of the power of
 19 attorney after the instrument of conveyance, and the registration shall relate back to the date
 20 and time of registration of the instrument of conveyance.

21"

22 **SECTION 2.3.** G.S. 47-43.1 reads as rewritten:

23 "**§ 47-43.1. Execution and acknowledgment of instruments by attorneys or**
 24 **attorneys-in-fact.**

25 When an instrument purports to be executed by parties acting through another by virtue of a
 26 power of attorney, it shall be sufficient if the attorney or ~~attorney-in-fact-agent~~ signs such
 27 instrument either in the name of the principal by the attorney or ~~attorney-in-fact-agent~~ or signs
 28 as attorney or ~~attorney-in-fact-agent~~ for the principal; and if such instrument purports to be
 29 under seal, the seal of the ~~attorney-in-fact-agent~~ shall be sufficient. ~~For such instrument to be~~
 30 ~~executed under seal, the power of attorney must have been executed under seal."~~

31 **SECTION 2.4.** G.S. 50-22 reads as rewritten:

32 "**§ 50-22. Action on behalf of an incompetent.**

33 A duly appointed ~~attorney-in-fact-agent~~ who has the power to sue and defend civil actions
 34 on behalf of an incompetent spouse and who has been appointed pursuant to a durable power of
 35 attorney executed in accordance with Chapter ~~32A-32C~~ of the General Statutes, a guardian
 36 appointed in accordance with Chapter 35A of the General Statutes, or a guardian ad litem
 37 appointed in accordance with G.S. 1A-1, Rules 17 and 25(b), may commence, defend,
 38 maintain, arbitrate, mediate, or settle any action authorized by this Chapter on behalf of an
 39 incompetent spouse. However, only a competent spouse may commence an action for absolute
 40 divorce."

41 **SECTION 2.5.** G.S. 90-21.13 reads as rewritten:

42 "**§ 90-21.13. Informed consent to health care treatment or procedure.**

43 ...

44 (c) The following persons, in the order indicated, are authorized to consent to medical
 45 treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or
 46 communicate health care decisions:

47 (1) A guardian of the patient's person, or a general guardian with powers over
 48 the patient's person, appointed by a court of competent jurisdiction pursuant
 49 to Article 5 of Chapter 35A of the General Statutes; provided that, if the
 50 patient has a health care agent appointed pursuant to a valid health care
 51 power of attorney, the health care agent shall have the right to exercise the

1 authority to the extent granted in the health care power of attorney and to the
 2 extent provided in G.S. 32A-19(a) unless the Clerk has suspended the
 3 authority of that health care agent in accordance with ~~G.S.~~
 4 ~~35A-1208(a);~~G.S. 35A-1208(a).

- 5 (2) A health care agent appointed pursuant to a valid health care power of
 6 attorney, to the extent of the authority ~~granted;~~granted.
- 7 (3) An ~~attorney-in-fact, agent,~~ with powers to make health care decisions for the
 8 patient, appointed by the patient pursuant to ~~Article 1 or Article 2 of Chapter~~
 9 ~~32A—32C~~ of the General Statutes, to the extent of the authority
 10 ~~granted;~~granted.
- 11 (4) The patient's ~~spouse;~~spouse.
- 12 (5) A majority of the patient's reasonably available parents and children who are
 13 at least 18 years of ~~age;~~age.
- 14 (6) A majority of the patient's reasonably available siblings who are at least 18
 15 years of ~~age;~~ or age.
- 16 (7) An individual who has an established relationship with the patient, who is
 17 acting in good faith on behalf of the patient, and who can reliably convey the
 18 patient's wishes.

19"

20 **SECTION 2.6.** G.S. 90-322 reads as rewritten:

21 "**§ 90-322. Procedures for natural death in the absence of a declaration.**

22 ...
 23 (b) If a person's condition has been determined to meet the conditions set forth in
 24 subsection (a) of this section and no instrument has been executed as provided in G.S. 90-321,
 25 then life-prolonging measures may be withheld or discontinued upon the direction and under
 26 the supervision of the attending physician with the concurrence of the following persons, in the
 27 order indicated:

- 28 (1) A guardian of the patient's person, or a general guardian with powers over
 29 the patient's person, appointed by a court of competent jurisdiction pursuant
 30 to Article 5 of Chapter 35A of the General Statutes; provided that, if the
 31 patient has a health care agent appointed pursuant to a valid health care
 32 power of attorney, the health care agent shall have the right to exercise the
 33 authority to the extent granted in the health care power of attorney and to the
 34 extent provided in G.S. 32A-19(b) unless the Clerk has suspended the
 35 authority of that health care agent in accordance with ~~G.S.~~
 36 ~~35A-1208(a);~~G.S. 35A-1208(a).
- 37 (2) A health care agent appointed pursuant to a valid health care power of
 38 attorney, to the extent of the authority ~~granted;~~granted.
- 39 (3) An ~~attorney-in-fact, agent,~~ with powers to make health care decisions for the
 40 patient, appointed by the patient pursuant to ~~Article 1 or Article 2 of Chapter~~
 41 ~~32A—32C~~ of the General Statutes, to the extent of the authority
 42 ~~granted;~~granted.
- 43 (4) The patient's ~~spouse;~~spouse.
- 44 (5) A majority of the patient's reasonably available parents and children who are
 45 at least 18 years of ~~age;~~age.
- 46 (6) A majority of the patient's reasonably available siblings who are at least 18
 47 years of ~~age;~~ or age.
- 48 (7) An individual who has an established relationship with the patient, who is
 49 acting in good faith on behalf of the patient, and who can reliably convey the
 50 patient's wishes.

1 If none of the above is reasonably available then at the discretion of the attending physician
2 the life-prolonging measures may be withheld or discontinued upon the direction and under the
3 supervision of the attending physician.

4"

5 **SECTION 2.7.** G.S. 122C-73 reads as rewritten:

6 "**§ 122C-73. Scope, use, and authority of advance instruction for mental health treatment.**

7 ...

8 (f) An advance instruction for mental health treatment may be combined with a health
9 care power of attorney or general power of attorney that is executed in accordance with the
10 requirements of Chapter 32A or Chapter 32C of the General Statutes so long as each form shall
11 be executed in accordance with its own statute."

12 **SECTION 2.8.** Articles 1, 2, 2A, 2B, and 5 of Chapter 32A of the General Statutes
13 are repealed.

14
15 **PART III. EFFECTIVE DATE AND AUTHORIZATION FOR THE PRINTING OF**
16 **OFFICIAL AND DRAFTERS' COMMENTS**

17 **SECTION 3.** This act becomes effective January 1, 2018. The Revisor of Statutes
18 shall cause to be printed, as annotations to the published General Statutes, all relevant portions
19 of the Official Comments to the Uniform Power of Attorney Act (2006) and all explanatory
20 comments of the drafters of this act as the Revisor may deem appropriate.