

## Power of Attorney for Property and Financial Matters (OH)

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A power of attorney form used by an individual residing in Ohio to authorize a third party to manage the individual's property and financial matters. This Standard Document has integrated notes and drafting tips where applicable.

### DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

A power of attorney for property and financial matters is a document in which an individual grants authority to another person to act for the individual regarding that individual's property and financial matters (R.C. 1337.22(G)). In an Ohio power of attorney (and in this Standard Document), generally the term:

- Principal refers to the individual granting the authority to act (R.C. 1337.22(I)).
- Agent refers to the person granted authority to act. The term agent, under a power of attorney, includes the original agent, coagents, successor agents and any person to which an agent's authority is delegated (R.C. 1337.22(A)). In Ohio, agents are also sometimes also referred to as attorneys in fact.

### Statutory Form Power of Attorney

Ohio has a statutory form of power of attorney (R.C. 1337.60). The statutory form is not the only acceptable power of attorney form that Ohio permits (R.C. 1337.22(G) and 1337.26). However, third parties are generally more familiar with the statutory form or a substantially similar document.

This Standard Document is based on the statutory form of power of attorney for Ohio. It also includes an additional section containing authorizations for actions requiring express authority, in case the principal wants to include any of those authorizations

(see Drafting Note, Actions Requiring Express Authority).

This Standard Document does not give an agent authority to make health care decisions on the principal's behalf. To authorize a third party to make health care decisions, an individual must use a valid health care power of attorney. For more information on health care powers of attorney and advance directives in Ohio, generally, see [Practice Notes, Understanding Powers of Attorney for Health Care \(OH\)](#) and [Understanding Advance Health Care Directives \(OH\)](#).

### Capacity to Create a Power of Attorney

To create an Ohio power of attorney, the principal must be mentally competent when the principal executes the power of attorney. The principal is mentally competent if the principal understands the nature, scope, and the extent of the business the principal is about to transact (creating a power of attorney). Ohio presumes the principal to be mentally competent to create a power of attorney until it is shown otherwise. A party seeking to prove mental incapacity to sign a power of attorney must do so by clear and convincing evidence. (*Testa v. Roberts*, 542 N.E. 2d 654, 658 (Ohio Ct. App. 1988).)

### Durability

Powers of attorney can be durable or non-durable:

- A durable power of attorney does not terminate on the principal's incapacity.
- A non-durable power of attorney terminates when the principal becomes incapacitated.

An Ohio power of attorney is durable unless it expressly provides that it terminates on the principal's incapacity (R.C. 1337.24). Therefore, a durable Ohio power of attorney does not need to explicitly state that it is durable (the statutory form of power of attorney does not state that it is durable).

If the client wants the power of attorney to terminate on the principal's incapacity (to be non-durable), counsel can include this provision in the special instructions section (see Drafting Note, Special Instructions). However, this is not generally advisable because most principals execute a power of attorney for estate planning purposes expecting their agents to act if the principal cannot act.

### Other Forms of Powers of Attorney

Depending on the principal's needs, additional forms of powers of attorney may be appropriate instead of, or in conjunction with, this form. These include:

- Statutory form powers of attorney for other states.
- Internal powers of attorney for financial institutions.
- Military powers of attorney.
- Separate powers of attorney for tax purposes.
- Powers of attorney and other advance health care directives. For more information on health care powers of attorney and advance directives in Ohio, generally, see [Practice Notes, Understanding Powers of Attorney for Health Care \(OH\)](#) and [Understanding Advance Health Care Directives \(OH\)](#).
- Powers of attorney that become effective in the future. These are called springing powers of attorney. (R.C. 1337.29(A) and see Drafting Note, Effective Date of Power of Attorney).
- Limited powers of attorney. If the principal does not wish to grant an agent broad fiduciary powers and instead wishes to limit an agent's authority to one particular transaction, counsel should consider preparing a separate special or limited power of attorney for that purpose.

### Bracketed Language

The drafting party should replace bracketed language in ALL CAPS with case-specific facts or other information. Bracketed language in sentence case is optional language that the drafting party may include, modify, or delete in its discretion. A forward slash between words or phrases indicates that the drafting party should include one of the words or phrases contained in the brackets in the document.

## OHIO

### STATUTORY FORM POWER OF ATTORNEY

#### (R.C. 1337.60)

#### IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Ohio Revised Code).

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

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

## Power of Attorney for Property and Financial Matters (OH)

Your agent is entitled to reasonable compensation unless you state otherwise in the Special Instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions.

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

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

### ACTIONS REQUIRING EXPRESS AUTHORITY

Unless expressly authorized and initialed by me in the Special Instructions, this power of attorney does not grant authority to my agent to do any of the following:

- (1) Create a trust;
- (2) Amend, revoke, or terminate an *inter vivos* trust, even if specific authority to do so is granted to the agent in the trust agreement;
- (3) Make a gift;
- (4) Create or change rights of survivorship;
- (5) Create or change a beneficiary designation;
- (6) Delegate authority granted under the power of attorney;
- (7) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (8) Exercise fiduciary powers that the principal has authority to delegate.

CAUTION: Granting any of the above eight powers will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death.

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

### DRAFTING NOTE: IMPORTANT INFORMATION

This section gives the principal information about:

- The scope and duration of the agent's general authority.
- The actions requiring express authority.

It also advises the principal to seek legal advice before signing the document.

Counsel should review this section with the principal before the principal executes the power of attorney.

The principal should understand the scope of power and control given to the agent and which actions require express authority (see Drafting Notes, Grant of General Authority and Actions Requiring Express Authority). Counsel should stress the importance of choosing an appropriate agent that the principal trusts (see Drafting Note, Designation of Agent).

Because this language is part of Ohio's statutory form, when using Ohio's statutory form, counsel should generally not remove or revise it.

