WEST VIRGINIA CODE CHAPTER 39B ARTICLE 2

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§39B-2-101. Authority that requires specific grant; grant of general authority.

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject to:

(1) Create, amend, revoke or terminate an inter vivos trust;

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

(5) Delegate authority granted under the power of attorney;

(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) Exercise fiduciary powers that the principal has authority to delegate; or

(8) Disclaim property, including a power of appointment.

(9) Exercise authority over the content of electronic communications, as defined in 18 U.S.C. Section 2510(12) sent or received by the principal.

(b) Notwithstanding a grant of authority to do an act described in this section, unless the power of attorney otherwise provides, an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer or otherwise.

(c) Subject to subsections (a), (b), (d) and (e) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §39B-2-104 through §39B-2-116 of this code.

(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of §39B-2-117 of this code.

(e) Subject to subsections (a), (b) and (d) of this section, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of

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attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

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§39B-2-102. Incorporation of authority.

(a) An agent has authority described in this article if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in section one hundred four through section one hundred seventeen of this article or cites the section in this article 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 section one hundred four through section one hundred seventeen of this article or a citation to a section of section one hundred four through section one hundred seventeen of this article 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.

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§39B-2-103. Construction of authority generally.

(a) Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in sections one hundred four through one hundred seventeen of this article or that grants to an agent authority to do all acts that a principal could do pursuant to the provisions of section one hundred one subsection (c) of this article, a principal authorizes the agent, with respect to that subject, to:

(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 rule;

(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; and

(10) Do any lawful act with respect to the subject and all property related to the subject.

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§39B-2-104. Real property.

(a) 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:

(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;

(2) Sell, exchange, convey with or without covenants, representations, or warranties, quitclaim, release, surrender, retain title for security, encumber, partition, consent to partitioning, subject to an easement or covenant, subdivide, apply for zoning or other governmental permits, plat or consent to platting; develop, grant an option concerning, lease, sublease, contribute to an entity in exchange for an interest in that entity or otherwise grant or dispose of an interest in real property or a right incident to real property;

(3) Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien or other claim to real property which exists or is asserted;

(5) Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:

(A) Insuring against liability or casualty or other loss;

(B) Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;

(C) Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with them; and

(D) Purchasing supplies, hiring assistance or labor and making repairs or alterations to the real property;

(6) Use, develop, alter, replace, remove, erect or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;

(7) Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold and act with respect to stocks and bonds or other property received in a plan of reorganization, including:

(A) Selling or otherwise disposing of them;

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(B) Exercising or selling an option, right of conversion or similar right with respect to them; and

(C) Exercising any voting rights in person or by proxy;

(8) Change the form of title of an interest in or right incident to real property; and

(9) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

(b) In order to exercise the powers provided in subdivisions (2), (3), (8) and (9), subsection (a) of this section, or to release or assign an interest in real property as described in subdivision (4), subsection (a) of this section, the power of attorney must first be recorded in the office of the clerk of the county commission in the county in which the property is located.

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§39B-2-105. Tangible personal property.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

(1) Demand, buy, receive or accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell, exchange, convey with or without covenants, representations, or warranties; quitclaim, release, surrender, create a security interest in, grant options concerning, lease, sublease or, otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(4) Release, assign, satisfy or enforce by litigation or otherwise, a security interest, lien or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;

(5) Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:

(A) Insuring against liability or casualty or other loss;

(B) Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;

(C) Paying, assessing, compromising or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;

(D) Moving the property from place to place;

(E) Storing the property for hire or on a gratuitous bailment; and

(F) Using and making repairs, alterations or improvements to the property; and

(6) Change the form of title of an interest in tangible personal property.

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§39B-2-106. Stocks and bonds.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

(1) Buy, sell and exchange stocks and bonds;

(2) Establish, continue, modify or terminate an account with respect to stocks and bonds;

(3) Pledge stocks and bonds as security to borrow, pay, renew or extend the time of payment of a debt of the principal;

(4) Receive certificates and other evidences of ownership with respect to stocks and bonds; and

(5) Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts and consent to limitations on the right to vote.

