

House Bill 897 (AS PASSED HOUSE AND SENATE)

By: Representatives Efstration of the 104<sup>th</sup>, Willard of the 51<sup>st</sup>, Trammell of the 132<sup>nd</sup>, Morris of the 156<sup>th</sup>, and Caldwell of the 131<sup>st</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 6B of Title 10 of the Official Code of Georgia Annotated, relating to the  
2 "Uniform Power of Attorney Act," so as to revise the short title; to provide for definitions;  
3 to change provisions relating to applicability; to change provisions relating to the execution  
4 of a power of attorney and the effect of a photocopy of it; to clarify provisions relating to the  
5 incapacity of a principal; to change provisions relating to the termination of a power of  
6 attorney; to clarify the role of a successor agent; to change provisions relating to actions of  
7 agents; to change provisions relating to a petition for construction of a power of attorney; to  
8 change provisions relating to acceptance of and reliance upon a power of attorney; to change  
9 provisions relating to liability for refusal to accept a power of attorney; to change provisions  
10 relating to an agent's authority that requires a specific grant or authority and granting general  
11 authority; to add a provision relating to the authority of an agent; to change provisions related  
12 to the operation of an entity or business; to add provisions relating to an agent's authority  
13 relating to estates, trusts, and other beneficial interests; to change provisions relating to an  
14 agent's authority relating to personal and family maintenance; to change provisions relating  
15 to an agent's authority relating to gifts; to revise the form power of attorney; to change  
16 provisions relating to the application of Chapter 6 of this title; to update cross-references to  
17 federal law; to provide for related matters; to repeal conflicting laws; and for other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 style="text-align:center">**SECTION 1.**

20 Chapter 6B of Title 10 of the Official Code of Georgia Annotated, relating to the "Uniform  
21 Power of Attorney Act," so as to revise Code Section 10-6B-1, relating to the short title, as  
22 follows:

23 "10-6B-1.

24 This chapter shall be known and may be cited as the 'Georgia Uniform Power of Attorney  
25 Act."

26 **SECTION 2.**

27 Said chapter is further amended by adding a new paragraph to Code Section 10-6B-2,  
28 relating to definitions, to read as follows:

29 "(3.1) 'Gift' means a transfer of property for less than adequate consideration in money  
30 or money's worth that is not a renunciation within the meaning of Code Section 53-1-20."

31 **SECTION 3.**

32 Said chapter is further amended by revising Code Section 10-6B-3, relating to applicability  
33 and exclusions, as follows:

34 "10-6B-3.

35 (a) This chapter shall apply to all powers of attorney except:

36 (1) A power to the extent it is coupled with an interest in the subject of the power,  
37 including a power given to or for the benefit of a creditor in connection with a credit  
38 transaction;

39 (2) A power to make health care decisions;

40 (3) ~~A proxy or other~~ Any delegation to exercise of voting, rights or management, or  
41 similar rights with respect related to the governance or administration of an entity or  
42 business, including, but not limited to, delegation of voting or management rights;

43 (4) A power created on a form prescribed by a government or governmental subdivision,  
44 agency, or instrumentality for a governmental purpose;

45 ~~Transaction specific powers of attorney, including, but not limited to, powers of~~  
46 ~~attorney under Chapter 6 of this title~~ Powers of attorney that only grant authority with  
47 respect to a single transaction or series of related transactions involving real estate; and

48 (6) Powers of attorney provided for under Titles 19 and 33; and

49 (7) As set forth in Code Section 10-6B-81.

50 ~~(b) A power of attorney shall not authorize an agent to create a will."~~

51 **SECTION 4.**

52 Said chapter is further amended by revising Code Section 10-6B-5, relating to the execution  
53 of a power of attorney, as follows:

54 "10-6B-5.

55 (a) A power of attorney shall be:

56 (1) Signed by the principal or by another individual in such principal's presence at the  
57 principal's express direction;

58 (2) Attested in the presence of the principal by ~~one or more~~ a competent witnesses  
59 witness who is not also named as an agent in the power of attorney being attested; and

60 (3) Attested as set forth in Code Section 44-2-15, in the presence of the principal, by an  
 61 individual before a notary public or other individual authorized by law to administer  
 62 oaths who is not a witness for purposes of paragraph (2) of this Code section subsection  
 63 and who is not also named as an agent in the power of attorney being attested.

64 (b) ~~All signatures and attestations required by subsection (a) of this Code section shall be~~  
 65 ~~performed and conducted in the presence of all parties~~ The individuals provided for in  
 66 paragraphs (2) and (3) of subsection (a) of this Code section shall not be required to attest  
 67 to the signature of any person other than the principal or the individual signing at the  
 68 principal's express direction."

69 **SECTION 5.**

70 Said chapter is further amended by revising Code Section 10-6B-6, relating to the validity  
 71 of power of attorney and the effect of a photocopy, as follows:

72 "10-6B-6.

73 (a) A power of attorney executed in this state on or after July 1, 2017, shall be valid if its  
 74 execution complies with Code Section 10-6B-5.

