

Code of Virginia

§ 26-96. 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 §§ 26-98 through 26-111, 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 §§ 26-98 through 26-111 or a citation to a section of §§ 26-98 through 26-111 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.

(2010, cc. 455, 632.)

§ 26-97. 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 §§ 26-98 through 26-111 or that grants to an agent authority to do all acts that a principal could do pursuant to subsection C of § 26-95, 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 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; and
10. Do any lawful act with respect to the subject and all property related to the subject.

(2010, cc. 455, 632.)

§ 26-98. 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:

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 that 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;
 - 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.

(2010, cc. 455, 632.)

§ 26-99. Tangible personal property.

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, 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.

(2010, cc. 455, 632.)

§ 26-100. Stocks and bonds.

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.

(2010, cc. 455, 632.)

§ 26-101. Commodities and options.

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.

(2010, cc. 455, 632.)

§ 26-102. Banks and other financial institutions.

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.

(2010, cc. 455, 632.)

§ 26-103. Operation of entity or business.

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
 - 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 buyout 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.

(2010, cc. 455, 632.)

§ 26-104. Insurance and annuities.

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 that 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.

(2010, cc. 455, 632.)

§ 26-105. Estates, trusts, and other beneficial interests.

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

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 settlor; 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.

(2010, cc. 455, 632.)

§ 26-106. Claims and litigation.

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 that 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.

(2010, cc. 455, 632.)

§ 26-107. 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. [Reserved.]
 - b. The 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 subdivision A 1 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 subdivision A 1;
 5. Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision A 1;
 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, as amended, 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 the Commonwealth 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 subdivision A 1;
 8. Maintain credit and debit accounts for the convenience of the individuals described in subdivision A 1 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 act.

(2010, cc. 455, 632.)

§ 26-108. 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 statute or regulation including, but not limited to, Social Security, Medicare, Medicaid, and the Department of Veterans Affairs.

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 subdivision A 1 of § 26-107, 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 regulation;
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 regulation; and
6. Receive the financial proceeds of a claim described in subdivision 4 and conserve, invest, disburse, or use for a lawful purpose anything so received.

(2010, cc. 455, 632.)

§ 26-109. 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, as amended;
2. A Roth individual retirement account under Internal Revenue Code 26 U.S.C. § 408A, as amended;
3. A deemed individual retirement account under Internal Revenue Code 26 U.S.C. § 408(q), as amended;
4. An annuity or mutual fund custodial account under Internal Revenue Code 26 U.S.C. § 403(b), as amended;
5. A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code 26 U.S.C. § 401(a), as amended;
6. A plan under Internal Revenue Code 26 U.S.C. § 457(b), as amended; and
7. A nonqualified deferred compensation plan under Internal Revenue Code 26 U.S.C. § 409A, as amended.

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.

(2010, cc. 455, 632.)

§ 26-110. 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, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
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.

(2010, cc. 455, 632.)

§ 26-111. Gifts.

A. In this section, a gift "for the benefit of" a person includes a gift to a trust, a custodial trust under the Uniform Custodial Trust Act (§ 55-34.1 et seq.), an account under the Uniform Transfers to Minors Act (§ 31-37 et seq.), 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), as amended, 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, as amended, 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.

(2010, cc. 455, 632.)