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§39B-2-107. Commodities and options.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

(1) Buy, sell, exchange, assign, settle and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and

(2) Establish, continue, modify and terminate option accounts.

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§39B-2-108. Banks and other financial institutions.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

(1) Continue, modify and terminate an account or other banking arrangement made by or on behalf of the principal;

(2) Establish, modify and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm or other financial institution selected by the agent;

(3) Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;

(4) Withdraw, by check, order, electronic funds transfer or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

(5) Receive statements of account, vouchers, notices and similar documents from a financial institution and act with respect to them;

(6) Enter a safe deposit box or vault and withdraw or add to the contents;

(7) Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;

(8) Make, assign, draw, endorse, discount, guarantee and negotiate promissory notes, checks, drafts and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;

(9) Receive for the principal and act upon a sight draft, warehouse receipt or other document of title whether tangible or electronic or other negotiable or nonnegotiable instrument;

(10) Apply for, receive and use letters of credit, credit and debit cards, electronic transaction authorizations and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and

(11) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

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§39B-2-109. Operation of entity or business.

(a) Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

(1) Operate, buy, sell, enlarge, reduce or terminate an ownership interest;

(2) Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege or option that the principal has, may have, or claims to have;

(3) Enforce the terms of an ownership agreement;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;

(5) Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege or option the principal has or claims to have as the holder of stocks and bonds;

(6) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;

(7) With respect to an entity or business owned solely by the principal:

(A) Continue, modify, renegotiate, extend and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;

(B) Determine:

(i) The location of its operation;

(ii) The nature and extent of its business;

(iii) The methods of manufacturing, selling, merchandising, financing, accounting and advertising employed in its operation;

(iv) The amount and types of insurance carried; and

(v) The mode of engaging, compensating and dealing with its employees and accountants, attorneys or other advisors;

(C) Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and

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(D) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;

(8) Put additional capital into an entity or business in which the principal has an interest;

(9) Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;

(10) Sell or liquidate all or part of an entity or business;

(11) Establish the value of an entity or business under a buy-out agreement to which the principal is a party;

(12) Prepare, sign, file and deliver reports, compilations of information, returns or other papers with respect to an entity or business and make related payments; and

(13) Pay, compromise, or contest taxes, assessments, fines or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

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§39B-2-110. Insurance and annuities.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

(1) Continue, pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract procured by or on behalf of the principal which insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;

(2) Procure new, different and additional contracts of insurance and annuities for the principal and the principal's spouse, children and other dependents, and select the amount, type of insurance or annuity and mode of payment;

(3) Pay the premium or make a contribution on, modify, exchange, rescind, release or terminate a contract of insurance or annuity procured by the agent;

(4) Apply for and receive a loan secured by a contract of insurance or annuity;

(5) Surrender and receive the cash surrender value on a contract of insurance or annuity;

(6) Exercise an election;

(7) Exercise investment powers available under a contract of insurance or annuity;

(8) Change the manner of paying premiums on a contract of insurance or annuity;

(9) Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;

(10) Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) Collect, sell, assign, hypothecate, borrow against or pledge the interest of the principal in a contract of insurance or annuity;

(12) Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and

(13) Pay, from proceeds or otherwise, compromise or contest and apply for refunds in connection with, a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

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§39B-2-111. Estates, trusts and other beneficial interests.

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

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

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

(2) Demand or obtain money or another thing of value to which the principal is, may become, or claims to be, entitled by reason of an estate, trust or other beneficial interest, by litigation or otherwise;

(3) Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;

(4) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to ascertain the meaning, validity or effect of a deed, will, declaration of trust or other instrument or transaction affecting the interest of the principal;

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation to remove, substitute or surcharge a fiduciary;

(6) Conserve, invest, disburse or use anything received for an authorized purpose;

(7) Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities and other property to the trustee of a revocable trust created by the principal as settler; and

(8) Reject, renounce, disclaim, release or consent to a reduction in or modification of a share in or payment from an estate, trust or other beneficial interest.

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§39B-2-112. Claims and litigation.

