

The Vermont Statutes Online

Title 14: Decedents' Estates and Fiduciary Relations

Chapter 123: POWERS OF ATTORNEY

§ 3501. Definitions

As used in this subchapter:

(1) "Accounting" means a written statement itemizing transactions taken by an agent pursuant to authority granted by a principal under a power of attorney.

(2) "Agent" means a person named by a principal in a written power of attorney to act on the principal's behalf, and is synonymous with the term "attorney-in-fact".

(3) "Commercial transaction" means any transaction entered into on behalf of the principal for commercial or business purposes and not primarily for personal, family, or household purposes.

(4) "Compensation" means payment to the agent from assets of the principal for services rendered by the agent.

(5) "Disability or incapacity of the principal" means a physical or mental condition which prevents the principal from directing the actions of the agent and would, under common law principles of agency, cause a power of attorney previously executed by the principal to terminate.

(6) "Durable power of attorney" means a written power of attorney in which the authority of the agent does not terminate in the event of the disability or incapacity of the principal.

(7) "Gift" means any transfer of anything of value for which consideration of less than fair market value is received.

(8) "Power of attorney" means a written document by which a principal designates an agent to act in his or her behalf.

(9) "Principal" means a person who executes a power of attorney designating one or more agents to act on his or her behalf.

(10) "Revocation" means the cancellation by a principal of the authority previously given by the principal to an agent.

(11) "Self-dealing" means any transaction, including transfer of property of a principal to an agent, that directly or indirectly benefits the agent or the immediate family of the agent, regardless of whether the agent has provided consideration for the transaction.

(12) "Termination" means any occurrence or event, including revocation, which, under this subchapter, causes the authority previously given by a principal to an agent to cease.

(13) "Terms of the power of attorney" means the specific language contained in a power of attorney.

(14) "Third party" means any person that acts on a request from, contracts with, or otherwise deals with an agent pursuant to authority granted by a principal in a power of attorney. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3502. Creation of a power of attorney

(a) Except as provided in subsections (d) and (e) of this section, a power of attorney shall, in order to be valid:

- (1) be in writing;
- (2) name one or more persons as agent;
- (3) give the agent power to act on behalf of the principal; and
- (4) be executed as provided in section 3503 of this title.

(b) Except as provided in subsection (c) of this section, a power of attorney shall be effective on the date the power of attorney is executed as provided in section 3503 of this title.

(c) A power of attorney may:

- (1) specify the date on which the power of attorney will become effective; or
- (2) become effective upon the occurrence of an event, which shall be specified in the power of attorney, as shall the manner in which the event shall be determined to have occurred.

(d) Subsection 3503(e) of this title, and the provision in subsection 3503(a) of this title that requires the witness and the notary to be different persons, shall not be applicable to:

(1) a power of attorney for the sale, transfer or mortgage of real estate executed in conformance with 27 V.S.A. § 305, provided the real estate is specifically identified in the power of attorney and the duration of the power of attorney is no more than 90 days; or

(2) a power of attorney for a commercial transaction, provided the transaction is specifically described in the power of attorney and the duration of the power of attorney is no more than 90 days.

(e) Notwithstanding any other provision of law, a military power of attorney containing a provision stating that the power of attorney is prepared pursuant to 10 U.S.C. § 1044b shall be deemed to be legally executed and shall be of the same force and effect as if executed in the mode prescribed by the laws of this State.

(f) Notwithstanding any other provision of law, a power of attorney appointing a representative to represent a person before the Vermont Department of Taxes that otherwise conforms to the provisions of this section is valid without the signature of a witness or notary. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002; amended 2005, No. 7, § 2, eff. April 21, 2005; 2011, No. 143 (Adj. Sess.), § 3; 2013, No. 73, § 2, eff. June 5, 2013.)

§ 3503. Execution

(a) A power of attorney shall be signed by the principal in the presence of at least one witness and shall be acknowledged before a notary public, who shall be a person other than the witness.

