

**CHAPTER 178**  
**SB 230-FN - FINAL VERSION**

03/16/2017 0771s  
4May2017... 1504h  
05/31/2017 2030EBA

2017 SESSION

17-0824  
08/03

SENATE BILL            ***230-FN***

AN ACT                establishing the Uniform Power of Attorney Act.

SPONSORS:           Sen. Carson, Dist 14; Sen. Lasky, Dist 13; Rep. Guthrie, Rock. 13; Rep. Wall,  
Straf. 6; Rep. Kenison, Merr. 15

COMMITTEE:        Judiciary

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ANALYSIS

This bill adopts the Uniform Power of Attorney Act.

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Explanation:        Matter added to current law appears in ***bold italics***.  
                         Matter removed from current law appears ~~[in brackets and struck through.]~~  
                         Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Seventeen*

AN ACT                    establishing the Uniform Power of Attorney Act.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1            178:1 New Chapter; Uniform Power of Attorney Act. Amend RSA by inserting after chapter  
2            564-D the following new chapter:

CHAPTER 564-E

UNIFORM POWER OF ATTORNEY ACT

ARTICLE 1

GENERAL PROVISIONS

7            564-E:101 Short Title. This chapter may be cited as the Uniform Power of Attorney Act.

8            564-E:102 Definitions. In this chapter:

9                    (1) "Agent" means a person granted authority to act for a principal under a power of  
10 attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an  
11 original agent, coagent, successor agent, and a person to whom an agent's authority is delegated.

12                    (2) "Conservator" means a person appointed by a court to administer the estate of  
13 an individual pursuant to RSA 464-A:13.

14                    (3) "Court" means a court of competent jurisdiction.

15                    (4) "Durable," with respect to a power of attorney, means not terminated by the  
16 principal's incapacity.

17                    (5) "Electronic" means relating to technology having electrical, digital, magnetic,  
18 wireless, optical, electromagnetic, or similar capabilities.

19                    (6) "Electronic signature" means an electronic sound, symbol, or process attached to  
20 or logically associated with a record and executed or adopted by a person with the intent to sign the  
21 record.

22                    (7) "General power of attorney" means a power of attorney that is not limited by its  
23 terms to a specified transaction or series of transactions, to a specific purpose, or to a specific asset  
24 or set of assets, or a power of attorney that grants an agent the authority to do any one or more of  
25 the acts described in RSA 564-E:201(a).

26                    (8) "Guardian" means a guardian of the estate, a guardian of the person, or either a  
27 guardian of the estate or a guardian of the person, as the context may require.

28                    (9) "Guardian of the estate" means a person appointed by a court to administer the  
29 estate of an adult individual, including a person appointed pursuant to RSA 464-A.

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1           (10) “Guardian of the person” means a person appointed by a court to make  
2 decisions regarding the support, care, education, health, and welfare of an adult individual,  
3 including a person appointed pursuant to RSA 464-A. The term does not include a guardian ad  
4 litem.

5           (11) “Good faith” means honesty in fact.

6           (12) “Incapacity” means inability of an individual to manage property or business  
7 affairs because the individual:

8                   (A) has an impairment in the ability to receive and evaluate information or  
9 make or communicate decisions even with the use of technological assistance; or

10                   (B) is:

11                           (i) missing;

12                           (ii) detained, including incarcerated in a penal system; or

13                           (iii) outside the United States and unable to return.

14           (13) “Include” and “including” means the same as “include, without limitation” and  
15 “including, without limitation,” regardless of whether expressly specified.

16           (14) “Person” means an individual, corporation, business trust, estate, trust,  
17 partnership, limited liability company, association, joint venture, public corporation, government or  
18 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

19           (15) “Power of attorney” means a writing or other record that grants authority to an  
20 agent to act in the place of the principal, whether or not the term power of attorney is used.

21           (16) “Presently exercisable general power of appointment,” with respect to property  
22 or a property interest subject to a power of appointment, means power exercisable at the time in  
23 question to vest absolute ownership in the principal individually, the principal’s estate, the  
24 principal’s creditors, or the creditors of the principal’s estate. The term includes a power of  
25 appointment not exercisable until the occurrence of a specified event, the satisfaction of an  
26 ascertainable standard, or the passage of a specified period only after the occurrence of the specified  
27 event, the satisfaction of the ascertainable standard, or the passage of the specified period. The  
28 term does not include a power exercisable in a fiduciary capacity or only by will.

29           (17) “Principal” means an individual who grants authority to an agent in a power of  
30 attorney.

31           (18) “Property” means anything that may be the subject of ownership, whether real  
32 or personal, or legal or equitable, or any interest or right therein.

33           (19) “Record” means information that is inscribed on a tangible medium or that is  
34 stored in an electronic or other medium and is retrievable in perceivable form.

35           (20) “Sign” means, with present intent to authenticate or adopt a record:

36                   (A) to execute or adopt a tangible symbol; or

37                   (B) to attach to or logically associate with the record an electronic sound,

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symbol, or process.

(21) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(22) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes.

564-E:103 Applicability. This chapter applies to all powers of attorney except:

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

(2) a power to make health-care decisions;

(3) a proxy or other delegation to exercise voting rights or management rights with respect to an entity; and

(4) a power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

564-E:104 Power of Attorney is Durable. A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal.

