

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 626
HOUSE BILL 434

AN ACT TO PROVIDE A STATUTORY SHORT FORM POWER OF ATTORNEY
AND A DURABLE POWER OF ATTORNEY STATUTE AS RECOMMENDED
BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are hereby amended by adding a new Chapter thereto to read as follows:

"Chapter 32B.

"Powers of Attorney.

"Article 1.

"Statutory Short Form Power of Attorney.

"§ 32B-1. Statutory Short Form of General Power of Attorney. – The use of the following form in the creation of a power of attorney is lawful, and, when used, it shall be construed in accordance with the provisions of this Chapter.

'NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE DEFINED IN CHAPTER 32B OF THE NORTH CAROLINA GENERAL STATUTES WHICH EXPRESSLY PERMITS THE USE OF ANY OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE PARTIES CONCERNED.

State of _____ County of _____ Know all men by these presents, that I _____, the undersigned, of _____(address), County of _____, State of _____, hereby make, constitute, and appoint _____, of _____(address), County of _____, State of _____, my true and lawful attorney-in-fact for me and in my name, place, and stead, giving unto said _____ full power to act in my name, place and stead in any way which I myself could do if I were personally present with respect to the following matters as each of them is defined in Chapter 32B of the North Carolina General Statutes to the extent that I am permitted by law to act through an agent: (Initial the line opposite any one or more of the subdivisions as to which the principal desires to give the agent authority and strike through those subdivisions remaining to which the principal does not give the agent authority.)

- (1) real property transactions; _____
- (2) personal property transactions; _____
- (3) bond, share and commodity transactions; _____
- (4) banking transactions; _____
- (5) safe deposits; _____
- (6) business operating transactions; _____

- (7) insurance transactions; _____
- (8) estate transactions; _____
- (9) personal relationships and affairs; _____
- (10) tax, social security and unemployment; _____
- (11) benefits from military service _____

(with full power of substitution and revocation), hereby ratifying and affirming that which _____ (or the substitute) shall lawfully do or cause to be done by said attorney-in-fact (or the substitute lawfully designated by virtue of the power herein conferred upon said attorney-in-fact).

(If period of power of attorney is to be limited, add:

"This power terminates _____, 19__.")

(If power of attorney is to be a durable power of attorney under the provision of Article 2 of Chapter 32B and is to continue in effect after the incapacity or mental incompetence of the principal, add:

"This power of attorney shall not be affected by my subsequent incapacity or mental incompetence.")

(If power of attorney is to take effect only after the incapacity or mental incompetence of the principal, add:

"This power of attorney shall become effective after I become incapacitated or mentally incompetent.") Dated _____, 19__.

Signature

STATE OF _____ COUNTY OF _____ On this _____ day of _____, _____, personally appeared before me, the said named _____ to me known and known to me to be the person described in and who executed the foregoing instrument and he (or she) acknowledged that he (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true. My Commission Expires _____

(Signature of Notary Public) Notary Public (Official Seal)

"§ 32B-2. Powers conferred by the Statutory Short Form Power of Attorney set out in G.S. 32B-1. – The Statutory Short Form Power of Attorney set out in G.S. 32B-1 confers the following powers on the attorney-in-fact named therein:

- (1) Real property transactions. To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any interest in real property whatsoever, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgage, subject to deeds of trust, and in any way or manner deal with all or any part of any interest in real property whatsoever, that the principal owns at the time of execution or may thereafter acquire, for under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.

- (2) Personal property transactions. To lease, purchase, exchange, and acquire, and to agree, bargain, and contract for the lease, purchase, exchange, and acquisition of, and to accept, take, receive, and possess any personal property whatsoever, tangible or intangible, or interest thereto, on such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper; and to maintain, repair, improve, manage, insure, rent, lease, sell, convey, subject to liens, mortgages, subject to deeds of trust, and hypothecate, and in any way or manner deal with all or any part of any real or personal property whatsoever, tangible or intangible, or any interest therein, that the principal owns at the time of execution or may thereafter acquire, under such terms and conditions, and under such covenants, as said attorney-in-fact shall deem proper.
- (3) Bond, share and commodity transactions. To request, ask, demand, sue for, recover, collect, receive, and hold and possess any bond, share, instrument of similar character, commodity interest or any instrument with respect thereto together with the interest, dividends, proceeds, or other distributions connected therewith, as now are, or shall hereafter become, owned by, or due, owing payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all indorsements, acquittances, releases, receipts, or other sufficient discharges for the same.
- (4) Banking transaction. To make, receive, sign, indorse, execute, acknowledge, deliver, and possess checks, drafts, bills of exchange, letters of credit, notes, stock certificates, withdrawal receipts and deposit instruments relating to accounts or deposits in, or certificates of deposit of, banks, savings and loan or other institutions or associations for the principal.
- (5) Safe deposits. To have free access at any time or times to any safe deposit box or vault to which the principal might have access.
- (6) Business operating transactions. To conduct, engage in, and transact any and all lawful business of whatever nature or kind for the principal.
- (7) Insurance transactions. To exercise or perform any act, power, duty, right or obligation whatsoever in regard to any contract of life, accident, health, disability or liability insurance or any combination of such insurance procured by or on behalf of the principal prior to execution; and to procure new, different or additional contracts of insurance for the principal and to designate the beneficiary of any such contract of insurance, provided, however, that the agent himself cannot

be such beneficiary unless the agent is spouse, child, grandchild, parent, brother or sister of the principal.