75 ~~(b) This chapter shall not affect a power of attorney executed prior to July 1, 2017, to~~  
 76 ~~which the former provisions of Article 7 of Chapter 6 of this title, as such existed on June~~  
 77 ~~30, 2017, shall continue to apply.~~

78 ~~(c)~~(b) A power of attorney executed other than in this state shall be valid in this state if,  
 79 when the power of attorney was executed, the execution complied with:

80 (1) The law of the jurisdiction that determines the meaning and effect of the power of  
 81 attorney pursuant to Code Section 10-6B-7; or

82 (2) The requirements for a military power of attorney pursuant to 10 U.S.C. Section  
 83 1044b, in effect on February 1, ~~2017~~ 2018.

84 ~~(d)~~(c) Except as otherwise provided by law other than this chapter, a photocopy or  
 85 electronically transmitted copy of an original power of attorney shall have the same effect  
 86 as the original; provided, however, that when recording a power of attorney in connection  
 87 with a conveyance involving real property, ~~an original~~ a power of attorney shall be used  
 88 in a form that complies with Part 1 of Article 1 of Chapter 2 of Title 44."

89 **SECTION 6.**

90 Said chapter is further amended by adding a new subsection to Code Section 10-6B-8,  
 91 relating to the nomination of a conservator and the relationship of the agent to a  
 92 court-appointed fiduciary, to read as follows:

93 "(d) A finding by a court that a principal is incapacitated for purposes of this chapter shall  
 94 neither constitute a determination of nor create a presumption regarding such principal's  
 95 need for a guardian or conservator under Title 29."

96 **SECTION 7.**

97 Said chapter is further amended in Code Section 10-6B-10, relating to the termination of a  
 98 power of attorney and agent's authority and a third party reliance, by revising subsections (a)  
 99 and (b) and adding a new subsection to read as follows:

100 "(a) A power of attorney shall terminate when:

101 (1) The principal dies;

102 (2) The principal becomes incapacitated, if the power of attorney specifically provides  
 103 that it is not durable;

104 (3) The principal revokes the power of attorney, ~~provided that the principal provides the~~  
 105 ~~agent with notice of such revocation by certified mail and provided that such notice is~~  
 106 ~~filed with the clerk of superior court in the county of domicile of the principal;~~

107 (4) The principal revokes the agent's authority or the agent resigns, becomes  
 108 incapacitated, or dies and the power of attorney does not provide for another agent to act  
 109 under such power of attorney;

110 (5) The power of attorney provides that it terminates; or

111 (6) The purpose of the power of attorney is accomplished; ~~or~~

112 ~~(7) One of the events specified in paragraph (3) or (4) of this subsection occurs and the~~  
 113 ~~power of attorney does not provide for another agent to act under the power of attorney.~~

114 (b) An agent's authority shall terminate when:

115 (1) The agent resigns, becomes incapacitated, or dies;

116 (2) The principal revokes the agent's authority, ~~provided that the principal provides the~~  
 117 ~~agent with notice of such revocation by certified mail and provided that such notice is~~  
 118 ~~filed with the clerk of superior court in the county of domicile of the principal;~~

119 (3) An action is filed for the dissolution or annulment of the agent's marriage to the  
 120 principal or their legal separation, unless the power of attorney otherwise provides; or

121 (4) The power of attorney terminates."

122 "(g) Nothing in this Code section shall prevent a principal who notifies an agent of the  
 123 revocation of the agent's authority or power of attorney by certified mail or statutory  
 124 overnight delivery from filing such notification and evidence of its receipt by the agent  
 125 with the clerk of superior court in the county of the principal's domicile for the purposes  
 126 of establishing such agent had knowledge of the principal's revocation."

127 **SECTION 8.**

128 Said chapter is further amended by revising paragraph (2) of subsection (b) of Code Section  
 129 10-6B-11, relating to the designation of coagents, the role of a successor agent, and  
 130 notification of violation, as follows:

131 ~~"(2) Once a predecessor agent resigns, becomes incapacitated, is no longer qualified to~~  
 132 ~~serve, or has declined to serve, he or she shall be permanently barred from serving as an~~  
 133 ~~agent under the then existing power of attorney~~ An agent who has been incapacitated for  
 134 more than six months shall not resume acting as an agent pursuant to the power of  
 135 attorney that created the agency during which the agent became incapacitated."

136 **SECTION 9.**

137 Said chapter is further amended by revising subsection (a) of Code Section 10-6B-14,  
 138 relating to actions of agents, as follows:

139 "(a) Notwithstanding provisions in the power of attorney, an agent that has accepted  
 140 ~~appointment shall act:~~

- 141 (1) Appointment shall act in ~~in~~ accordance with the principal's reasonable expectations  
 142 to the extent actually known by the agent and, otherwise, in the principal's best interest;  
 143 (2) Appointment shall act in ~~in~~ good faith; ~~and~~  
 144 (3) Appointment shall act only ~~Only~~ within the scope of authority granted in the power  
 145 of attorney; ~~and~~  
 146 (4) Delegation of fiduciary powers under paragraph (7) of subsection (a) of Code Section  
 147 10-6B-40, shall have the same duties and liabilities as the principal with respect to such  
 148 fiduciary powers."

149 **SECTION 10.**

150 Said chapter is further amended by revising Code Section 10-6B-16, relating to the petition  
 151 for construction of power of attorney or role of agent, as follows:

152 "10-6B-16.