## Power of Attorney for Property and Financial Matters (OH)

### DESIGNATION OF AGENT:

I, [PRINCIPAL NAME], [ADDRESS], (name and address of principal) name the following person as my agent:

[AGENT NAME], [ADDRESS] (name and address of agent)

### DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)

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

[SUCCESSOR AGENT NAME], [ADDRESS] (name and address of successor agent)

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

[SECOND SUCCESSOR AGENT NAME], [ADDRESS] (name and address of second successor agent)

### DRAFTING NOTE: DESIGNATION OF AGENT

In this section, counsel should identify:

- The principal's legal name. If the principal has any common or assumed names, counsel should generally include them here (for example, Jane Smith, formerly known, as Jane Johnson).
- The agent or coagents.
- The successor agent or coagents.

A principal may designate one agent or two or more coagents. Unless the power of attorney specifies that coagents must act together, each coagent may act independently. (R.C. 1337.31(A).) Although the statutory default rule is that coagents act independently, if the principal designates coagents, the principal should explicitly indicate whether the principal wants the coagents to act independently or together. To do this, counsel should state, after naming the coagents, that the coagents either:

- May act independently by including a phrase, such as "either of whom may act independently."
- Must act together by including a phrase, such as "both of whom must act together." Despite this language requiring joint action, one coagent may delegate authority granted under the power of attorney if expressly authorized to do so (R.C. 1337.42(A)(5) and see Drafting Note, Actions Requiring Express Authority).

Appointing coagents generally is not recommended. Appointing coagents to act:

- Together may result in delay or deadlock.
- Independently may result in confusion and conflicting actions.

The principal should choose as an agent someone the principal trusts who can manage financial matters. The agent need not live near the principal (for example, in the same city). However, a principal should consider proximity when choosing an agent, given that proximity may be a factor for an agent to act expeditiously.

### Designation of Successor Agents

The principal may and should designate one or more successors to act if an agent resigns, dies, becomes incapacitated, or otherwise declines to serve or is not qualified to serve. A principal may also grant authority to an agent to delegate the agent's authority to one or more successor agents to serve if that agent no longer can or intends to serve. The principal may grant this authority by initialing this specific power in the section, Actions Requiring Express Authority (see Drafting Note, Actions Requiring Express Authority).

Unless the principal otherwise provides in the special instructions section, a successor agent:

- Has the same authority as the original agent.
- May not act until all predecessor agents have resigned, died, become incapacitated or otherwise declined or become unqualified to serve.

(R.C. 1337.31(B) and see Drafting Note, Special Instructions.)

When presenting the power of attorney to a third party, the successor agent should be ready to present proof of the original agent's inability to serve or continue to serve (for example, a death certificate

for the original agent or proof of the original agent's incapacity or resignation).

Counsel should advise the principal that, without a named successor agent, if the principal becomes incapacitated and the named agent can no longer serve, a court might need to appoint a guardian to manage the principal's financial matters (see Drafting Note, Nomination of Guardian).

### Acceptance of Appointment

In Ohio, an agent generally does not need to sign or formally acknowledge acceptance of the agency under a power of attorney. Unless otherwise provided in the power of attorney, an agent accepts appointment under a power of attorney by exercising authority under the power of attorney or performing duties as an agent or by any other conduct indicating acceptance (R.C. 1337.33).

### Duties of the Agent

An agent's specific duties depend on the authority granted in the power of attorney and the principal's needs or requests (see Drafting Notes, Grant of General Authority and Actions Requiring Express Authority).

Despite any provisions in the power of attorney to the contrary, an agent accepting appointment must:

- Act in the principal's best interest under the principal's expectations as known by the agent and, otherwise, in the principal's best interest.
- Act in good faith and only within the scope of authority granted.
- Attempt to preserve the principal's estate plan to the extent known if in the principal's best interest based on relevant factors including the value and nature of property, the principal's obligations and need for maintenance, minimization of taxes, and eligibility for benefit programs. An agent acting in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(R.C. 1337.34(A), (C).)

Except as otherwise provided in the power of attorney, an agent must:

- Act loyally for the principal's benefit.
- Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.
- Act with care, competence, and diligence ordinarily exercised by agents in similar circumstances.
- Keep a record of all transactions and receipts.
- Cooperate with the principal's health care agent as necessary to carry out the principal's best interest (see [Practice Note, Understanding Powers of Attorney for Health Care \(OH\)](#)).

(R.C. 1337.34(B).) Though the principal may waive these duties in the power of attorney, the principal typically does not do so as principals generally want their agents to be bound by these duties.

An agent may be liable for breaching the agent's duties toward the principal (see Drafting Note, Liability of Agent).

### Duty to Provide Information

Except as otherwise provided in the power of attorney, an agent does not need to disclose receipts, disbursements, or transactions on behalf of the principal unless ordered by a court, or requested by either:

- The principal.
- A guardian or other fiduciary acting for the principal.
- A governmental agency with authority to protect the principal's welfare.
- On the principal's death, by the personal representative or successor in interest of the principal's estate.

(R.C. 1337.34.) If so required or requested, the agent must comply within 30 days or provide a writing indicating why additional time is needed and comply within an additional 30 days (R.C. 1337.34(H)).

### Agent Compensation and Expenses

Unless the power of attorney provides otherwise, agents are entitled to reimbursement of expenses reasonably incurred on behalf of the principal and

to compensation that is reasonable under the circumstances (R.C. 1337.32).

While it is not common for an agent to be compensated, whether an agent takes compensation depends on the circumstances and the relationship between the principal and agent. If the principal wants to ensure the agent receives compensation other than reasonable compensation (or receives no compensation), the principal should clearly state the desired compensation terms in the power of attorney. The principal and the agent may alternatively enter into a separate written agreement addressing compensation, if the principal has capacity at that time. Otherwise, the agent may take reasonable compensation as determined based on the facts and circumstances.

### Resignation of Agent

Unless the power of attorney provides otherwise, an agent may resign by giving notice to the principal. If the principal is incapacitated, the resigning agent should give the notice to any coagent or successor agent and to the guardian of the principal if one was appointed. If there is no guardian of the principal, coagent, or successor agent, the notice should be given to either:

- The principal's caregiver.
- Another person reasonably believed by the agent to have sufficient interest in the principal's welfare.
- A government agency having authority to protect the principal's welfare.

(R.C. 1337.38.)

#### GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Ohio Revised Code):

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

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities
- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- Digital Assets
- All Preceding Subjects
- My agent shall have access to the content of electronic communications sent or received by me.

### DRAFTING NOTE: GRANT OF GENERAL AUTHORITY

In this section of the power of attorney, the principal authorizes the agent to exercise any listed power by initialing the line before that power. If the principal wants to authorize the agent to have all the powers listed in this section (as is typically the case), the principal may initial next to only All Preceding Subjects.

However, even if the principal initials next to Digital Assets or All Preceding Subjects, if the principal wants to grant the agent access to the content of the principal's electronic communications, the principal should also initial next to where it says, My agent shall have access to the content of electronic communications sent or received by me. Under Ohio's Digital Assets Act, a power of attorney must expressly grant an agent authority over the content of electronic communications, if the principal wants the agent to have that authority (R.C. 2137.08). This separate line specifically addressing access to content is therefore used even though this access is mentioned in the statute addressing the digital asset powers (see Digital Assets).

### Grant of General Authority Powers

The powers listed in the Grant of General Authority section are intended to broadly authorize power for the most common types of financial and property transactions. The agent has the authority, as set out in statute, for each subject matter referred to in this portion of the form that the principal authorizes. A general reference to a subject listed in this section incorporates the entire related statutory section as if the power of attorney set out in full that statutory section. (R.C. 1337.43.)

Except as otherwise provided in the power of attorney, incorporating by reference powers in this part or granting an agent to do all acts that the principal can do, authorizes an agent, regarding that subject, to do things including but not limited to:

- Demanding, receiving, and obtaining, by litigation or otherwise, money or another thing of value to which the principal may be entitled and conserving, investing, distributing, or using anything received for the intended purposes.

- Contracting for the principal and acting regarding an instrument or communicating to accomplish a transaction.
- Initiating or participating in alternative dispute resolution.
- Seeking the assistance of a court or other governmental agency to carry out powers.
- Working with and compensating professionals and advisors.
- Communicating with any government representation for the principal or accessing communications intended for and communicating for the principal by any means.
- Doing all lawful acts regarding the subject and all related property.

(R.C. 1337.44.)

### Real Property

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority for real property authorizes the agent to acquire property either by purchase or lease or as a gift or even security interest. The agent may also:

- Convey the property by sale, exchange, or gift and consent to a partition or any other form of conveyance or partial conveyance of the real property.
- Pledge or release a mortgage interest.
- Take any action to preserve and protect the value of the asset whether that be taking on an insurance policy for the property, paying assessed taxes and other fees, handling property management and maintenance, defending against outstanding claims, and making improvements on the property.

(R.C. 1337.45.) If the real property is held in a legal entity, the agent may generally exercise rights conveyed to the principal through the principal's entity ownership, subject to the terms of a document governing an entity or an entity ownership interest (R.C. 1337.45(G)).

### Tangible Personal Property

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

- Demand, buy, or receive any tangible property as a gift.
- Sell, exchange, surrender, or grant a security interest in tangible personal property.
- Release, assign, or satisfy any security interest in tangible personal property.

(R.C. 1337.46(A) to (D).) The agent also has the right to manage the property by protecting it from loss by:

- Procuring insurance.
- Moving the property to a more secure location, including paying reasonable storage fees.
- Paying any taxes or assessments on the property.

(R.C. 1337.46(E).) The agent also has the right to change the form of title of the property (R.C. 1337.46(F)).

### Stocks and Bonds

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

- Buy, sell, and exchange securities.
- Open, modify, or terminate any accounts that hold the stocks and bonds.
- Use stocks and bonds as security on a debt.
- Handle certificates or any other evidence of ownership for the principal.
- Exercise any voting rights for the principal in relation to stocks and bonds.

(R.C. 1337.47.)

### Commodities and Options

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

- Buy, sell, exchange, assign, or settle out an option or commodities contract.
- Establish, continue, modify, or terminate an option account.

(R.C. 1337.48.)

### Banks and Other Financial Institutions

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority regarding banks and other financial institutions authorizes the agent powers including to:

- Establish, continue, modify, and terminate accounts with any bank, trust company, thrift, credit union, savings and loan, or brokerage, including depositing or withdrawing funds in any account or safe deposit box on behalf of the principal.
- Contract with a financial institution for any services that may be available by that institution.
- Withdraw funds from any account by any legal means.
- Receive statements on an account.
- Sign, negotiate, draw, or discount promissory notes, or receive income from or guaranty promissory notes.
- Enter into a letter of credit with a financial institution and offer any guaranty or indemnity on the letter of credit as required.

(R.C. 1337.49.)

### Operation of Entity or Business

Subject to the terms of a document 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 for the operation of an entity or business authorizes the agent to, among other things:

- Operate the business as a going concern or take steps to sell or terminate the ownership interest.
- Act for the principal to take the actions necessary to discharge a liability.
- Act to settle any outstanding claims to the business using litigation, alternative dispute resolution, or otherwise.



(R.C. 1337.50.) If the business or entity owned by the principal is a sole proprietorship or single member entity, the agent may act regarding all the affairs of the business for which the principal is required to act, including undertaking any expansion, sale, or other opportunity in the business for which the principal otherwise acts alone (R.C. 1337.50(G)).

### Insurance and Annuities

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

- Continue a policy, pay the premium, modify, exchange, rescind, release, or terminate a policy.
- Obtain new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents.
- Pay premiums or make modifications to how premiums are paid as the agent sees fit.
- Obtain a loan secured by insurance or an annuity contract.
- Surrender and receive the cash value of a contract or exercise an election on a policy or any investment powers that may be available.
- Convert the type of insurance or annuity as the agent determines fit.
- Assign, sell, collect, borrow against or pledge the interest of the principal on a contract.
- Select how the proceeds are to be paid out (not change the beneficiaries, but merely the mode or method of payment).
- Make any payment regarding proceeds to any taxing authority for any liabilities incurred by the principal stemming from the insurance or annuity contract.

(R.C. 1337.51.)