564-E:105 Execution Of Power Of Attorney.

(a) With regard to a general power of attorney:

(1) The power of attorney must be signed (other than by electronic signature) by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney and must be acknowledged before a notary public or other individual authorized by law to take acknowledgments.

(2) A disclosure statement in substantially the following form, signed (other than by electronic signature) by the principal or by another individual directed by the principal to sign the principal's name, must be affixed to the power of attorney:

INFORMATION CONCERNING THE POWER OF ATTORNEY

THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU SHOULD KNOW THESE IMPORTANT FACTS:

Notice to the Principal: As the "Principal," you are using this Power of Attorney to grant power to another person (called the "Agent") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use your money, property, or both on your behalf. If this Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Unless you have expressly provided

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1 otherwise in this Power of Attorney, your Agent will have these powers before you become  
2 incapacitated, and unless you have expressly provided otherwise in this Power of Attorney, your  
3 Agent will continue to have these powers after you become incapacitated. You have the right to  
4 retain this Power of Attorney and to release it later or to request that another person retain this  
5 Power of Attorney on your behalf and release it only if one or more conditions specified in advance  
6 by you are satisfied. You have the right to revoke or take back this Power of Attorney at any time,  
7 so long as you are of sound mind. If there is anything about this Power of Attorney that you do not  
8 understand, you should seek professional advice.

9 (b) A power of attorney to convey real estate must be signed (other than by electronic  
10 signature) by the principal or in the principal's conscious presence by another individual directed by  
11 the principal to sign the principal's name on the general power of attorney and must be  
12 acknowledged before a notary public or other individual authorized by law to take  
13 acknowledgments.

14 (c) Any other power of attorney must be signed by the principal or in the principal's  
15 conscious presence by another individual directed by the principal to sign the principal's name on  
16 the power of attorney.

17 (d) A signature on a power of attorney is presumed to be genuine if the principal  
18 acknowledges the signature before a notary public or other individual authorized by law to take  
19 acknowledgments.

20 564-E:106 Validity of Power of Attorney.

21 (a) A power of attorney executed in this state on or after the effective date of this  
22 chapter is valid if its execution complies with RSA 564-E:105.

23 (b) A power of attorney executed in this state before the effective date of this chapter is  
24 valid if its execution complied with the law of this state as it existed at the time of execution.

25 (c) A power of attorney executed other than in this state is valid in this state if, when  
26 the power of attorney was executed, the execution complied with:

27 (1) the law of the jurisdiction that determines the meaning and effect of the power  
28 of attorney pursuant to RSA 564-E:107; or

29 (2) the requirements for a military power of attorney pursuant to 10 U.S.C. section  
30 1044b, as amended.

31 (d) Except as otherwise provided in the power of attorney or by statute other than this  
32 chapter, a photocopy or electronically transmitted copy of an original power of attorney has the  
33 same effect as the original.

34 564-E:107 Meaning and Effect of Power of Attorney. The meaning and effect of a power of  
35 attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the  
36 absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney  
37 was executed.

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1       564-E:108 Nomination of Guardian; Relation of Agent to Court-Appointed Fiduciary.

2               (a) In a power of attorney, a principal may nominate a guardian of the principal's estate  
3 or guardian of the principal's person for consideration by the court if protective proceedings for the  
4 principal's estate or person are begun after the principal executes the power of attorney. Except for  
5 good cause shown or disqualification, the court shall make its appointment in accordance with the  
6 principal's most recent nomination.

7               (b) If, after a principal executes a power of attorney, a court appoints a conservator or  
8 guardian of the principal's estate or other fiduciary charged with the management of some or all of  
9 the principal's property:

10                       (1) the agent is accountable to the fiduciary as well as to the principal;

11                       (2) the power of attorney is not terminated and the agent's authority continues  
12 unless limited, suspended, or terminated by the court; and

13                       (3) The fiduciary shall have the same power as the principal to revoke, suspend, or  
14 terminate all or any part of such power of attorney.

15       564-E:109 When Power Of Attorney Effective.

16               (a) A power of attorney is effective when executed unless the principal provides in the  
17 power of attorney that it becomes effective at a future date or upon the occurrence of a future event  
18 or contingency.

19               (b) If a power of attorney becomes effective upon the occurrence of a future event or  
20 contingency, the principal, in the power of attorney, may authorize one or more persons to  
21 determine in a writing or other record that the event or contingency has occurred.

22               (c) If a power of attorney becomes effective upon the principal's incapacity and the  
23 principal has not authorized a person to determine whether the principal is incapacitated, or the  
24 person authorized is unable or unwilling to make the determination, the power of attorney becomes  
25 effective upon a determination in a writing or other record by:

26                       (1) a physician that the principal is incapacitated within the meaning of RSA 564-  
27 E:102(12)(A); or

28                       (2) a judge, or an appropriate governmental official that the principal is  
29 incapacitated within the meaning of RSA 564-E:102(12)(B).