153 (a) The following persons may petition a court to construe a power of attorney or review  
 154 the agent's conduct, and grant appropriate relief:

- 155 (1) The principal or the agent;  
 156 (2) A guardian, conservator, personal representative, or other fiduciary acting for the  
 157 principal or for the principal's estate;  
 158 (3) A person authorized to make health care decisions for the principal;  
 159 (4) The principal's spouse, parent, or descendant;  
 160 (5) An individual who would qualify as a presumptive heir of the principal;

161 (6) A person named as a beneficiary to receive any property, benefit, or contractual right  
 162 on the principal's death or as a beneficiary of a trust created by or for the principal that  
 163 has a financial interest in the principal's estate;

164 (7) A governmental agency having authority to protect the welfare of the principal;

165 (8) The principal's caregiver or another person that demonstrates sufficient interest in the  
 166 principal's welfare; and

167 (9) A person asked to accept the power of attorney.

168 (b) If a petition under this Code section was in the best interest of the principal and the  
 169 agent admitted to a violation of this chapter or a court found that such agent violated this  
 170 chapter, a court may order the principal to reimburse the persons, other than a  
 171 governmental agency, who made such petition for part or all of the reasonable attorney's  
 172 fees and expenses of litigation incurred by such persons, provided that such fees and  
 173 expenses were not imposed on the agent, were related to the agent's violation of this  
 174 chapter, and were reasonable in the context of the agent's misconduct and the general  
 175 circumstances of the principal.

176 ~~(b)~~(c) Upon motion by the principal, the court shall dismiss a petition filed under this Code  
 177 section, unless the court finds that the principal lacks capacity to revoke the agent's  
 178 authority or the power of attorney."

179 **SECTION 11.**

180 Said chapter is further amended by revising Code Section 10-6B-19, relating to acceptance  
 181 of and reliance upon a power of attorney, as follows:

182 "10-6B-19.

183 (a) As used in this Code section, the term 'attested power of attorney' means a power of  
 184 attorney that was purportedly attested as set forth in Code Section 44-2-15.

185 (b) A person that in good faith accepts a an attested power of attorney without actual  
 186 knowledge that the signature is not genuine may rely upon the presumption under Code  
 187 Section 10-6B-5 that the signature is genuine.

188 ~~(b)~~(c) A person that in good faith accepts a an attested power of attorney without actual  
 189 knowledge that ~~the~~ such power of attorney is void, invalid, or terminated; ; that the  
 190 purported agent's authority is void, invalid, or terminated; ; or that the agent is exceeding  
 191 or improperly exercising the agent's authority may rely upon ~~the~~ such power of attorney  
 192 as if ~~the power of attorney were~~ it were genuine, valid, and still in effect; ; the agent's  
 193 authority were genuine, valid, and still in effect; ; and the agent had not exceeded and had  
 194 properly exercised the authority.

195 ~~(c)~~(d) A person that is asked to accept a an attested power of attorney may request, and  
 196 rely upon, without further investigation:

- 197 (1) An agent's certification under penalty of perjury of any factual matter concerning the  
 198 principal, agent, or such power of attorney;
- 199 ~~(2) A coagent's certification under penalty of perjury of any factual matter concerning~~  
 200 ~~the principal, agent, or power of attorney;~~
- 201 ~~(3)~~(2) An English translation of the such power of attorney if ~~the power of attorney it~~  
 202 contains, in whole or in part, language other than English; and
- 203 ~~(4)~~(3) An opinion of an attorney as to any matter of law concerning the such power of  
 204 attorney if the person making the request provides in a writing or other record the reason  
 205 for the request.
- 206 ~~(d)~~(e) An English translation or an opinion of an attorney requested under this Code  
 207 section shall be provided at the principal's expense unless the request is made more than  
 208 seven business days after ~~the~~ an attested power of attorney is presented for acceptance.
- 209 ~~(e)~~(f) For purposes of this Code section, a person that conducts activities through  
 210 employees shall be without actual knowledge of a fact relating to a an attested power of  
 211 attorney, a principal, or an agent if the employee conducting the transaction involving the  
 212 such power of attorney is without actual knowledge of the fact."

## 213 SECTION 12.

214 Said chapter is further amended by revising Code Section 10-6B-20, relating to liability for  
 215 refusal to accept a power of attorney, as follows:

216 "10-6B-20.

217 (a) As used in this Code section, the term '~~statutory~~':

218 (1) 'Attested statutory form power of attorney' means a statutory form power of attorney  
 219 that was purportedly attested as set forth in Code Section 44-2-15.