Under this general authority, the agent does not have the power to change a beneficiary designation. To authorize the agent to change a beneficiary designation, the principal must expressly grant that authority in the power of attorney (see Drafting Note, Actions Requiring Express Authority).

### Estates, Trusts, and Other Beneficial Interests

As used 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 (R.C. 1337.52(A)). Unless the power of attorney otherwise provides, language in a power of attorney granting general authority regarding estates, trusts, and other beneficial interests authorizes the agent to:

- Accept, receive, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest.
- Demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled because of an estate, trust, or other beneficial interest, by litigation or otherwise.
- Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal.
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise regarding 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.
- Conserve, invest, disburse, or use anything received for an authorized purpose.
- Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions and other property to the trustee of a revocable trust created by the principal as settlor.
- 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.

(R.C. 1337.52(B).)

Under this general authority, the agent does not have the power to change a beneficiary designation on any of the principal's assets. To authorize the agent to change a beneficiary designation, the principal must expressly grant that authority in the power of attorney (see Drafting Note, Actions Requiring Express Authority).

### Claims and Litigation

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

- Assert before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, or other relief.
- Bring an action to determine adverse claims or intervene in litigation.
- Seek an attachment, garnishment, order of arrest, or other relief and use an available procedure to effect or satisfy a judgment, order, or decree.
- 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.
- Settle the case or propose a compromise.
- Waive the issuance and service of process on the principal, accept service of process, appear for the principal, and designate people on which process directed to the principal may be served.
- Act for the principal regarding bankruptcy or insolvency.
- Pay any judgment that may be awarded relating to litigation.
- Receive any settlement money from a litigation.

(R.C. 1337.53.)

### Personal and Family Maintenance

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

- Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and other individuals legally entitled to be supported by the principal and customarily supported by the principal.
- Make periodic payments of child support and other family maintenance that are required by a court or governmental agency or an agreement to which the

principal is a party and provide living quarters for all members entitled to be supported by the principal.

- Provide domestic assistance, vacations and travel expenses, food, education, health care, transportation including automobiles, and other funds necessary to care for any individuals supported by the principal.
- Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or continue contributions to those organizations.

(R.C. 1337.54(A).) This authority does not depend on, and is not limited by, the authority of the agent to make gifts (R.C. 1337.54(B) and see Drafting Note, Gifts).

### Benefits from Governmental Programs or Civil or Military Service

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

- Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States, foreign government or by a state to the principal.
- Take possession and order the removal of property of the principal.
- Enroll in any benefit program on the principal's behalf and maintain that benefit for the principal's assistance.

(R.C. 1337.55.) If there is a dispute over funds received by the government or any third party regarding the validity of these funds, the agent may defend that dispute as necessary. The agent may also receive any proceeds distributed to the principal. (R.C. 1337.55(B)(5), (6).)

For more information regarding social security and military benefits, see [Social Security, Form SSA-1696-U4 Appointment of Representative](#) and [United States Office of Personnel Management: Representative Payees](#).

### Retirement Plans

A retirement plan is 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. Unless the power of attorney otherwise provides, the agent is authorized to:

- Select the form and timing of payments under a retirement plan and withdraw benefits from a plan.
- Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another.
- Establish a retirement plan in the principal's name.
- Make contributions to a retirement plan.
- Exercise investment powers available under a retirement plan.
- Borrow from, sell assets to, or purchase assets from a retirement plan.

(R.C. 1337.56.)

Under this general authority, the agent does not have the power to change a beneficiary designation on the principal's retirement plans. To authorize the agent to change a beneficiary designation, the principal must expressly grant that authority in the power of attorney (see Drafting Note, Actions Requiring Express Authority).

### Taxes

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

- Prepare, sign, and file all tax documents as may be required by any government entity.
- Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority.
- Exercise any election available to the principal under tax law.
- Act for the principal in tax matters before the Internal Revenue Service or other taxing authority.

(R.C. 1337.57.)

Although the Ohio statute indicates the agent can act for the principal in tax matters before the Internal Revenue Service (IRS), the IRS typically does not accept a non-IRS power of attorney unless it contains certain information (such as Social Security number, types of tax involved, tax form number, tax years involved, and other information). This Standard Document therefore is generally not acceptable to the IRS and the agent must instead sign a separate IRS Form 2848 to represent the principal in certain tax matters (if the agent can practice before the IRS; if not, the agent must name an eligible individual).

If the agent is named on the Form 2848, the agent must attach to the Form 2848 a statement signed under penalty of perjury that the non-IRS power of attorney is valid under the laws of the governing jurisdiction and grants the agent authority to handle federal tax matters (see [IRS Form 2848, Power of Attorney and Declaration of Representative](#) and [IRS Publication 947, Practice Before the IRS and Power of Attorney](#)). The Ohio Department of Taxation has a similar procedure and form, called the [TBOR 1](#) (Declaration of Tax Representative).

### Digital Assets

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority regarding digital assets causes the agent to be an authorized user for applicable computer fraud and unauthorized computer access laws and authorizes the agent to:

- Have access to any catalogue of electronic communications sent or received by the principal.
- Have access to any other digital asset in which the principal has a right or interest.
- Have access to any of the principal's tangible personal property capable of receiving, storing, processing, or sending a digital asset.
- Take any action concerning the asset to the extent of the account holder's authority.
- Have access to the content of electronic communications sent or received by the principal.

(R.C. 1337.571.)

Even with these powers, it can be difficult for an agent to gain access to digital assets from a third-

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party custodian of those assets due to the custodian's terms of service agreements and their concerns about improper disclosure. Custodians of digital assets sometimes require a court order before granting access, even where there is a valid power of attorney granting the agent authority over the principal's digital assets.

The principal should therefore consider whether there are ways to grant the principal's agent access to some digital assets when the power of attorney is executed so that there is no issue on incapacity (for example, using photo or document sharing websites which permit multiple users to have access). The principal should also consider assembling a list of where and how the principal's assets are held, usernames, passwords, answers to security questions, and other information that may enable the agent to access the principal's digital accounts without seeking a third party's assistance. The principal does not need to share this list with the agent while the principal has capacity. However, the principal should keep this information where the agent may access it if the principal is incapacitated.