30               (d) A person authorized by the principal in the power of attorney to determine that the  
31 principal is incapacitated may act as the principal's personal representative pursuant to the Health  
32 Insurance Portability and Accountability Act, sections 1171 through 1179 of the Social Security Act,  
33 42 U.S.C. section 1320d, as amended, and applicable regulations, to obtain access to the principal's  
34 health-care information and communicate with the principal's health-care provider.

35       564-E:110 Termination of Power of Attorney or Agent's Authority.

36               (a) A power of attorney terminates when:

37                       (1) the principal dies;

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- 1                   (2) the principal becomes incapacitated, if the power of attorney is not durable;  
2                   (3) the principal revokes the power of attorney;  
3                   (4) the power of attorney provides that it terminates;  
4                   (5) the purpose of the power of attorney is accomplished; or  
5                   (6) the principal revokes the agent's authority or the agent dies, becomes  
6 incapacitated, or resigns, and the power of attorney does not provide for another agent to act under  
7 the power of attorney.

8                   (b) An agent's authority terminates when:

- 9                         (1) the principal revokes the authority;  
10                        (2) the agent dies, becomes incapacitated, or resigns;  
11                        (3) a petition for divorce, annulment, separation or a decree of nullity is filed with  
12 respect to the agent's marriage to the principal, unless the power of attorney otherwise provides; or  
13                        (4) the power of attorney terminates.

14                   (c) Unless the power of attorney otherwise provides, an agent's authority is exercisable  
15 until the authority terminates under subsection (b), notwithstanding a lapse of time since the  
16 execution of the power of attorney.

17                   (d) Termination of an agent's authority or of a power of attorney is not effective as to  
18 the agent or another person that, without actual knowledge of the termination, acts in good faith  
19 under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds  
20 the principal and the principal's successors in interest.

21                   (e) Incapacity of the principal of a power of attorney that is not durable does not revoke  
22 or terminate the power of attorney as to an agent or other person that, without actual knowledge of  
23 the incapacity, acts in good faith under the power of attorney. An act so performed, unless  
24 otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

25                   (f) The execution of a power of attorney does not revoke a power of attorney previously  
26 executed by the principal unless the subsequent power of attorney provides that the previous power  
27 of attorney is revoked or that all other powers of attorney are revoked.

28                   564-E:111 Coagents and Successor Agents.

29                   (a) A principal may designate 2 or more persons to act as coagents. Unless the power of  
30 attorney otherwise provides, the coagents must exercise their authority jointly.

31                   (b) A principal may designate one or more successor agents to act if an agent resigns,  
32 dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant  
33 authority to designate one or more successor agents to an agent or other person designated by  
34 name, office, or function. Unless the power of attorney otherwise provides, a successor agent:

- 35                         (1) has the same authority as that granted to the original agent; and  
36                         (2) may not act until all predecessor agents have resigned, died, become  
37 incapacitated, are no longer qualified to serve, or have declined to serve.

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1           (c) Except as otherwise provided in the power of attorney and subsection (d), an agent  
2 that does not participate in or conceal a breach of fiduciary duty committed by another agent,  
3 including a predecessor agent, is not liable for the actions of the other agent.

4           (d) A coagent that has actual knowledge of a breach or imminent breach of fiduciary  
5 duty by another coagent shall notify the principal and, if the principal is incapacitated, take any  
6 action reasonably appropriate in the circumstances to safeguard the principal's best interest. A  
7 coagent that fails to notify the principal or take action as required by this subsection is liable for the  
8 reasonably foreseeable damages that could have been avoided if the coagent had notified the  
9 principal or taken such action.

10         564-E:112 Reimbursement and Compensation of Agent. Unless the power of attorney otherwise  
11 provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the  
12 principal and to compensation that is reasonable under the circumstances.

13         564-E:113 Agent's Authority and Agent's Acceptance or Declination.

14           (a) A person designated as agent under a general power of attorney shall have no  
15 authority to act as agent unless, at any time prior to exercising the power granted under the  
16 general power of attorney and not necessarily at the time the general power of attorney is signed by  
17 the principal, the person has signed (other than by electronic signature) and affixed to the general  
18 power of attorney an acknowledgment in substantially the following form:

19         I, \_\_\_\_\_, have read the attached power of attorney and am the person  
20 identified as the agent for the principal. I hereby acknowledge that when I act as agent, I am given  
21 power under the power of attorney to make decisions about money, property, or both belonging to  
22 the principal, and to spend the principal's money, property, or both on the principal's behalf, in  
23 accordance with the terms of the power of attorney. When acting as agent, I have duties (called  
24 "fiduciary duties") to act in the principal's best interest, to act in good faith, and to act only within  
25 the scope of authority granted in the power of attorney, as well as other duties imposed by law to  
26 the extent not provided otherwise in the power of attorney. As an agent, I am not entitled to use  
27 the money or property for my own benefit or to make gifts to myself or others unless the power of  
28 attorney specifically gives me the authority to do so. As an agent, my authority under the power of  
29 attorney will end when the principal dies and I will not have authority to manage or dispose of any  
30 property or administer the estate of the principal. If I violate a fiduciary duty under the power of  
31 attorney, I may be liable for damages and may be subject to criminal prosecution. If there is  
32 anything about the power of attorney, or my duties under it, that I do not understand, I understand  
33 that I should seek professional advice.