220 (2) 'Statutory form power of attorney' means ~~using~~ a power of attorney:

221 ~~(1)~~(A) Substantially in the ~~The~~ form set forth in Code Section 10-6B-70;

222 ~~(2)~~(B) That meets the requirements for a ~~A~~ military power of attorney pursuant to 10  
 223 U.S.C. Section 1044b, in effect on February 1, ~~2017~~ 2018; or

224 ~~(3)~~(C) That ~~A document that~~ substantially reflects the language in the form set forth  
 225 in Code Section 10-6B-70, ~~so long as it is witnessed as required by Code Section~~  
 226 ~~10-6B-5.~~

227 (b) For purposes of:

228 (1) Subparagraph (a)(2)(C) of this Code section, a power of attorney shall be deemed to  
 229 substantially reflect the language in the form set forth in Code Section 10-6B-70 if it:

230 (A) Grants or withholds authority for each of the descriptive terms for the subjects  
 231 described in Code Sections 10-6B-43 through 10-6B-56, either by reference to the  
 232 descriptive terms or citation to the specific Code sections;

233 (B) Grants or withholds authority for each of the powers described in subsection (a)  
 234 of Code Section 10-6B-40, either by reference to the powers or citation to such  
 235 subsection; and

236 (C) Contains a provision substantially similar to the following: 'Any person, including  
 237 my agent, may rely upon the validity of this power of attorney or a copy of it unless that  
 238 person has actual knowledge it has terminated or is invalid.'; and

239 (2) Subparagraphs (1)(A) and (1)(B) of this subsection, a power of attorney shall be  
 240 deemed to satisfy the requirement to grant authority with respect to a subject described  
 241 in Code Sections 10-6B-43 through 10-6B-56 and a power described in subsection (a) of  
 242 Code Section 10-6B-40, so long as it grants some authority with respect to such subject  
 243 or power and regardless of whether it modifies the authority granted with respect to such  
 244 subject or power under Code Sections 10-6B-43 through 10-6B-56 and subsection (a) of  
 245 Code Section 10-6B-40.

246 (c) Except as otherwise provided in subsection ~~(c)~~ (d) of this Code section:

247 (1) A person shall either accept a an attested statutory form power of attorney or request  
 248 a certification, a translation, or an opinion of an attorney under subsection ~~(c)~~ (d) of Code  
 249 Section 10-6B-19 no later than seven business days after presentation of ~~the~~ such power  
 250 of attorney for acceptance;

251 (2) If a person requests a certification, a translation, or an opinion of an attorney under  
 252 subsection ~~(c)~~ (d) of Code Section 10-6B-19, the person shall accept the attested statutory  
 253 form power of attorney no later than five business days after receipt of the certification,  
 254 translation, or opinion of an attorney; and

255 (3) A person shall not require an additional or different form of the attested statutory  
 256 form power of attorney for authority granted in the ~~power of attorney~~ document  
 257 presented.

258 ~~(c)~~(d) A person shall not be required to accept a an attested statutory form power of  
 259 attorney if:

260 (1) The person is not otherwise required to engage in a transaction with the principal in  
 261 the same circumstances;

262 (2) Engaging in a transaction with the agent or the principal in the same circumstances  
 263 would be inconsistent with federal law;

264 (3) The person has actual knowledge of the termination of the agent's authority or of ~~the~~  
 265 such power of attorney before exercise of ~~the~~ such power of attorney;

266 (4) A request for a certification, a translation, or an opinion of an attorney under  
 267 subsection ~~(c)~~ (d) of Code Section 10-6B-19 is refused;

268 (5) The person in good faith believes that ~~the~~ such power of attorney is not valid or that  
 269 the agent does not have the authority to perform the act requested, whether or not a

270 certification, a translation, or an opinion of an attorney under subsection ~~(e)~~ (d) of Code  
 271 Section 10-6B-19 has been requested or provided; or

272 (6) The person makes, or has actual knowledge that another person has made, a report  
 273 to protective services as such term is defined in Code Section 30-5-1 stating a good faith  
 274 belief that the principal may be subject to physical or financial abuse, neglect,  
 275 exploitation, or abandonment by the agent or a person acting for or with the agent.

276 ~~(d)~~(e) A person that refuses to accept a an attested statutory form power of attorney in  
 277 violation of this Code section shall be subject to:

278 (1) A court order mandating acceptance of ~~the~~ such power of attorney; and

279 (2) Liability for reasonable attorney's fees and expenses of litigation incurred in any  
 280 action or proceeding that confirms the validity of the power of attorney or mandates  
 281 acceptance of ~~the~~ such power of attorney.

282 ~~(e)~~(f) For purposes of this Code section, a person that conducts activities through  
 283 employees shall be without actual knowledge of a fact relating to a an attested statutory  
 284 form power of attorney, a principal, or an agent if the employee conducting the transaction  
 285 involving ~~the~~ such power of attorney is without actual knowledge of the fact."

286

### SECTION 13.

287 Said chapter is further amended by revising Code Section 10-6B-40, relating to an agent's  
 288 authority that requires a specific grant and granting of general authority, as follows:

289 "10-6B-40.