(b) If the principal is physically unable to sign, the power of attorney may be signed in the principal's name written by some other person in the principal's presence and at the principal's express direction, provided the person signing for the principal is not named as agent and the power of attorney states another person has signed for the principal and identifies the name of that person.

(c) A person named as agent under the document may not serve as a witness or notary public with

respect to the document.

(d) The witness shall affirm that the principal appeared to be of sound mind and free from duress at the time the power of attorney was signed, and that the principal affirmed that he or she was aware of the nature of the document and signed it freely and voluntarily.

(e)(1) No agent, including alternate or successor agents, may exercise authority granted in a power of attorney unless the agent has signed the power of attorney, attesting that the agent:

(A) accepts appointment as agent;

(B) understands the duties under the power of attorney and under the law;

(C) understands that he or she has a duty to act if expressly required to do so in the power of attorney consistent with subsection 3506(c) of this title; and

(D) understands that the agent is expected to use his or her special skills or expertise on behalf of the principal, if the expectation that the agent does so is expressly provided for in the power of attorney consistent with subdivision 3505(a)(6) of this title.

(2) An agent may sign at any time after a power of attorney has been executed and before it has been exercised for the first time. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3504. Scope of authority

(a)(1) The agent shall have the authority to act on the principal's behalf as to all lawful subjects and purposes, but only to the extent such authority is given under the terms of the power of attorney, subject to section 3506 of this title and subsections (b) through (g) of this section.

(2) A general power of attorney created under this subchapter shall be construed to grant powers that are not expressly delineated in the terms of the power of attorney if it appears from the relevant facts and circumstances that the principal intended the agent to have general authority to act on the principal's behalf with respect to all lawful subjects and purposes. The specific inclusion or exclusion of one or more powers shall not, by itself, prevent a determination that the principal intended to grant general authority to the agent with respect to subjects not specifically included or excluded.

(b) No power of attorney created under this subchapter may give an agent the authority to:

(1) make health care decisions, as that term is defined in chapter 121 of this title;

(2) execute, modify, or revoke a durable power of attorney for health care for the principal;

(3) execute, amend, or revoke a will for the principal;

(4) execute, modify, or revoke a living will for the principal;

(5) require the principal, against his or her will, to take any action or to refrain from taking any action;

(6) exercise, by delegation, the fiduciary responsibility of the principal as executor of a will or administrator of an estate;

(7) exercise, by delegation, the fiduciary responsibility of a trustee, unless the instrument creating or amending the trust specifically authorizes the delegation; or

(8) take any action specifically forbidden by the principal, notwithstanding any provision of the

power of attorney giving the agent the authority to take such action.

(c) No agent may convey lands belonging to the principal or an estate or interest therein unless the terms of the power of attorney explicitly provide the agent has such authority and the power of attorney meets the specific execution requirements of section 3503 of this title.

(d) No agent may compensate him or herself for duties performed under a power of attorney with funds or property belonging to the principal unless the terms of the power of attorney explicitly provide for compensation. Reasonable reimbursement for actual out-of-pocket expenditures by the agent for the benefit of the principal shall not be considered compensation.

(e) No agent may make a gift or a loan to a third party unless the terms of the power of attorney explicitly provide for the authority to make gifts or loans.

(f) No agent may make a gift or a loan to him or herself of property belonging to the principal unless the terms of the power of attorney explicitly provide for the authority to make gifts or loans to the agent.

(g) No agent may appoint another person as alternate or successor agent unless the terms of the power of attorney explicitly provide for the authority to appoint an alternate or successor agent.

(h) A power of attorney may specify that accountings shall be made by the agent at specific times or upon the occurrence of specified events or that accountings be made to specified third parties. The authority of the principal to request accountings at any time shall not be limited or waived. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002; amended 2011, No. 144 (Adj. Sess.), § 3, eff. May 15, 2012.)