34           (b) A person accepts appointment as an agent under a power of attorney by  
35 substantially complying with the method of acceptance provided in the terms of the power of  
36 attorney or, if the terms of the power of attorney do not provide a method or if the method provided  
37 is not expressly made exclusive, by exercising authority or performing duties as an agent or by any



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1 other assertion or conduct indicating acceptance. A person designated as agent under a power of  
2 attorney has no duties unless the person has accepted the appointment.

3 (c) A person that has not yet accepted appointment as an agent under a power of  
4 attorney may decline the appointment.

5 564-E:114 Agent's Duties.

6 (a) Notwithstanding provisions in the power of attorney, an agent that has accepted  
7 appointment shall:

8 (1) act in accordance with the principal's reasonable expectations to the extent  
9 actually known by the agent and, otherwise, in the principal's best interest;

10 (2) act in good faith; and

11 (3) act only within the scope of authority granted in the power of attorney.

12 (b) Except as otherwise provided in the power of attorney, an agent that has accepted  
13 appointment shall:

14 (1) act loyally for the principal's benefit;

15 (2) act so as not to create a conflict of interest that impairs the agent's ability to act  
16 impartially in the principal's best interest;

17 (3) act with the care, competence, and diligence ordinarily exercised by agents in  
18 similar circumstances;

19 (4) keep a record of all receipts, disbursements, and transactions made on behalf of  
20 the principal; and

21 (5) cooperate with a person that has authority to make health-care decisions for the  
22 principal to carry out the principal's reasonable expectations to the extent actually known by the  
23 agent and, otherwise, act in the principal's best interest.

24 (c) An agent that acts in good faith is not liable to any beneficiary of the principal's  
25 estate plan.

26 (d) An agent that acts with care, competence, and diligence for the best interest of the  
27 principal is not liable solely because the agent also benefits from the act or has an individual or  
28 conflicting interest in relation to the property or affairs of the principal.

29 (e) If an agent is selected by the principal because of special skills or expertise possessed  
30 by the agent or in reliance on the agent's representation that the agent has special skills or  
31 expertise, the special skills or expertise must be considered in determining whether the agent has  
32 acted with care, competence, and diligence under the circumstances.

33 (f) Absent a breach of duty to the principal, an agent is not liable if the value of the  
34 principal's property declines.

35 (g) An agent that exercises authority to delegate to another person the authority  
36 granted by the principal or that engages another person on behalf of the principal is not liable for  
37 an act, error of judgment, or default of that person if the agent exercises care, competence, and

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1 diligence in selecting and monitoring the person.

2 (h) Except as otherwise provided in the power of attorney, if any of the persons  
3 designated in RSA 564-E:116(a) makes a written request of the agent to submit an accounting or to  
4 report his, her or its acts as agent, then the agent shall comply within 60 days after the request was  
5 made. If the agent has not submitted an accounting or report within the 60-day period, then the  
6 person making such a request may petition the court to compel the agent to comply. The 60-day  
7 period shall be shortened to 7 days if the decision at issue relates to a decision affecting health care.  
8 The time limit in this subsection may be shortened by court order for good cause.

9 564-E:115 Exoneration of Agent. A provision in a power of attorney relieving an agent of  
10 liability for breach of duty is binding on the principal and the principal's successors in interest  
11 except to the extent the provision:

12 (1) relieves the agent of liability for breach of duty committed dishonestly, with an  
13 improper motive, or with reckless indifference to the purposes of the power of attorney or the best  
14 interest of the principal; or

15 (2) was inserted as a result of an abuse of a confidential or fiduciary relationship  
16 with the principal.

17 564-E:116 Judicial Relief.

18 (a) The following persons may petition a court to determine whether a power of  
19 attorney is in effect, to determine whether a power of attorney has terminated, to determine  
20 whether an agent's authority has terminated, to determine whether a particular gift is authorized  
21 as provided in subsection (g), to determine whether a particular transaction is authorized, to  
22 construe a power of attorney or to review the agent's conduct, and to grant appropriate relief:

23 (1) the principal;

24 (2) the agent;

25 (3) a guardian, conservator, or other fiduciary acting for the principal;

26 (4) a person authorized to make health-care decisions for the principal;

27 (5) the principal's spouse, parent, or descendant;

28 (6) a person who would take property of the principal under the laws of intestate  
29 succession if the principal were to die at the time the petition is filed, whether or not the principal  
30 has a will;

31 (7) a person named as a beneficiary to receive any property, benefit, or contractual  
32 right on the principal's death or as a beneficiary of a trust created by or for the principal that has a  
33 financial interest in the principal's estate;

34 (8) the department of justice, the department of health and human services, the  
35 county attorney, or any other governmental agency having regulatory authority to protect the  
36 welfare of the principal.

37 (b) If there is no person specified in subsection (a) who is able or willing to file a petition

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1 for a purposes specified in subsection (a), then the court may entertain a petition for such purpose  
2 from any other interested party who or which demonstrates to the satisfaction of the court the  
3 following:

4 (1) sufficient knowledge of the principal to demonstrate interest in the welfare of  
5 the principal; and

6 (2) the lack of capacity of the principal to bring such a petition.