290 (a)(1) An agent under a power of attorney may do the following on behalf of the  
 291 principal or with the principal's property only if the power of attorney expressly grants  
 292 the agent the authority and exercise of the authority is not otherwise prohibited by another  
 293 agreement or instrument to which the authority or property is subject:

294 ~~(1)~~(A) Create, fund, amend, revoke, or terminate an inter vivos trust;

295 ~~(2)~~(B) Make a gift;

296 ~~(3)~~(C) Create or change rights of survivorship;

297 ~~(4)~~(D) Create or change a beneficiary designation;

298 ~~(5)~~(E) Authorize another person to exercise ~~Delegate~~ authority granted under the  
 299 power of attorney;

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

302 ~~(7)~~(G) Exercise fiduciary powers, other than those associated with an ownership  
 303 interest as provided under paragraph (14) of Code Section 10-6B-48, that the principal  
 304 has authority to delegate;

305 ~~(8)~~(H) Exercise authority over the content of electronic communications, as defined  
 306 in 18 U.S.C. Section 2510(12), in effect on February 1, ~~2017~~ 2018, sent or received by  
 307 the principal; or

308 ~~(9)~~(I) Renounce an interest in ~~Disclaim~~ property, including a power of appointment.  
 309 (2) A failure to grant authority under subparagraphs (1)(A) through (1)(D) of this  
 310 subsection shall not prevent an agent from accessing information, depositing money, or  
 311 withdrawing money, pursuant to the agent's other authority and in accordance with the  
 312 agent's duties to the principal, from a revocable trust or an account or other banking  
 313 arrangement with a bank or other financial institution.

314 (b) Notwithstanding a grant of authority to:

315 (1) To do an act described in subsection (a) of this Code section, unless the power of  
 316 attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the  
 317 principal, shall not exercise authority under a power of attorney to create in the agent, or  
 318 in an individual to whom the agent owes a legal obligation of support, an interest in the  
 319 principal's property, whether by gift, right of survivorship, beneficiary designation,  
 320 disclaimer, or otherwise; and

321 (2) To exercise a fiduciary power described in subparagraph (a)(1)(G), an agent may  
 322 only exercise those fiduciary powers of the principal that are expressly and clearly  
 323 identified in the power of attorney. In identifying such fiduciary powers, the principal  
 324 shall specify the persons for which the principal acts as a fiduciary. If such persons are  
 325 not individuals, the principal shall specify only the estate, trust, or other legal or  
 326 commercial entity for which the principal acts as a fiduciary. With respect to such an  
 327 entity, the principal shall not be required to specify additional persons such as  
 328 beneficiaries, members, partners, or other similar persons.

329 (c) Subject to subsections (a), (b), (d), and (e) of this Code section, if a power of attorney  
 330 grants to an agent authority to do all acts that a principal could do, the agent has the general  
 331 authority described in Code Sections 10-6B-43 through 10-6B-55.

332 (d) Unless the power of attorney otherwise provides, a grant of authority to make a gift  
 333 shall be subject to Code Section 10-6B-56.

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

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

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

344 (h) A power of attorney shall not authorize an agent to:

345 (1) Execute or revoke any will or codicil for the principal;

346 (2) Make an affidavit as to the personal knowledge of the principal; or

347 (3) Vote in any public election on behalf of the principal."

348 **SECTION 14.**

349 Said chapter is further amended by revising paragraphs (9) and (10) of Code Section  
 350 10-6B-42, relating to construction of authority of agent generally, as follows:

351 "(9) Except as otherwise provided under federal privacy laws, access communications  
 352 intended for, and communicate on behalf of the principal, whether by mail, electronic  
 353 transmission, telephone, or other means; ~~and~~

354 (10) Exercise all authority over digital assets for which an express grant by the principal  
 355 is not required; and

356 ~~(10)~~(11) Do any lawful act with respect to the subject and all property related to the  
 357 subject."

358 **SECTION 15.**

359 Said chapter is further amended in Code Section 10-6B-48, relating to the operation of an  
 360 entity or business, by deleting "and" at the end of paragraph (12), by replacing the period  
 361 with "; and" at the end of paragraph (13), and by adding a new paragraph (14) to read as  
 362 follows:

363 "(14) Exercise the principal's fiduciary powers associated with an ownership interest."

364 **SECTION 16.**

365 Said chapter is further amended by revising paragraphs (7) and (8) of Code Section  
 366 10-6B-50, relating to estates, trusts, and other beneficial interests, as follows:

367 "(7) Create, amend, and revoke a revocable trust so long as the terms of the trust only  
 368 authorize distributions that would be allowable under the power of attorney if the  
 369 principal held the trust assets outright and provide for the distribution of all trust assets  
 370 to the principal's estate upon the principal's death;

371 (8) Transfer an interest of the principal in real property, stocks and bonds, accounts with  
 372 financial institutions or securities intermediaries, insurance, annuities, and other property  
 373 to the trustee of a revocable trust created by the principal as settlor or as described in  
 374 paragraph (7) of this Code section; and

375 ~~(8)~~(9) With respect to a bona fide dispute, Reject, renounce, disclaim, release, or consent  
 376 to a reduction in or modification of a share in or payment from an estate, trust, or other  
 377 beneficial interest."

378 **SECTION 17.**

379 Said chapter is further amended by revising paragraph (1) of subsection (a) of Code Section  
 380 10-6B-52, relating to personal and family maintenance, as follows:

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

384 (A) The principal's minor children;

385 (B) The principal's adult children who are pursuing a postsecondary school education  
 386 and are under 25 years of age;

387 (C) The principal's parents or the parents of the principal's spouse, if the principal had  
 388 established a pattern of such payments or indicated a clear intent to make such  
 389 payments; and

390 (D) The principal's minor dependents who are not also the principal's children, if the  
 391 principal had established a pattern of such payments or indicated a clear intent to make  
 392 such payments;

393 (E) The principal's adult descendants who are under 25 years of age, not the principal's  
 394 children, and pursuing a postsecondary school education, if the principal had  
 395 established a pattern of such payments or indicated a clear intent to make such  
 396 payments; and

397 ~~(D)~~(F) Any other individuals legally entitled to be supported by the principal;"

398 **SECTION 18.**

399 Said chapter is further amended by revising Code Section 10-6B-56, relating to gifts, as  
 400 follows:

401 "10-6B-56.