The statute governing the general authority regarding digital assets states that agents with authority over digital assets can access the content of electronic communications sent or received by the principal.

However, under Ohio's Digital Assets Act, a power of attorney must expressly grant an agent authority over the content of electronic communications. (R.C. 2137.08). Therefore, counsel should add a separate line to the statutory form specifically addressing access to the principal's content. If the principal initials this separate line expressly authorizing the agent authority over electronic communications sent or received by the principal, unless directed otherwise by the principal or a court, a custodian of these digital assets must disclose to the agent the content if the agent gives the custodian:

- A written request for disclosure in physical or electronic form.
- A copy of the power of attorney expressly granting the agent authority over the content of the principal's electronic communications.
- A certification by the agent, under penalty of perjury, that the power of attorney is in effect.
- If requested by the custodian:
  - a number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or
  - evidence linking the account to the principal.

(R.C. 2137.08.)

### LIMITATIONS ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions or in the Actions Requiring Express Authority section.

### ACTIONS REQUIRING EXPRESS AUTHORITY (OPTIONAL)

You must give your agent express authority to perform certain actions. Please review the following and initial each action that you wish to grant authority over to your agent and any successor agent. Please consider this carefully, as granting any of the below powers will give your agent authority to take actions that could significantly reduce your property or change how your property is distributed at your death.

Create a trust.

Amend, revoke, or terminate an *inter vivos* trust, even if specific authority to do so is granted to the agent in the trust agreement.

Make a gift: To carry out any charitable pledge program commenced by me and which my attorney in fact agrees should be continued.

Make a gift: To my lineal descendants, which my attorney in fact deems appropriate, even though my attorney in fact may be donee of such gifts, but in no event shall any gifts made hereunder to any one donee exceed the amount of the

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annual exclusion from taxable gifts to a donee available under Internal Revenue Code 2503(b) (or any corresponding provisions of succeeding law).

( ) Make a gift: To my lineal descendants which my attorney in fact deems appropriate, even though my attorney in fact may be donee of such gifts, in a total amount not to exceed my remaining federal exemption amount. My attorney in fact is hereby authorized to execute and file any required gift tax return in connection with any gift(s) made hereunder.

( ) Make Payments: Directly to an educational organization for tuition payments or directly to health care providers for medical services on behalf of a donee, which my attorney in fact deems appropriate even if made on behalf of my attorney in fact.

( ) Create or change rights of survivorship.

( ) Create or change a beneficiary designation.

( ) Delegate authority granted under the power of attorney.

( ) Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.

( ) Exercise fiduciary powers that I have authority to delegate.

### DRAFTING NOTE: LIMITATIONS ON AGENT'S AUTHORITY

Unless the power of attorney provides otherwise, an agent that is not an ancestor, spouse, or descendant of the principal may not create in the agent or in an individual to which the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, survivorship, beneficiary designation, disclaimer, or otherwise (R.C. 1337.42(B)).

This form includes language to grant the agent (regardless of affinity to principal) the ability to make gifts to the agent in the "Make a Gift" and "Make Payments" portions of Actions Requiring Express Authority section (see Actions Requiring Express Authority). The principal may want to grant the agent that authority, especially where the agent is the principal's child and therefore included in the class of permissible donees. However, if the agent or successor agent is an unrelated third party or the principal does not want the agent or successor agent to have this power, the principal should consider removing the language granting gifts or making payments to the agent.

### Actions Requiring Express Authority

This section is the only one in this Standard Document that is not a part of the Ohio statutory form of power

of attorney, though the statutory form does state in the Important Information section that these actions are not permitted unless expressly authorized and initialized by the principal (see Drafting Note, Important Information). The provisions in this section are optional and counsel may revise or delete them, as the principal prefers.

Counsel should use this section if the principal wants to grant the principal's agent the broadest powers possible. However, counsel should be careful to discuss each power with principal so that the principal understands that these powers, if granted, give the principal's agent the authority to take actions that may significantly reduce the principal's property or change how the principal's property is distributed at the principal's death. These include the power to:

- Create, amend, revoke, or terminate a trust.
- Make certain gifts.
- Make payments to an educational organization for tuition or to health care providers for medical services for a donee..
- Create or change survivorship rights.
- Create or change a beneficiary designations.
- Delegate authority granted under the power of attorney.

- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that the principal has authority to delegate (such as if the principal is an executor of another's estate and can delegate those powers).

The agent has authority regarding these express authority powers only if both:

- The principal expressly grants the agent that authority (in this form, by initialing by the express powers).
- Exercise of the authority is not otherwise prohibited by another agreement.

(R.C. 1337.42(A).) If the principal wants the agent to have the power to create, amend, revoke, or terminate a trust of which the principal is settlor, both the trust agreement and the power of attorney must expressly authorize those powers (R.C. 1337.42(A)).

A power of attorney granting the agent authority to do all acts that a principal can do does **not** grant the agent authority for these powers requiring express authority, but only authority regarding the general powers (R.C. 1337.42(C) and see Drafting Note, Grant of General Authority).

### Gifts

This section has separate choices for a principal to initial allowing the principal to make gifts subject to certain criteria, as desired. As used in this section, a gift for the benefit of a person includes a gift to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan.

The first provision entitled "Make a Gift" allows charitable gifting. The second provision entitled "Make a Gift" allows gifts to lineal descendants in amounts less than the annual gifting exclusion provision. The third provision entitled "Make a Gift" allows gifts to lineal descendants in amounts less than the principal's remaining estate and gift tax exclusion amount. The

optional language entitled "Make a Payment" allows educational and health related payments directly to providers. Counsel may initial next to one or more of these provisions (which, if initialed, are read together), as the principal desires.

Unless the power of attorney otherwise provides, language in a power of attorney granting this express authority regarding gifts authorizes the agent to:

- Make gifts to or for the benefit of a person, which gifts do not exceed the annual dollar limits of the federal gift tax exclusion (see [Practice Note, Federal Gift Tax](#)).
- Consent to splitting 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.
- Make a gift of the principal's property, outright or by amending, creating, or funding a trust, as the agent determines is consistent with the principal's objectives or, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, especially considering:
  - the value and nature of the principal's property;
  - the principal's foreseeable obligations and need for maintenance;
  - minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
  - eligibility for a benefit, a program, or assistance under a statute or regulation; and
  - the principal's personal history of making or joining in making gifts.