- (8) Estate transactions. To request, ask, demand, sue for, recover, collect, receive, and hold and possess all legacies, bequests, devises, as are, owned by, or due, owing, payable, or belonging to, the principal at the time of execution or in which the principal may thereafter acquire interest, to have, use, and take all lawful means and equitable and legal remedies, procedures, and writs in the name of the principal for the collection and recovery thereof, and to adjust, sell, compromise, and agree for the same, and to make, execute, and deliver for the principal, all indorsements, acquittances, releases, receipts, or other sufficient discharges for the same.
- (9) Personal relationships and affairs. To do all acts necessary for maintaining the customary standard of living of the principal, the spouse and children, and other dependents of the principal; to provide medical, dental and surgical care, hospitalization and custodial care for the principal, the spouse, and children, and other dependents of the principal; to continue whatever provision has been made by the principal, for the principal, the spouse, and children, and other dependents of the principal, with respect to automobiles, or other means of transportation; to continue whatever charge accounts have been operated by the principal, for the convenience of the principal, the spouse, and children, and other dependents of the principal, to open such new accounts as the attorney-in-fact shall think to be desirable for the accomplishment of any of the purposes enumerated in this section, and to pay the items charged on such accounts by any person authorized or permitted by the principal or the attorney-in-fact to make such charges; to continue the discharge of any services or duties assumed by the principal, to any parent, relative or friend of the principal; to continue payments incidental to the membership or affiliation of the principal in any church, club, society, order or other organization, or to continue contributions thereto.
- (10) Tax, social security and unemployment. To prepare, to execute and to file all tax, social security, unemployment insurance and information returns required by the laws of the United States, or of any state or subdivision thereof, or of any foreign government, to prepare, to execute and to file all other papers and instruments which the agent shall think to be desirable or necessary for safeguarding of the principal against excess or illegal taxation or against penalties imposed for claimed violation of any law or other governmental regulation, and to pay, to compromise, or to contest or to apply for refunds in connection with any taxes or assessments for which the principal is or may be liable.

- (11) Benefits from military service. To execute vouchers in the name of the principal for any and all allowances and reimbursements payable by the United States, or subdivision thereof, to the principal, arising from or based upon military service and to receive, to indorse and to collect the proceeds of any check payable to the order of the principal drawn on the treasurer or other fiscal officer or depositary of the United States or subdivision thereof; to take possession and to order the removal and shipment, of any property of the principal from any post, warehouse, depot, dock or other place of storage or safekeeping, either governmental or private, to execute and to deliver any release, voucher, receipt, bill of lading, shipping ticket, certificate or other instrument which the agent shall think to be desirable or necessary for such purpose; to prepare, to file and to prosecute the claim of the principal to any benefit or assistance, financial or otherwise, to which the principal is, or claims to be, entitled, under the provisions of any statute or regulation existing at the creation of the agency or thereafter enacted by the United States or by any state or by any subdivision thereof, or by any foreign government, which benefit or assistance arises from or is based upon military service performed prior to or after execution.

"§ 32B-3. Provisions not exclusive. – The provisions of this Article are not exclusive and shall not bar the use of any other or different form of power of attorney desired by the parties concerned.

"Article 2.

"Durable Power of Attorney.

"§ 32B-8. Definition. – A durable power of attorney is a power of attorney by which a principal designates another his attorney- in-fact in writing and the writing contains a statement that it is executed pursuant to the provisions of this Article or the words 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence,' or 'This power of attorney shall become effective after I become incapacitated or mentally incompetent,' or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity or mental incompetence.

"§ 32B-9. Registered durable power of attorney not affected by incapacity or mental incompetence. – (a) All acts done by an attorney-in-fact pursuant to a durable power of attorney during any period of incapacity or mental incompetence of the principal have the same effect and inure to the benefit of and bind the principal and his successors in interest as if the principal were not incapacitated or mentally incompetent if the power of attorney has been registered under the provisions of subsection (b).

(b) No power of attorney executed pursuant to the provisions of this Article shall be valid subsequent to the principal's incapacity or mental incompetence unless it is registered in the office of the register of deeds of that county in this State designated in the power of attorney, or if no place of registration is designated, in the office of the register of deeds of the county in which the principal has his legal residence at the time

of such registration or, if the principal has no legal residence in this State at the time of registration or the attorney-in-fact is uncertain as to the principal's residence in this State, in some county in the State in which the principal owns property or the county in which one or more of the attorneys-in-fact reside. A power of attorney executed pursuant to the provision of this Article shall be valid even though the time of such registration is subsequent to the incapacity or mental incompetence of the principal.