402 (a) As used in this Code section, the term a gift ~~for~~:

403 (1) 'For the benefit of' means a person includes a gift to a trust, an account under the  
 404 Uniform Transfers to Minors Act, ~~and~~ a tuition savings account or prepaid tuition plan  
 405 as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529, in effect on  
 406 February 1, ~~2017~~, 2018 or an ABLE account as defined under Internal Revenue Code  
 407 Section 529A, 26 U.S.C. Section 529A, in effect on February 1, 2018.

408 (2) 'Gift splitting' means the election to have a gift treated as made one-half by the  
 409 transferor and one-half by the spouse pursuant to Internal Revenue Code Section 2513,  
 410 26 U.S.C. Section 2513, in effect on February 1, 2018.

411 (3) 'Section 2503(b) amount' means the federal gift tax exclusion under Internal Revenue  
 412 Code Section 2503(b), 26 U.S.C. Section 2503(b), in effect on February 1, 2018, indexed  
 413 for future years under the provisions in effect on February 1, 2018.

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

416 (1) Make outright to, or for the benefit of, a person, a gift of any of the principal's  
 417 property, including by the exercise of a presently exercisable general power of  
 418 appointment held by the principal, in the following amounts, without regard to whether  
 419 the federal gift tax exclusion applies to the gift:

420 (A) If the principal is not married or is legally separated at the time of the gift, in an  
 421 amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion  
 422 under Internal Revenue Code Section 2503(b), 26 U.S.C. Section 2503(b), in effect on  
 423 February 1, 2017, without regard to whether the federal gift tax exclusion applies to the  
 424 gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal  
 425 Revenue Code Section 2513, 26 U.S.C. Section 2513, in effect on February 1, 2017, in  
 426 an amount per donee not to exceed twice the annual federal gift tax exclusion limit  
 427 amount; or

428 (B) If the principal is married and not legally separated at the time of the gift, in an  
 429 amount per donee not to exceed twice the Section 2503(b) amount; and

430 ~~(2) Consent, pursuant to Internal Revenue Code Section 2513, 26 U.S.C. Section 2513,~~  
 431 ~~in effect on February 1, 2017, to the splitting of a gift made by the principal's spouse in~~  
 432 ~~an amount per donee not to exceed the aggregate annual gift tax exclusions for both~~  
 433 ~~spouses to gift splitting if the principal has a spouse for purposes of gift splitting.~~

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

- 438 (1) The value and nature of the principal's property;  
 439 (2) The principal's foreseeable obligations and need for maintenance;  
 440 (3) Minimization of taxes, including income, estate, inheritance, generation-skipping  
 441 transfer, and gift taxes;  
 442 (4) Eligibility for a benefit, a program, or assistance under a law or regulation; and  
 443 (5) The principal's personal history of making or joining in making gifts."

444 **SECTION 19.**

445 Said chapter is further amended by revising Code Section 10-6B-70, relating to the form  
446 power of attorney, as follows:

447 "10-6B-70.

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

450 'State of Georgia

451 County of \_\_\_\_\_

452 **STATUTORY FORM POWER OF ATTORNEY**

453 **IMPORTANT INFORMATION**

454 This power of attorney authorizes another person (your agent) to make decisions  
455 concerning your property for you (the principal). Your agent will be able to make  
456 decisions and act with respect to your property (including your money) whether or not you  
457 are able to act for yourself. The meaning of authority over subjects listed on this form is  
458 explained in O.C.G.A. Chapter 6B of Title 10.

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

460 You should select someone you trust to serve as your agent. Unless you specify otherwise  
461 in the Special Instructions, generally the agent's authority will continue until you die or  
462 revoke the power of attorney or the agent resigns or is unable to act for you. ~~If you revoke~~  
463 ~~the power of attorney, you must communicate your revocation by notice to the agent in~~  
464 ~~writing by certified mail and file such notice with the clerk of superior court in your county~~  
465 ~~of domicile.~~

466 Your agent is not entitled to any compensation unless you state otherwise in the Special  
467 Instructions. Your agent shall be entitled to reimbursement of reasonable expenses  
468 incurred in performing the acts required by you in your power of attorney.

469 This form provides for designation of one agent. If you wish to name more than one agent,  
470 you may name a successor agent or name a coagent in the Special Instructions. Coagents  
471 will not be required to act together unless you include that requirement in the Special  
472 Instructions.

473 If your agent is unable or unwilling to act for you, your power of attorney will end unless  
474 you have named a successor agent. You may also name a second successor agent.