(a) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

(1) Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance or other relief;

(2) Bring an action to determine adverse claims or intervene or otherwise participate in litigation;

(3) Seek an attachment, garnishment, order of arrest or other preliminary, provisional or intermediate relief and use an available procedure to effect or satisfy a judgment, order or decree;

(4) Make or accept a tender, offer of judgment or admission of facts, submit a controversy on an agreed statement of facts, consent to examination and bind the principal in litigation;

(5) Submit to alternative dispute resolution, settle and propose or accept a compromise;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, receive, execute and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement or other instrument in connection with the prosecution, settlement or defense of a claim or litigation;

(7) Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership or application for the appointment of a receiver or trustee which affects an interest of the principal in property or other thing of value;

(8) Pay a judgment, award or order against the principal or a settlement made in connection with a claim or litigation; and

(9) Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

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§39B-2-113. Personal and family maintenance.

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

(1) Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse and the following individuals, whether living when the power of attorney is executed or later born:

(A) The principal's children;

(B) Other individuals legally entitled to be supported by the principal; and

(C) The individuals whom the principal has customarily supported or indicated the intent to support;

(2) Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

(3) Provide living quarters for the individuals described in subsection (1) of this section by:

(A) Purchase, lease or other contract; or

(B) Paying the operating costs, including interest, amortization payments, repairs, improvements and taxes, for premises owned by the principal or occupied by those individuals;

(4) Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education and other current living costs for the individuals described in subsection (1) of this section;

(5) Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision (1) of this section;

(6) Act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §1171 through §1179 of the Social Security Act, §42 U. S. C. 1320d, and applicable regulations, in making decisions related to the past, present or future payment for the provision of health care consented to by the principal or anyone authorized under the law of this state to consent to health care on behalf of the principal;

(7) Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring and replacing them, for the individuals described in subsection (1) of this section;

(8) Maintain credit and debit accounts for the convenience of the individuals described in

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subsection (1) of this section and open new accounts; and

(9) Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order or other organization or to continue contributions to those organizations.

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

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§39B-2-114. Benefits from governmental programs or civil or military service.

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

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

(1) Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in section one hundred thirteen, subsection (a)(1) of this article, and for shipment of their household effects;

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

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

(4) Prepare, file and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or rule;

(5) Initiate, participate in, submit to alternative dispute resolution, settle, oppose or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or rule; and

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

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§39B-2-115. Retirement plans.

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

(1) An individual retirement account under Internal Revenue Code, 26 U. S. C. §408;

(2) A Roth individual retirement account under Internal Revenue Code, 26 U. S. C. §408A;

(3) A deemed individual retirement account under Internal Revenue Code, 26 U. S. C. §408(q);

(4) An annuity or mutual fund custodial account under Internal Revenue Code, 26 U. S. C. §403(b);

(5) A pension, profit-sharing, stock bonus or other retirement plan qualified under Internal Revenue Code, 26 U. S. C. §401(a);

(6) A plan under Internal Revenue Code, 26 U. S. C. §457(b); and

(7) A nonqualified deferred compensation plan under Internal Revenue Code, 26 U. S. C. §409A.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1) Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) Establish a retirement plan in the principal's name;

(4) Make contributions to a retirement plan;

(5) Exercise investment powers available under a retirement plan; and

(6) Borrow from, sell assets to or purchase assets from a retirement plan.

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§39B-2-116. Taxes.

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

(1) Prepare, sign and file federal, state, local and foreign income, gift, payroll, property, Federal Insurance Contributions Act and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code, 26 U. S. C. §2032A, closing agreements and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or other taxing authority;

(3) Exercise any election available to the principal under federal, state, local or foreign tax law; and

(4) Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

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§39B-2-117. Gifts.

(a) In this section, a gift "for the benefit of" a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code, 26 U. S. C. §529, as amended.

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

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

(2) Consent, pursuant to Internal Revenue Code, 26 U. S. C. §2513, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

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

(1) The value and nature of the principal's property;

(2) The principal's foreseeable obligations and need for maintenance;

(3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes;

(4) Eligibility for a benefit, a program or assistance under a statute or regulation; and

(5) The principal's personal history of making or joining in making gifts.

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