7 (c) Upon motion by the principal, the court shall dismiss a petition filed under this  
8 section, unless the court finds that the principal lacks capacity to revoke the agent's authority or  
9 the power of attorney.

10 (d) The court may hold hearings, issue injunctions, make orders and decrees, and take  
11 other actions that are necessary or proper in making determinations and providing relief on matters  
12 presented by a petition filed under this section.

13 (e) In a proceeding under this section commenced by the filing of a petition by a person  
14 other than the agent, the court may order the agent to pay reasonable attorney's fees to the  
15 petitioner if the court determines that the agent has clearly violated the agent's fiduciary duties  
16 under the power of attorney or has failed without any reasonable cause or justification to submit  
17 accounts or reports after written request pursuant to RSA 564-E:114(h).

18 (f) Unless good cause is shown, court hearings conducted on a petition filed under this  
19 section shall be closed to the general public. Only the parties, their counsel, witnesses, and  
20 representatives of agencies who are present to perform their official duties shall be admitted. The  
21 records, reports, and evidence presented to the court shall be confidential. The final decision of the  
22 court shall be a public record.

23 (g) With regard to a petition to determine whether a particular gift is authorized,

24 (1) the court shall appoint a guardian ad litem if the proposed gift would benefit the  
25 agent personally or otherwise create a potential conflict of interest between the principal's interests  
26 and the agent's personal interests;

27 (2) the court shall consider all relevant factors, including, without limitation, the  
28 factors set forth in RSA 564-E:217(b); and

29 (3) the gift shall be presumed to be lawful if the power of attorney is accompanied  
30 by the disclosure statement under RSA 564-E:105 and the agent's acknowledgment under RSA 564-  
31 E:113 and expressly grants the agent the authority to make the gift under RSA 564-E:201(a)(2) or  
32 (b); otherwise, the agent shall be required to prove by a preponderance of evidence that the gift was  
33 authorized and was not a result of undue influence, fraud, or misrepresentation.

34 (h) The department of justice, the department of health and human services, and the  
35 county attorney, shall be notified and shall have the opportunity to address the court in any  
36 proceeding under this section if the court has concerns relative to:

37 (1) The impact on the principal of any period of Medicaid ineligibility that would

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1 result from a proposed gift; or

2 (2) Whether the principal has been the victim of a crime or has been or is at risk of  
3 being abused, neglected, or exploited within the meaning of RSA 161-F:43.

4 564-E:117 Agent's Liability. An agent that violates this chapter may be held liable, and an  
5 agent that knowingly, willfully, or recklessly violates this chapter shall be liable, to the principal or  
6 the principal's successors in interest for the amount required to:

7 (1) restore the value of the principal's property to what it would have been had the  
8 violation not occurred; and

9 (2) reimburse the principal or the principal's successors in interest for the attorney's  
10 fees and costs paid on the agent's behalf.

11 564-E:118 Agent's Resignation; Notice. An agent may resign by substantially complying with a  
12 method of resignation provided in the terms of the power of attorney or, if the terms of the power of  
13 attorney do not provide a method or the method provided in the terms is not expressly made  
14 exclusive or is not possible to achieve, by giving written notice to the principal and, if the principal  
15 is incapacitated:

16 (1) to the conservator or guardian, if one has been appointed for the principal, and a  
17 coagent or successor agent; or

18 (2) if there is no person described in subsection (1), to:

19 (A) a parent, spouse, or descendant of the principal;

20 (B) the principal's caregiver;

21 (C) another person reasonably believed by the agent to have sufficient interest  
22 in the principal's welfare; or

23 (D) a governmental agency having authority to protect the welfare of the  
24 principal.

25 564-E:119 Acceptance of and Reliance Upon Acknowledged Power of Attorney.

26 (a) For purposes of this section and RSA 564-E:120, "acknowledged" means purportedly  
27 verified before a notary public or other individual authorized to take acknowledgments.

28 (b) A person that in good faith accepts an acknowledged power of attorney without  
29 actual knowledge that the signature is not genuine may presume that the signature is genuine.

30 (c) A person that in good faith accepts an acknowledged power of attorney without  
31 actual knowledge that the power of attorney is void, invalid, or terminated, that the purported  
32 agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly  
33 exercising the agent's authority may rely upon the power of attorney as if the power of attorney  
34 were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect,  
35 and the agent had not exceeded and had properly exercised the authority.

36 (d) A person that is asked to accept an acknowledged power of attorney may request,  
37 and rely upon, without further investigation:

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1           (1) an agent's certification under penalty of perjury of any factual matter  
2 concerning the principal, agent, or power of attorney;

3           (2) an English translation of the power of attorney if the power of attorney contains,  
4 in whole or in part, language other than English; and

5           (3) an opinion of counsel as to any matter of law concerning the power of attorney if  
6 the person making the request provides in a writing or other record the reason for the request.

7           (e) An English translation or an opinion of counsel requested under this section must be  
8 provided at the principal's expense unless the request is made more than 7 business days after the  
9 power of attorney is presented for acceptance.