475 This power of attorney shall be durable unless you state otherwise in the Special  
476 Instructions.

477 This power of attorney becomes effective immediately unless you state otherwise in the  
478 Special Instructions.

479 **If you have questions about the power of attorney or the authority you are granting to**  
480 **your agent, you should seek legal advice before signing this form.**

481 **DESIGNATION OF AGENT**

482 I \_\_\_\_\_ (Name of principal)  
483 name the following person as my agent:

484 Name of agent: \_\_\_\_\_

485 Agent's address: \_\_\_\_\_

486 Agent's telephone number: \_\_\_\_\_

487 Agent's e-mail address: \_\_\_\_\_

488 **DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

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

490 Name of successor agent: \_\_\_\_\_

491 Successor agent's address: \_\_\_\_\_

492 Successor agent's telephone number: \_\_\_\_\_

493 Successor agent's e-mail address: \_\_\_\_\_

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

496 Name of second successor agent: \_\_\_\_\_

497 Second successor agent's address: \_\_\_\_\_

498 Second successor agent's telephone number: \_\_\_\_\_

499 Second successor agent's e-mail address: \_\_\_\_\_

500 **GRANT OF GENERAL AUTHORITY**

501 I grant my agent and any successor agent general authority to act for me with respect to the  
502 following subjects as defined in O.C.G.A. Chapter 6B of Title 10:

503 (INITIAL each subject you want to include in the agent's general authority. If you wish  
504 to grant general authority over all of the subjects, you may initial "all preceding subjects"  
505 instead of initialing each subject.)

- 506  Real property
- 507  Tangible personal property
- 508  Stocks and bonds
- 509  Commodities and options
- 510  Banks and other financial institutions
- 511  Operation of entity or business
- 512  Insurance and annuities
- 513  Estates, trusts, and other beneficial interests
- 514  Claims and litigation
- 515  Personal and family maintenance
- 516  Benefits from governmental programs or civil or military service
- 517  Retirement plans
- 518  Taxes
- 519  All preceding subjects

520 **GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

521 My agent SHALL NOT do any of the following specific acts for me UNLESS I have  
522 INITIALED the specific authority listed below:

523 (CAUTION: Granting any of the following will give your agent the authority to take  
524 actions that could significantly reduce your property or change how your property is  
525 distributed at your death. INITIAL ONLY the specific authority you WANT to give your  
526 agent. You should give your agent specific instructions in the Special Instructions when  
527 you authorize your agent to make gifts.)

- 528  Create, fund, amend, revoke, or terminate an inter vivos trust



560 **NOMINATION OF CONSERVATOR (OPTIONAL)**

561 If it becomes necessary for a court to appoint a conservator of my estate, I nominate the  
562 following person(s) for appointment:

563 Name of nominee for conservator of my estate:  
564 \_\_\_\_\_  
565 Nominee's address: \_\_\_\_\_  
566 Nominee's telephone number: \_\_\_\_\_  
567 Nominee's e-mail address: \_\_\_\_\_

568 **RELIANCE ON THIS POWER OF ATTORNEY**

569 Any person, including my agent, may rely upon the validity of this power of attorney or a  
570 copy of it unless that person has actual knowledge it has terminated or is invalid.

571 **SIGNATURE AND ACKNOWLEDGMENT**

572 \_\_\_\_\_  
573 Your signature \_\_\_\_\_  
Date

574 \_\_\_\_\_

575 Your name printed  
576 \_\_\_\_\_

577 \_\_\_\_\_

578 Your address  
579 \_\_\_\_\_

580 Your telephone number  
581 \_\_\_\_\_

582 Your e-mail address

583 This document was signed or acknowledged in my presence on \_\_\_\_\_,  
584 (Date)

585 by \_\_\_\_\_.  
586 (Name of principal)

587 \_\_\_\_\_  
588 (Witness's signature)

589 \_\_\_\_\_.

590 (Witness's name printed)

591 \_\_\_\_\_

592 \_\_\_\_\_

593 Witness's address

594 \_\_\_\_\_

595 Witness's telephone number

596 \_\_\_\_\_

597 Witness's e-mail address

598 State of Georgia

599 County of \_\_\_\_\_

600 This document was signed or acknowledged in my presence on \_\_\_\_\_,

601 (Date)

602 by \_\_\_\_\_.

603 (Name of principal)

604 \_\_\_\_\_ (Seal)

605 Signature of notary

606 My commission expires: \_\_\_\_\_

607 This document prepared by: \_\_\_\_\_.

**IMPORTANT INFORMATION FOR AGENT**

**Agent's Duties**

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked.

You must:

- (1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (2) Act in good faith;
- (3) Do nothing beyond the authority granted in this power of attorney; and

619 (4) Disclose your identity as an agent whenever you act for the principal by writing or  
 620 printing the name of the principal and signing your own name as "agent" in the following  
 621 manner:

622 \_\_\_\_\_ by \_\_\_\_\_ as Agent.  
 623 (Principal's name) (Your signature)

624 (Principal's name) by (Your signature) as Agent.

625 Unless the Special Instructions in this power of attorney state otherwise, you must also:

- 626 (1) Act loyally for the principal's benefit;  
 627 (2) Avoid conflicts that would impair your ability to act in the principal's best interest;  
 628 (3) Act with care, competence, and diligence;  
 629 (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the  
 630 principal;  
 631 (5) Cooperate with any person that has authority to make health care decisions for the  
 632 principal to do what you know the principal reasonably expects or, if you do not know  
 633 the principal's expectations, to act in the principal's best interest; and  
 634 (6) Attempt to preserve the principal's estate plan if you know the plan and preserving  
 635 the plan is consistent with the principal's best interest.