(c) Any person dealing in good faith with an attorney-in-fact acting under a power of attorney executed and then in effect under this Article shall be protected to the full extent of the powers conferred upon such attorney-in-fact, and no person so dealing with such attorney-in-fact shall be responsible for the misapplication of any money or other property paid or transferred to such attorney-in-fact.

"§ 32B-10. Relation of attorney-in-fact to court-appointed fiduciary. – (a) If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the principal's person or estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not incapacitated or mentally incompetent.

(b) A principal may nominate, by a durable power of attorney, the conservator, guardian of his estate, or guardian of his person for consideration by the court if protective proceedings for the principal's person or estate are thereafter commenced. The court shall make its appointment in accordance with the principal's most recent nomination in a durable power of attorney except for good cause or disqualification.

"§ 32B-11. File with clerk, records, inventories, accounts, fees, and commissions. –

(a) Within 30 days after registration of the power of attorney as provided in G.S. 32B-9(b), the attorney-in-fact shall file with the clerk of superior court in the county of such registration a copy of the power of attorney. Every attorney-in-fact acting under a power of attorney under this Article subsequent to the principal's incapacity or mental incompetence shall keep full and accurate records of all transactions in which he acts as agent of the principal and of all property of the principal in his hands and the disposition thereof.

(b) Any provision in the power of attorney waiving or requiring the rendering of inventories and accounts shall govern, and a power of attorney that waives the requirement to file inventories and accounts need not be filed with the clerk of superior court. Otherwise, subsequent to the principal's incapacity or mental incompetence, the attorney-in-fact shall file in the office of the clerk of the superior court of the county in which the power of attorney is filed, inventories of the property of the principal in his hands and annual and final accounts of the receipt and disposition of property of the principal and of other transactions in behalf of the principal. The power of the clerk to enforce the filing and his duties in respect to audit and recording of such accounts shall be the same as those in respect to the accounts of administrators, but the fees and charges of the clerk shall be computed or fixed only with relation to property of the principal required to be shown in the accounts and inventories. The fees and charges of

the clerk shall be paid by the attorney-in-fact out of the principal's money or other property and allowed in his accounts. If the powers of an attorney-in-fact shall terminate for any reason whatever, he, or his executors or administrators, shall have the right to have a judicial settlement of a final account by any procedure available to executors, administrators or guardians.

(c) In the event that any power of attorney executed pursuant to the provisions of this Article does not contain the amount of commissions that the attorney-in-fact is entitled to receive or the way such commissions are to be determined, and the principal should thereafter become incapacitated or mentally incompetent, the commissions such attorney-in-fact shall receive subsequent to the principal's incapacity or mental incompetence shall be fixed in the discretion of the clerk of superior court pursuant to the provisions of G.S. 32-50(c).

"§ 32B-12. Appointment, resignation, removal, and substitutions. – (a) A power of attorney executed under this Article may contain any provisions, not unlawful, relating to the appointment, resignation, removal and substitution of an attorney-in-fact, and to the rights, powers, duties and responsibilities of the attorney-in-fact.

(b) If all attorneys-in-fact named in the instrument or substituted shall die, or cease to exist, or shall become incapable of acting, and all methods for substitution provided in the instrument have been exhausted, such power of attorney shall cease to be effective. Any substitution by a person authorized to make it shall be in writing signed and acknowledged by such person. Notice of every other substitution shall be in writing and acknowledged by the person substituted. No substitution or notice subsequent to the principal's subsequent incapacity or mental incompetence shall be effective until it has been recorded in the office of the register of deeds of the county in which the power of attorney has been recorded.

"§ 32B-13. Revocation. – Every power of attorney executed pursuant to the provisions of this Article shall be revoked by:

- (1) The death of the principal; or
- (2) Registration in the office of the register of deeds where the power of attorney has been registered of an instrument of revocation executed and acknowledged by the principal while he is not incapacitated or mentally incompetent, or by the registration in such office of an instrument of revocation executed by any person or corporation who is given such power of revocation in the power of attorney, or by this Article, with proof of service thereof in either case on the attorney-in-fact in the manner prescribed for service of summons in civil actions.

"§ 32B-14. Powers of attorney executed under the provisions of G.S. 47-115.1. – A power of attorney executed pursuant to G.S. 47-115.1 prior to October 1, 1983, shall be deemed to be a durable power of attorney as defined in G.S. 32B-8."

Sec. 2. G.S. 47-115.1 is hereby repealed and the title to Article 6 of Chapter 47 of the North Carolina General Statutes is rewritten to read as follows:

"Registration and Execution of Instruments Signed Under A Power of Attorney."

Sec. 3. This act shall become effective October 1, 1983.

In the General Assembly read three times and ratified, this the 27th day of June, 1983.