10          (f) For purposes of this section and RSA 564-E:120, a person that conducts activities  
11 through employees is without actual knowledge of a fact relating to a power of attorney, a principal,  
12 or an agent if the employee conducting the transaction involving the power of attorney is without  
13 actual knowledge of the fact.

14           564-E:120 Liability For Refusal To Accept Acknowledged Power of Attorney.

15           (a) Except as otherwise provided in subsection (b):

16           (1) a person shall either accept an acknowledged power of attorney or request a  
17 certification, a translation, or an opinion of counsel under RSA 564-E:119(d) no later than 7  
18 business days after presentation of the power of attorney for acceptance;

19           (2) if a person requests a certification, a translation, or an opinion of counsel under  
20 RSA 564-E:119(d), the person shall accept the power of attorney no later than 5 business days after  
21 receipt of the certification, translation, or opinion of counsel; and

22           (3) a person may not require an additional or different form of power of attorney for  
23 authority granted in the power of attorney presented.

24           (b) A person is not required to accept an acknowledged power of attorney if:

25           (1) the person is not otherwise required to engage in a transaction with the  
26 principal in the same circumstances;

27           (2) engaging in a transaction with the agent or the principal in the same  
28 circumstances would be inconsistent with federal law, including, without limitation, federal rules  
29 and federal regulations;

30           (3) the person has actual knowledge of the termination of the agent's authority or of  
31 the power of attorney before exercise of the power;

32           (4) a request for a certification, a translation, or an opinion of counsel under RSA  
33 564-E:119(d) is refused;

34           (5) the person in good faith believes that the power is not valid or that the agent  
35 does not have the authority to perform the act requested, whether or not a certification, a  
36 translation, or an opinion of counsel under RSA 564-E:119(d) has been requested or provided; or

37           (6) the person makes, or has actual knowledge that another person has made, a

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1 report to the appropriate adult protective services or law enforcement agency stating a good faith  
2 belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or  
3 abandonment by the agent or a person acting for or with the agent.

4 (c) A person that refuses in violation of this section to accept an acknowledged power of  
5 attorney:

6 (1) is subject to a court order mandating acceptance of the power of attorney; and

7 (2) may be held liable for reasonable attorney's fees and costs incurred in any action  
8 or proceeding that confirms the validity of the power of attorney or mandates acceptance of the  
9 power of attorney.

10 564-E:121 Principles of Law and Equity. Unless displaced by a provision of this chapter, the  
11 principles of law and equity supplement this chapter.

12 564-E:122 Laws Applicable to Financial Institutions and Entities. This chapter does not  
13 supersede any other law applicable to financial institutions or other entities, and the other law  
14 controls if inconsistent with this chapter.

15 564-E:123 Remedies Under Other Law. The remedies under this chapter are not exclusive and  
16 do not abrogate any right or remedy under the law of this state other than this chapter.

17 ARTICLE 2

18 AUTHORITY

19 564-E:201 Authority That Requires Specific Grant; Grant of General Authority.

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

24 (1) create, amend, revoke, or terminate an inter vivos trust;

25 (2) make a gift, except the agent may not make a gift that will leave the principal  
26 without sufficient assets or income to provide for the principal's care without relying on Medicaid,  
27 other public assistance or charity unless the power of attorney expressly grants such authority or  
28 unless the gift is approved in advance by the court upon a determination that the gift is authorized  
29 in accordance with RSA 564-E:116(g);

30 (3) create or change rights of survivorship;

31 (4) create or change a beneficiary designation;

32 (5) delegate authority granted under the power of attorney;

33 (6) waive the principal's right to be a beneficiary of a joint and survivor annuity,  
34 including a survivor benefit under a retirement plan;

35 (7) exercise a fiduciary power that the principal has authority to delegate to the  
36 extent that the principal specifically and expressly delegates such power to the agent; or

37 (8) exercise authority over the content of electronic communications sent or received

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1 by the principal.

2 (b) Notwithstanding a grant of authority to do an act described in subsection (a):

3 (1) an agent may not exercise authority under a power of attorney to create in the  
4 agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the  
5 principal's property by gift unless the power of attorney otherwise provides or unless the gift is  
6 approved in advance by the court upon a determination that the gift is authorized in accordance  
7 with RSA 564-E:116(g); and

8 (2) an agent (other than an agent that is an ancestor, spouse, or descendant of the  
9 principal) may not exercise authority under a power of attorney to create in the agent, or in an  
10 individual to whom the agent owes a legal obligation of support, an interest in the principal's  
11 property by any manner other than a gift, including, without limitation, by right of survivorship,  
12 beneficiary designation, or disclaimer, unless the power of attorney otherwise provides.

13 (c) Subject to subsections (a), (b), (d), and (e), if a power of attorney grants to an agent  
14 authority to do all acts that a principal could do, the agent has the general authority described in  
15 RSA 564-E:204 through RSA 564-E:216.

16 (d) Unless the power of attorney otherwise provides, a grant of authority to make a gift  
17 is subject to RSA 564-E:217.

18 (e) Subject to subsections (a), (b), and (d), if the subjects over which authority is granted  
19 in a power of attorney are similar or overlap, the broadest authority controls.