### 636 **Termination of Agent's Authority**

637 You must stop acting on behalf of the principal if you learn of any event that terminates  
 638 this power of attorney or your authority under this power of attorney. Events that terminate  
 639 a power of attorney or your authority to act under a power of attorney include:

- 640 (1) Death of the principal;  
 641 (2) The principal's revocation of your authority or the power of attorney ~~so as long as the~~  
 642 ~~revocation of the power of attorney is communicated to you in writing by certified mail~~  
 643 ~~and provided that such notice is filed with the clerk of superior court in the county of~~  
 644 ~~domicile of the principal;~~  
 645 (3) The occurrence of a termination event stated in the power of attorney;  
 646 (4) The purpose of the power of attorney is fully accomplished; or  
 647 (5) If you are married to the principal, a legal action is filed with a court to end your  
 648 marriage, or for your legal separation, unless the Special Instructions in this power of  
 649 attorney state that such an action will not terminate your authority.

650 **Liability of Agent**

651 The meaning of the authority granted to you is defined in O.C.G.A. Chapter 6B of Title 10.  
 652 If you violate O.C.G.A. Chapter 6B of Title 10 or act outside the authority granted, you  
 653 may be liable for any damages caused by your violation.

654 **If there is anything about this document or your duties that you do not understand,**  
 655 **you should seek legal advice."**

656 **SECTION 20.**

657 Said chapter is further amended by revising Code Section 10-6B-71, relating to the optional  
 658 form for agent certification of facts, as follows:

659 "10-6B-71.

660 The following optional form may be used by an agent to certify facts concerning a power  
 661 of attorney.

662 **'AGENT'S CERTIFICATION AS TO THE VALIDITY OF**  
 663 **POWER OF ATTORNEY AND AGENT'S AUTHORITY**

664 State of Georgia

665 County of \_\_\_\_\_

666 I, \_\_\_\_\_ (name of agent), certify under penalty  
 667 of perjury that \_\_\_\_\_ (name of principal) granted  
 668 me authority as an agent or successor agent in a power of attorney dated  
 669 \_\_\_\_\_.

670 I further certify that to my knowledge:

671 (1) The principal is alive and has not revoked the power of attorney or my authority to  
 672 act under the power of attorney, and the power of attorney and my authority to act under  
 673 the power of attorney have not terminated;

674 (2) If the power of attorney was drafted to become effective upon the happening of an  
 675 event or contingency, the event or contingency has occurred;

676 (3) If I were named as a successor agent, the prior agent is no longer able or willing to  
 677 serve; and

678 (4) \_\_\_\_\_  
 679 \_\_\_\_\_  
 680 \_\_\_\_\_  
 681 \_\_\_\_\_  
 682 \_\_\_\_\_

683 (Insert other relevant statements)

684 **SIGNATURE AND ACKNOWLEDGMENT**

685 \_\_\_\_\_

686 Agent's signature Date

687 \_\_\_\_\_

688 Agent's name printed

689 \_\_\_\_\_

690 \_\_\_\_\_

691 Agent's address

692 \_\_\_\_\_

693 Agent's telephone number

694 \_\_\_\_\_

695 Agent's e-mail address

696 This document was signed or acknowledged in my presence on \_\_\_\_\_,

697 (Date)

698 by \_\_\_\_\_

699 (Name of agent)

700 \_\_\_\_\_ (Seal)

701 Signature of notary

702 My commission expires: \_\_\_\_\_

703 This document prepared by: \_\_\_\_\_."

704 **SECTION 21.**

705 Said chapter is further amended by revising Code Section 10-6B-81, relating to the  
 706 application of Chapter 6, as follows:

707 "10-6B-81.

708 (a) Code Section 10-6B-19 shall apply retroactively to powers of attorney created before  
709 July 1, 2018. The remainder of this chapter shall not apply to a power of attorney executed  
710 before July 1, 2017.

711 (b) When Code Section 10-6B-3 applies to a power of attorney, Chapter 6 of this title shall  
712 not apply to a such power of attorney created pursuant to this chapter.

713 (c) When, other than Code Section 10-6B-19, this chapter does not apply to a power of  
714 attorney:

715 (1) It shall not affect the application of Chapter 6 of this title; and

716 (2) The former provisions of Article 7 of Chapter 6 of this title, as such existed on  
717 June 30, 2017, shall remain applicable."

718 **SECTION 22.**

719 Said chapter is further amended by replacing "February 1, 2017" with "February 1, 2018"  
720 wherever the former occurs in:

721 (1) Code Section 10-6B-9, relating to when power of attorney effective;

722 (2) Code Section 10-6B-22, relating to laws applicable to financial institutions and entities;

723 (3) Code Section 10-6B-52, relating to personal and family maintenance;

724 (4) Code Section 10-6B-54, relating to retirement plans; and

725 (5) Code Section 10-6B-55, relating to taxes.

726 **SECTION 23.**

727 All laws and parts of laws in conflict with this Act are repealed.