(R.C. 1337.58.)

If the principal wants to provide for gifting, but limit any of these powers related to gifting, counsel may include express language in the Special Instructions section or revise any initialed language in the Actions Requiring Express Authority section as desired (see Drafting Note, Special Instructions).

### SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

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### EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the Special Instructions.

#### DRAFTING NOTE: SPECIAL INSTRUCTIONS

The principal may include in this section any special instructions, limitations, or directions which the principal cannot include in the other sections of this statutory document. In Ohio, people may include information in this section regarding:

- Effective date (see Effective Date of Power of Attorney).
- Durability (see Drafting Note, Durability).
- The agent's authority to make gifts to the agent or relatives of the agent (see Drafting Note, Limitations on Agent's Authority).
- The power to make gifts (see Drafting Note, Gifts).
- Other specific authority that applies to the principal's circumstances.

Examples may include statements, such as:

- "The powers included in the above "Actions Requiring Express Authority" are only granted to my [relationship], [AGENT NAME], and not my successor [agent/agents]."
- "This power of attorney shall terminate upon my incapacity and is not durable."
- "I grant my agent and any successor agent the power to create an irrevocable Qualified Income Trust, a.k.a. a Miller Trust, on my behalf for the purpose of allowing me to qualify for Medicaid benefits."

### Effective Date of Power of Attorney

A power of attorney is effective when executed, unless the principal provides that it becomes effective at a future date or on the occurrence of a future event or contingency (R.C. 1337.29(A)). A power of attorney that

becomes effective in the future is called a springing power of attorney.

To create a springing power of attorney, the power of attorney generally should state that it becomes effective:

- On a future date that is specified in the document. This can be done in the Special Instructions section.
- If a future event or contingency occurs, in which case the principal may authorize in the power of attorney, one or more persons to determine in a writing or other record that the event or contingency has occurred. For example, if the principal is in the military and the event is the principal's deployment, the party certifying the event can be the principal's commanding officer or other named person or office within the military.

(R.C. 1337.29.) Counsel can add these instructions, if the principal desires, in the Special Instruction section (see Special Instructions).

A springing power often provides that it is effective on the principal's incapacity. If the triggering event is the principal's incapacity and the principal did not authorize a person to determine whether the principal is incapacitated (or that person cannot or is unwilling to make the determination), then the power of attorney becomes effective on one of the following determinations made in a writing or other record:

- A determination by a physician or licensed psychologist that has examined the principal that the principal is mentally incapacitated (they have an impairment in the ability to receive and evaluate information or make or communicate decisions).
- A determination by an attorney at law, judge, or appropriate government official that principal is legally incapacitated (that is, is missing, detained,

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including under the penal system, or outside the US and unable to return).

(R.C. 1337.22(E) and 1337.29(C).)

Counsel should discuss with the principal whether a springing power of attorney is appropriate. Springing powers generally are not recommended for powers of attorney created for estate planning purposes unless the principal has a specific reason for creating a springing power. If a principal wants a springing power of attorney, counsel should inform the principal of the practical difficulties a springing power can present when the agent needs to act. For example, if the agent:

- Must obtain a physician's note that the principal is incapacitated, this can impede the agent's ability to act quickly.

- Has a physician's note that the principal is incapacitated, a third party may reject that determination if the third party feels too much time elapsed between the determination and its presentation to the third party.

These practical difficulties often favor creating a power of attorney that is effective immediately when signed. If the principal does not prefer to make the power of attorney effective immediately but does not want to create a springing power of attorney, the principal may agree with counsel that counsel holds the power of attorney in escrow and does not release it to the agent until certain stated client conditions are met.

### NOMINATION OF GUARDIAN (OPTIONAL)

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

[GUARDIAN OF ESTATE NOMINEE NAME], [ADDRESS] (name and address of nominee for guardian of estate)

[GUARDIAN OF PERSON NOMINEE NAME], [ADDRESS] (name and address of nominee for guardian of person)

### DRAFTING NOTE: NOMINATION OF GUARDIAN

A principal may nominate a guardian of a principal's person or estate, or both, if a guardian for the principal becomes necessary. The court must consider this nomination if guardianship proceedings are commenced later. The principal may also, in the Special Instructions section:

- Authorize the person nominated as guardian or the agent to nominate a successor guardian for consideration by the court by using language, such as:

"I authorize the person nominated as guardian to nominate a successor guardian under R.C. 1337.28."

- Direct that bond be waived for a person nominated as guardian or successor guardian by using language, such as:

"I direct bond be waived for the guardian or successor guardian."

(R.C. 1337.28.)

If, after the principal executes a power of attorney, a court appoints a guardian of the principal's estate or other fiduciary charged with the management of the principal's property, the agent is accountable to the fiduciary and the principal. The power of attorney is not terminated and the agent's authority continues unless the court:

- Limits, suspends, or terminates the authority after notice to the agent.
- Finds that limitation, suspension or termination is in the principal's best interest.

(R.C. 1337.28(C).)

Executing this power of attorney nominating an agent and successor agents helps minimize the chances a guardian of the estate must be appointed for the principal. Similarly, executing a health care power of attorney helps minimize the chances a guardian of the



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person may need to be appointed for the principal. However, the principal, by using this language, may nominate persons the principal wants to serve as guardian of the estate or person, or both, if that is ever necessary.

The health care power of attorney also includes an optional section on naming guardians of the person and estate. Counsel must ensure that there are no conflicts between designations of guardians

in the principal's estate planning documents. If there are conflicts, except for good cause shown or disqualification, the court will make its appointment under the principal's most recent designation (R.C. 1337.12(E)(1)). For more information on health care powers of attorney and advance directives in Ohio, generally, see [Practice Notes, Understanding Powers of Attorney for Health Care \(OH\)](#) and [Understanding Advance Health Care Directives \(OH\)](#).