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

24 (g) An act performed by an agent pursuant to a power of attorney has the same effect  
25 and inures to the benefit of and binds the principal and the principal's successors in interest as if  
26 the principal had performed the act.

27 **564-E:202 Incorporation of Authority.**

28 (a) An agent has authority described in this article if the power of attorney refers to  
29 general authority with respect to the descriptive term for the subjects stated in RSA 564-E:204  
30 through RSA 564-E:217 or cites the section in which the authority is described.

31 (b) A reference in a power of attorney to general authority with respect to the  
32 descriptive term for a subject in RSA 564-E:204 through RSA 564-E:217 or a citation to a section of  
33 RSA 564-E:204 through RSA 564-E:217 incorporates the entire section as if it were set out in full in  
34 the power of attorney.

35 (c) A principal may modify authority incorporated by reference.

36 **564-E:203 Construction Of Authority Generally.** Except as otherwise provided in the power of  
37 attorney, by executing a power of attorney that incorporates by reference a subject described in RSA

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1 564-E:204 through RSA 564-E:217 or that grants to an agent authority to do all acts that a principal  
2 could do pursuant to RSA 564-E:201(c), a principal authorizes the agent, with respect to that  
3 subject, to:

4 (1) demand, receive, and obtain by litigation or otherwise, money or another thing  
5 of value to which the principal is, may become, or claims to be entitled, and conserve, invest,  
6 disburse, or use anything so received or obtained for the purposes intended;

7 (2) contract in any manner with any person, on terms agreeable to the agent, to  
8 accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate,  
9 release, or modify the contract or another contract made by or on behalf of the principal;

10 (3) execute, acknowledge, seal, deliver, file, or record any instrument or  
11 communication the agent considers desirable to accomplish a purpose of a transaction, including  
12 creating at any time a schedule listing some or all of the principal's property and attaching it to the  
13 power of attorney;

14 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
15 propose or accept a compromise with respect to a claim existing in favor of or against the principal  
16 or intervene in litigation relating to the claim;

17 (5) seek on the principal's behalf the assistance of a court or other governmental  
18 agency to carry out an act authorized in the power of attorney;

19 (6) engage, compensate, and discharge an attorney, accountant, discretionary  
20 investment manager, expert witness, or other advisor;

21 (7) prepare, execute, and file a record, report, or other document to safeguard or  
22 promote the principal's interest under a statute or regulation;

23 (8) communicate with any representative or employee of a government or  
24 governmental subdivision, agency, or instrumentality, on behalf of the principal;

25 (9) access communications intended for, and communicate on behalf of the principal,  
26 whether by mail, electronic transmission, telephone, or other means; and

27 (10) do any lawful act with respect to the subject and all property related to the  
28 subject.

29 564-E:204 Real Property. Unless the power of attorney otherwise provides, language in a  
30 power of attorney granting general authority with respect to real property authorizes the agent to:

31 (1) demand, buy, lease, receive, accept as a gift or as security for an extension of  
32 credit, or otherwise acquire or reject an interest in real property or a right incident to real property;

33 (2) sell; exchange; convey with or without covenants, representations, or  
34 warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to  
35 partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental  
36 permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute  
37 to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in



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1 real property or a right incident to real property;

2 (3) pledge or mortgage an interest in real property or right incident to real property  
3 as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal  
4 or a debt guaranteed by the principal;

5 (4) release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of  
6 trust, conditional sale contract, encumbrance, lien, or other claim to real property which exists or is  
7 asserted;

8 (5) manage or conserve an interest in real property or a right incident to real  
9 property owned or claimed to be owned by the principal, including:

10 (A) insuring against liability or casualty or other loss;

11 (B) obtaining or regaining possession of or protecting the interest or right by  
12 litigation or otherwise;

13 (C) paying, assessing, compromising, or contesting taxes or assessments or  
14 applying for and receiving refunds in connection with them; and

15 (D) purchasing supplies, hiring assistance or labor, and making repairs or  
16 alterations to the real property;

17 (6) use, develop, alter, replace, remove, erect, or install structures or other  
18 improvements upon real property in or incident to which the principal has, or claims to have, an  
19 interest or right;

20 (7) participate in a reorganization with respect to real property or an entity that  
21 owns an interest in or right incident to real property and receive, and hold, and act with respect to  
22 stocks and bonds or other property received in a plan of reorganization, including:

23 (A) selling or otherwise disposing of them;

24 (B) exercising or selling an option, right of conversion, or similar right with  
25 respect to them; and

26 (C) exercising any voting rights in person or by proxy;

27 (8) change the form of title of an interest in or right incident to real property; and

28 (9) dedicate to public use, with or without consideration, easements or other real  
29 property in which the principal has, or claims to have, an interest.