§ 3505. Duties of the agent

(a) The agent shall have a fiduciary duty to the principal. The fiduciary duty of the agent requires that the agent, in the performance of his or her duties, shall:

(1) act in good faith and in the interest of the principal;

(2) refrain from self-dealing except as provided in the power of attorney pursuant to subsection 3504(d) or (f) of this subchapter;

(3) avoid conflicts of interest which would impair the ability of the agent to act in the interest of the principal;

(4) not commingle the funds of the principal with his or her own funds or the funds of third parties, except in an attorney-client trust account in accordance with the rules governing such accounts;

(5) exercise the degree of care that would be observed by a prudent person dealing with the property and affairs of another person;

(6) if selected as agent with the expectation he or she has special skills or expertise, use those skills on behalf of the principal, provided the terms of the power of attorney specify that the agent is expected to use special skills and expertise, and provided, further, the agent acknowledges in signing the power of attorney that he or she has been so selected;

(7) take no action beyond the scope of authority granted by the terms of the power of attorney;

(8) take no action which violates any provision of this subchapter;

(9) keep records of all transactions taken under the power of attorney;

(10) provide accountings upon request of the principal or at such times or in such manner as is

specified by the terms of the power of attorney;

(11) follow the directions of the principal specifically forbidding an action, notwithstanding any provision of the power of attorney giving the agent authority to take such action; provided, however, no third party who acts in reliance on the apparent authority of the agent under the power of attorney shall be bound or limited by the directions of the principal to the agent not set forth in the power of attorney unless such third party has actual notice of the instructions;

(12) comply with any lawful termination of the power of attorney as provided in section 3507 of this title.

(b) Nothing in this section shall be construed to limit other duties imposed on the agent by statute or common law. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3506. No duty to exercise authority unless specifically provided

(a) Except for the duties imposed on agents by this subchapter and except as provided in subsections (b) and (c) of this section, an agent has no duty to exercise any authority granted in a power of attorney, regardless of whether the principal is disabled or incapacitated or otherwise unable to act.

(b) Acting for the principal in one or more transactions does not obligate an agent to act for the principal in a subsequent transaction, but the agent has a duty to the principal to complete any transaction the agent has commenced.

(c) If the power of attorney explicitly provides that the agent has a duty to act for the principal as to specified transactions or types of transactions and the agent has specifically acknowledged and accepted such duty to act in signing the power of attorney, the agreement to act on behalf of the principal is enforceable against the agent regardless of whether there is any consideration to support a contractual obligation. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3507. Termination; revocation

(a) Subject to the provisions of subsection (c) of this section, a power of attorney shall terminate upon:

(1) the revocation by the principal, as provided in subsection (b) of this section;

(2) the divorce of the principal and spouse, where the spouse is the agent;

(3) the death of the principal;

(4) the disability or incapacity of the principal, except as provided in section 3508 of this title;

(5) the resignation or death of the agent, unless an alternate agent is named in the power of attorney or by the agent;

(6) a termination date specified in the power of attorney, if any;

(7) the occurrence of a termination event explicitly specified in the power of attorney; or

(8) the order of a court of competent jurisdiction.

(b) A principal who is not subject to an involuntary guardianship under subchapter 12 of chapter 111 of this title may revoke a power of attorney, whether durable or not, at any time by notification to the agent orally, or in writing, or by any other act evidencing a specific intent to revoke. An agent must comply with his or her principal's revocation notwithstanding the actual or perceived disability or incapacity of the principal.

(c) The occurrence of a terminating circumstance listed in subsection (a) of this section does not terminate a power of attorney, whether durable or not, as to the agent or other person, who, without actual knowledge of the terminating circumstance, acts in good faith under the power of attorney. Any action so taken, unless otherwise invalid or unenforceable, binds the principal and his or her heirs, devisees, and personal representatives.