### RELIANCE ON THIS POWER OF ATTORNEY

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

### DRAFTING NOTE: RELIANCE ON THIS POWER OF ATTORNEY AND AGENT'S CERTIFICATION

The language in this section gives the agent and third parties assurance that they may act under the power of attorney and according to its terms unless they know the power of attorney is terminated or is otherwise invalid (see Termination of the Power of Attorney and the Agent's Authority).

Ohio law also includes an optional form that can be used by the agent to certify facts concerning a power of attorney (R.C. 1337.61). Third parties may request this certification before honoring a power of attorney. By completing and acknowledging this form, the agent certifies under penalty of perjury that the principal granted the agent's power of attorney under the specific power of attorney document (referenced by date). The agent further certifies that to the agent's knowledge:

- The principal is alive and did not revoke the power of attorney or the agent's authority under the power of attorney and the power of attorney was not terminated.
- If the power of attorney is springing, the event or contingency occurred.
- If the agent was named as a successor agent, the prior agent is no longer able or willing to serve.
- Any other pertinent statements the agent wants to certify.

The agent should then sign and date the certification in the presence of a notary public.

### Termination of the Power of Attorney and the Agent's Authority

The power of attorney terminates when:

- The principal dies.
- The principal becomes incapacitated, if the power of attorney is not durable.
- The principal revokes the power of attorney (see [Revoking a Prior Power of Attorney](#)).
- The power of attorney provides that it terminates.
- The purpose of the power of attorney is accomplished (for example, if the power of attorney was limited to granting the agent the authority to perform a certain action that occurred, such as selling a specific piece of real estate).
- The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(R.C. 1337.30(A).)

The agent's authority under the power of attorney terminates when either:

- The principal revokes the authority.
- The agent dies, becomes incapacitated or resigns.
- An action is filed for divorce, dissolution, or annulment of the agent's marriage to the principal or their legal separation, unless the power of attorney provides otherwise.
- The power of attorney terminates.

(R.C. 1337.30(B).) Unless the power of attorney provides otherwise, the agent's authority is exercisable until terminated, despite a lapse of time (R.C. 1337.30(C)).

Termination of an agent's authority or of a power of attorney is not effective regarding the agent or any third party that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise unenforceable, binds the principal. (R.C. 1337.30(D).) Therefore, if the principal revokes the agent's authority or the power of attorney, the principal should provide notice to the agent and to any third parties with which the agent transacted business or is likely to transact business (see *Revoking a Prior Power of Attorney*).

Incapacity of a principal who executed a non-durable power of attorney does not revoke or terminate the power of attorney regarding an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. These acts, unless otherwise invalid or unenforceable, bind the principal. (R.C. 1337.30(E).)

### Revoking a Prior Power of Attorney

The principal may revoke the power of attorney at any time, if the principal has capacity to do so. The execution of a power of attorney does not revoke a previously executed power of attorney unless the later power of attorney provides that the previous power of attorney is revoked or all other

powers of attorney are revoked (R.C. 1337.30(F)). If the principal wants to revoke all prior powers of attorney, the principal should clearly state this in the current power of attorney by using language, such as:

"Any and all previous general durable powers of attorney executed by the principal are hereby revoked and this power of attorney controls."

Though this statement may be included in the Special Instructions section, it is common practice in Ohio for the principal to include it at the beginning of the document.

Whether the power of attorney document should state that all prior powers of attorney are revoked depends on the situation. If the principal is just restating an older power of attorney that names the same agent, it is probably not necessary to include a statement revoking all prior powers of attorney. If the principal decides to designate a different agent in the current power of attorney, the principal should revoke previous powers of attorney.

The principal should also ensure that the agent in a revoked power of attorney has actual knowledge of the revocation (the principal should provide notice to the agent). Termination of an agent's authority or of a power of attorney is not effective regarding the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. These acts, unless otherwise invalid or unenforceable, bind the principal and the principal's successors in interest. (R.C. 1337.30(D).)

If the principal is concerned that a former agent may try to continue to act, it may be best to revoke the power of attorney by a separately created revocation document which specifically mentions the power of attorney to be revoked and the date that power of attorney was executed. This document should then be provided to the former agent and all third parties with which the agent may act (such as the principal's bank or brokerage company maintaining the principal's accounts).

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SIGNATURE AND ACKNOWLEDGMENT:

Dated: [DATE]

\_\_\_\_\_  
[PRINCIPAL NAME], Principal

Your Address: [ADDRESS]

Your Telephone Number: [TELEPHONE NUMBER]

STATE OF OHIO )

COUNTY OF [NAME] )ss.

)

The foregoing instrument was acknowledged before me this [MONTH] [DAY], [YEAR] by [PRINCIPAL NAME].

\_\_\_\_\_  
Signature of Notary

My Commission Expires:

This instrument was prepared by:

[PREPARER NAME]

[ADDRESS]

[PHONE]

### DRAFTING NOTE: EXECUTING A POWER OF ATTORNEY

#### Review Document

Counsel should discuss the document with the principal before signing. Counsel should be certain that the following items are highlighted and completed:

- The names, addresses and contact numbers of the agent and successor agent are correct.
- The principal initials each subject in the Grant of General Authority section that the principal wants to include in the agent's general authority. Instead of initialing each subject area in this section, the principal can simply initial only the All Preceding Subjects line item if the principal wants to give the principal's agent all the general authorities granted. The principal should also initial the digital asset language after the "All Preceding Subjects" line, if desired. (See Drafting Note, Grant of General Authority.)
- The principal initials every subject in the Actions Requiring Express Authority section that the principal wants to include in the agent's authority. Unlike the Grant of General Authority section, the express authority section does not have an "All Preceding Subjects" line. The principal needs to specifically initial each desired power in the express authority section. Counsel should discuss the powers with the principal and ensure that the principal understands that these powers, among other things, give the agent the ability to alter the disposition of the principal's assets at the principal's death and use the principal's assets other than for the principal's benefit. (See Drafting Note, Actions Requiring Express Authority.)
- The principal lists any special instructions the principal may have in the special instructions area (see Drafting Note, Special Instructions).