(d) When an agent has acted in good faith under a power of attorney without actual knowledge of the occurrence of a terminating circumstance, an affidavit may be executed by the agent at any time, stating at the time of doing an act pursuant to the power of attorney, he or she did not have actual knowledge of the occurrence of the terminating circumstance. The affidavit shall constitute conclusive proof of the nontermination of the power of attorney at that time, in the absence of fraud. If the exercise of the power requires execution and delivery of any instrument that is recordable, the affidavit may also be recorded and shall be cross-referenced to the other instrument.

(e) A power of attorney coupled with an interest in a commercial transaction shall not be subject to revocation if the power of attorney states that it is irrevocable. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3508. Durable powers of attorney; when power of attorney not affected by disability

(a) A durable power of attorney is created by an explicit term in the power of attorney that "This power of attorney shall not be affected by the subsequent disability or incapacity of the principal," or similar words showing the intent of the principal that the authority given the agent is intended to be exercisable notwithstanding the principal's subsequent disability or incapacity.

(b) If the principal intends that the power of attorney become effective upon the principal's subsequent disability or incapacity, the power of attorney shall state that fact, and specify the manner in which the disability or incapacity is to be determined.

(c) All acts done by an agent pursuant to a durable power of attorney during any period of disability or incapacity of the principal shall have the same effect as if the principal were not disabled or incapacitated. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3509. Effect of subsequent involuntary guardianship on power of attorney

(a) On motion filed in connection with a petition for appointment of an involuntary guardian or on petition of a guardian if one has been appointed, the probate division of the superior court shall consider whether the authority of an agent designated pursuant to a previously executed power of attorney should continue undisturbed or be limited, suspended or terminated. The court may issue an order limiting, suspending or terminating the power of attorney only upon determining that to do so would be in the best interests of the ward.

(b) Upon a finding by a probate division of the superior court that appointment of a guardian is warranted, pursuant to a petition for involuntary guardianship under subchapter 12 of chapter 111 of this title, if the principal has nominated a guardian in a previously executed power of attorney or other document, the probate division of the superior court shall appoint as guardian the person so nominated unless the court determines that to do so would not be in the best interests of the ward.

(c) In determining the best interests of the ward, the court shall consider, at a minimum, the following factors:

(1) the preferences of the ward, including the identity of the agent and the scope of the agent's authority, as expressed in the power of attorney;

(2) whether the agent was appointed because he or she has special skills or expertise;

(3) whether a guardian is needed to perform duties for which authority was not given under the power of attorney;

(4) whether the exercise of concurrent powers is advisable when the scope of the agent's authority overlaps with the authority of the guardian;

(5) whether the agent and the guardian are able to perform their respective duties in a collaborative manner that does not compromise the best interests of the ward;

(6) whether the agent has violated the provisions of this subchapter or the terms of the power of attorney, breached his or her fiduciary duty, failed to perform duties under the power, or is unable or unwilling to perform duties under the power of attorney;

(7) whether the power of attorney was improperly executed;

(8) whether the principal executed the power of attorney as the result of duress, coercion, fraud or undue influence; or

(9) whether the principal lacked the capacity to create the power of attorney at the time of execution.

(d) If a guardian is appointed for the principal and the court determines that the previously executed power of attorney should remain in effect, the agent shall account to the guardian rather than the principal. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002; amended 2009, No. 154 (Adj. Sess.), § 238a, eff. Feb. 1, 2011.)

§ 3510. Action for accounting; declaratory relief; termination of power of attorney

(a) A principal may file a petition in superior court to compel the agent to submit an accounting or report his or her acts as agent to the principal or for the purposes listed in subdivisions (c)(1)-(3) of this section.

(b) The commissioner of disabilities, aging, and independent living, or designee, acting pursuant to chapter 69 of Title 33, may also file a petition in superior court for the purposes listed in subsection (c) of this section. If, upon motion of the principal, the court determines that the principal is capable of expressing his or her opinion and does not wish the commissioner, or designee, to pursue the petition, the court shall dismiss the petition unless the court finds the opinion is the product of duress or undue influence.

(c) A petition may be filed for the following purposes:

(1) To determine whether a power of attorney is in effect or has been terminated or revoked.