- The names, address and contact numbers for the nominated guardian of the estate and person are correct if the client wants to use that optional section (see Drafting Note, Nomination of Guardian).
- The client properly signs the document.

### Signature on and Notarization of the Power of Attorney

To be valid, a power of attorney must be signed either:

- By the principal.
- In the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney.

(R.C. 1337.25.) The principal's signature on a power of attorney is presumed genuine if the principal acknowledges the signature before a notary public. Therefore, powers of attorney are most commonly notarized. (R.C. 1337.25.)

This Standard Document includes the statutory short form language for notarization (R.C. 147.55).

### Instrument Prepared by

A valid power of attorney does not require a statement of who prepared the power of attorney (though the

statutory form includes it). It is usually included, especially if the power of attorney needs to be recorded. The county recorder cannot record any instrument affecting title to any interest in real estate or personal property or any related lien unless the name of the person preparing the instrument appears on the instrument. Therefore, if the power of attorney document may be recorded (for example, if the agent intends to engage in any real estate transactions requiring recording, the power of attorney should contain a prepared by statement with the printed name of the person preparing the document. (R.C. 317.111.)

### Execution Copies

Agents may generally present a copy of the power of attorney to third parties to show the agent is empowered to act on behalf of the principal. Except as otherwise provided by statute, a photocopy or electronically transmitted copy of an original has the same effect as the original (R.C. 1337.26(D)).

However, it is generally good practice to have the principal sign two duplicate originals of the power of attorney. This is helpful if a financial institution or other third party ever requests an original to allow the agent to act despite the statute providing that copies are sufficient for an agent to act, or if an original ever needs to be recorded and the agent needs a second original before the first original is returned.

#### 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;
- (4) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest;

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(5) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as “agent” in the following manner:

(Principal’s Name) by (Your Signature) as Agent.

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

- (1) Act loyally for the principal’s benefit;
- (2) Avoid conflicts that would impair your ability to act in the principal’s best interest;
- (3) Act with care, competence, and diligence;
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (5) Cooperate with any person that has authority to make health-care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal’s expectations, to act in the principal’s best interest.

### Termination of Agent’s Authority

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

- (1) The death of the principal;
- (2) The principal’s revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished;
- (5) If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

### Liability of Agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act (sections 1337.21 to 1337.64 of the Ohio Revised Code). If you violate the Uniform Power of Attorney Act or act outside the authority granted, you may be liable for any damages caused by your violation.

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

### **DRAFTING NOTE: IMPORTANT INFORMATION FOR THE AGENT**

This section of the power of attorney:

- Provides the agent with information regarding the agent’s duties, including how to sign documents for the principal when the agent is acting on the principal’s behalf.
- Informs the agent how the agent may terminate the agency.

- Alerts the agent regarding potential liability and encourages the agent to seek legal advice if there is anything the agent does not understand.

The agent generally does not have to sign to acknowledge receipt of this notice or to accept appointment as agent under the power of attorney (R.C. 1337.33 and see Drafting Note, Acceptance of Appointment). However, counsel should still include

this notice in the power of attorney document for the agent's information when the principal provides the document to the agent.

### Judicial Relief

Any of the following may petition the court to construe a power of attorney or review the agent's conduct and grant relief:

- The principal or agent.
- A guardian, conservator, or other fiduciary (including an executor or administrator of the estate of a deceased principal).
- A person authorized to make health care decisions.
- The principal's spouse, parent, or descendant.
- An individual qualifying as a presumptive heir of the principal.
- A person named as a beneficiary to receive property, a benefit, or a contractual right on principal's death, or as a beneficiary of a trust created by principal that has a financial interest in principal's estate.
- A governmental agency with regulatory authority to protect the principal's welfare.
- The principal's caregiver or other person that demonstrates sufficient interest in the principal's welfare.
- A person asked to accept a power of attorney.

(R.C. 1337.36.)

On the principal's motion, a court must dismiss this petition unless the court finds that the principal lacks the capacity to revoke the agent's authority or the power of attorney (R.C. 1337.36(B) and see Drafting Note, Capacity to Create a Power of Attorney).

### Liability of Agent

This section of the power of attorney contains a general statement that the agent is liable for damages if the agent either:

- Violates statute.
- Acts outside the agent's authority under the power of attorney.

Ohio statute provides that if an agent:

- Acts with care and diligence in principal's best interest, the agent is not liable solely because the agent also benefits or has a conflicting interest (R.C. 1337.34(D)).
- Is chosen for special skills, those skills must be considered when determining if agent acted with care, competence, and diligence (R.C. 1337.34(E)).
- Does not commit a breach of duty to the principal, an agent is not liable if the principal's property declines (R.C. 1337.34(F)).
- Has authority to delegate to another person and does so, the agent is not liable for the acts of the other person if the agent exercised care, competence, and diligence in selecting and monitoring the person (R.C. 1337.34(G)).

For more information regarding the agent's duties, see Drafting Note, Duties of the Agent.

### Coagent Liability

If an agent has actual knowledge of a breach or imminent breach of fiduciary duty by a coagent, the agent must notify the principal or, if the principal is incapacitated, take reasonable action to safeguard the principal's best interest. Failing to do so makes the agent liable for reasonably foreseeable damages that may have been avoided if the agent acted. (R.C. 1337.31(D).) Otherwise, unless otherwise provided, an agent that does not participate in or conceal a breach by another agent, including a predecessor, is not liable for the actions of the other agent (R.C. 1337.31(C).)

### Exoneration Provision

A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal's successors unless the provision either:

- Relieves the agent for breach committed dishonestly, with improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal.

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- Was inserted from an abuse of a confidential or fiduciary relationship with the principal.

(R.C. 1337.35.)

### **Damages for Agent Liability**

An agent violating duties under R.C. Section 1337.21 to 1337.64 is liable to the principal or the principal's successors-in-interest for an amount:

- Necessary to restore the value of the principal's property as if the violation did not occur.

- Of attorney's fees and costs paid on the agent's behalf.

(R.C. 1337.37.)

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