(2) To determine the legality of acts, proposed acts, or omissions of an agent.

(3) To enjoin the agent from taking unauthorized or illegal acts or to compel the agent to act, if the terms of the power of attorney provide that the agent has a duty to act, pursuant to section 3506 of this title.

(4) To compel the agent to submit an accounting or to report his or her acts as agent to the commissioner of disabilities, aging, and independent living, acting pursuant to subsection (b) of this section, upon a showing that there is good cause to believe:

(A) the agent has violated the provisions of this chapter or the terms of the power of attorney, has breached his or her fiduciary duty to the principal, or is unfit to perform his or her duties under the power

of attorney; and

(B) that, at the time of the petition, the principal lacked the capacity to request an accounting.

(5) To declare that the power of attorney shall be terminated upon determination by the court that the power of attorney was improperly executed, the principal executed the power of attorney as the result of duress, fraud or undue influence, the principal lacked the capacity to create the power of attorney at the time of execution, the agent has violated the provisions of this chapter or the terms of the power of attorney, has breached his or her fiduciary duty to the principal, or is unfit to perform his or her duties under the power of attorney.

(d)(1) In a proceeding under this section, commenced by the filing of a petition by a principal or the principal's legal representative, the court may order an agent to pay reasonable attorney's fees to the principal if the court determines that the agent has clearly violated the provisions of this chapter or the terms of the power of attorney, his or her fiduciary duties under the power of attorney, or has failed without any reasonable cause or justification to submit accountings or reports after written request.

(2) In a proceeding under this section, commenced by the filing of a petition by the commissioner of disabilities, aging, and independent living, or designee, the court may order the commissioner to pay reasonable attorney's fees to the agent if the court finds that the petition was filed without a substantial basis in law or fact.

(e) The principal and the agent shall be parties to any petition brought under this section. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002; amended 2005, No. 174 (Adj. Sess.), § 26.)

§ 3511. Remedies for violation by agent

Any principal who sustains damages or injury as a result of an agent's action or inaction in violation of this chapter, the terms of a power of attorney, or the agent's fiduciary duties under a power of attorney may sue for appropriate equitable relief, and may sue and recover from the agent the amount of his or her damages, costs, and reasonable attorney's fees. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3512. Other common law and statutory remedies still available

Nothing in this subchapter shall be construed to abrogate any other causes of action or relief at law or equity to which a principal is entitled under other statutes or at common law. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3513. Presumption of validity

Any power of attorney executed as provided in this subchapter shall be presumed valid. No third party with whom an agent seeks to act shall require an additional or different form of power of attorney. A photocopy or electronically transmitted facsimile of a duly executed original power of attorney may be relied upon to the same extent as the original. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3514. Reciprocity

Nothing in this subchapter limits the enforceability of a power of attorney or similar instrument executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3515. Provisions of statute implied; may not be waived; severable

(a) The duties and obligations of agents under this subchapter shall be deemed incorporated into all powers of attorney.

(b) Any term of a power of attorney, executed after the effective date of this subchapter, which purports to waive, or which is otherwise inconsistent with, the provisions of this subchapter, shall be void and unenforceable.

(c) If any term of a power of attorney is held to be invalid, the invalidity does not affect other terms of the power of attorney that can be given effect without the invalid term. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002.)

§ 3516. Effective date; effect on existing powers of attorney

(a) A power of attorney shall be valid if it:

(1) complies with the terms of this subchapter; or

(2) is executed before July 1, 2002 and valid under common law or statute existing at the time of execution.

(b) If a power of attorney executed before July 1, 2002 was valid under common law or statute existing at the time of execution, any exercise of authority under the power of attorney, whether before or after July 1, 2002, shall be deemed valid if the exercise complies with common law or statute existing at the time of execution. (Added 2001, No. 135 (Adj. Sess.), § 2, eff. June 13, 2002; amended 2011, No. 144 (Adj. Sess.), § 4, eff. May 15, 2012.)