30 564-E:205 Tangible Personal Property. Unless the power of attorney otherwise provides,  
31 language in a power of attorney granting general authority with respect to tangible personal  
32 property authorizes the agent to:

33 (1) demand, buy, receive, accept as a gift or as security for an extension of credit, or  
34 otherwise acquire or reject ownership or possession of tangible personal property or an interest in  
35 tangible personal property;

36 (2) sell; exchange; convey with or without covenants, representations, or  
37 warranties; quitclaim; release; surrender; create a security interest in; grant options concerning;

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1 lease; sublease; or, otherwise dispose of tangible personal property or an interest in tangible  
2 personal property;

3 (3) grant a security interest in tangible personal property or an interest in tangible  
4 personal property as security to borrow money or pay, renew, or extend the time of payment of a  
5 debt of the principal or a debt guaranteed by the principal;

6 (4) release, assign, satisfy, or enforce by litigation or otherwise, a security interest,  
7 lien, or other claim on behalf of the principal, with respect to tangible personal property or an  
8 interest in tangible personal property;

9 (5) manage or conserve tangible personal property or an interest in tangible  
10 personal property on behalf of the principal, including:

11 (A) insuring against liability or casualty or other loss;

12 (B) obtaining or regaining possession of or protecting the property or interest,  
13 by litigation or otherwise;

14 (C) paying, assessing, compromising, or contesting taxes or assessments or  
15 applying for and receiving refunds in connection with taxes or assessments;

16 (D) moving the property from place to place;

17 (E) storing the property for hire or on a gratuitous bailment; and

18 (F) using and making repairs, alterations, or improvements to the property; and

19 (6) change the form of title of an interest in tangible personal property.

20 564-E:206 Stocks and Bonds. Unless the power of attorney otherwise provides, language in a  
21 power of attorney granting general authority with respect to stocks and bonds authorizes the agent  
22 to:

23 (1) buy, sell, and exchange stocks and bonds;

24 (2) establish, continue, modify, or terminate an account with respect to stocks and  
25 bonds;

26 (3) pledge stocks and bonds as security to borrow, pay, renew, or extend the time of  
27 payment of a debt of the principal;

28 (4) receive certificates and other evidences of ownership with respect to stocks and  
29 bonds; and

30 (5) exercise voting rights with respect to stocks and bonds in person or by proxy,  
31 enter into voting trusts, and consent to limitations on the right to vote.

32 564-E:207 Commodities and Options. Unless the power of attorney otherwise provides,  
33 language in a power of attorney granting general authority with respect to commodities and options  
34 authorizes the agent to:

35 (1) buy, sell, exchange, assign, settle, and exercise commodity futures contracts and  
36 call or put options on stocks or stock indexes traded on a regulated option exchange; and

37 (2) establish, continue, modify, and terminate option accounts.

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1       564-E:208 Banks And Other Financial Institutions. Unless the power of attorney otherwise  
2 provides, language in a power of attorney granting general authority with respect to banks and  
3 other financial institutions authorizes the agent to:

4               (1) continue, modify, and terminate an account or other banking arrangement made  
5 by or on behalf of the principal;

6               (2) establish, modify, and terminate an account or other banking arrangement with  
7 a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm,  
8 or other financial institution selected by the agent;

9               (3) contract for services available from a financial institution, including renting a  
10 safe deposit box or space in a vault;

11              (4) withdraw, by check, order, electronic funds transfer, or otherwise, money or  
12 property of the principal deposited with or left in the custody of a financial institution;

13              (5) receive statements of account, vouchers, notices, and similar documents from a  
14 financial institution and act with respect to them;

15              (6) enter a safe deposit box or vault and withdraw or add to the contents;

16              (7) borrow money and pledge as security personal property of the principal  
17 necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal  
18 or a debt guaranteed by the principal;

19              (8) make, assign, draw, endorse, discount, guarantee, and negotiate promissory  
20 notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the  
21 principal or the principal's order, transfer money, receive the cash or other proceeds of those  
22 transactions, and accept a draft drawn by a person upon the principal and pay it when due;

23              (9) receive for the principal and act upon a sight draft, warehouse receipt, or other  
24 document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;

25              (10) apply for, receive, and use letters of credit, credit and debit cards, electronic  
26 transaction authorizations, and traveler's checks from a financial institution and give an indemnity  
27 or other agreement in connection with letters of credit; and

28              (11) consent to an extension of the time of payment with respect to commercial  
29 paper or a financial transaction with a financial institution.

30       564-E:209 Operation of Entity or Business. Subject to the terms of a document or an  
31 agreement governing an entity or an entity ownership interest, and unless the power of attorney  
32 otherwise provides, language in a power of attorney granting general authority with respect to  
33 operation of an entity or business authorizes the agent to:

34              (1) operate, buy, sell, enlarge, reduce, or terminate an ownership interest;

35              (2) perform a duty or discharge a liability and exercise in person or by proxy a right,  
36 power, privilege, or option that the principal has, may have, or claims to have;

37              (3) enforce the terms of an ownership agreement;

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1                   (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
2 propose or accept a compromise with respect to litigation to which the principal is a party because of  
3 an ownership interest;

4                   (5) exercise in person or by proxy, or enforce by litigation or otherwise, a right,  
5 power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;

6                   (6) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
7 propose or accept a compromise with respect to litigation to which the principal is a party  
8 concerning stocks and bonds;

9                   (7) with respect to an entity or business owned solely by the principal:

10                   (A) continue, modify, renegotiate, extend, and terminate a contract made by or  
11 on behalf of the principal with respect to the entity or business before execution of the power of  
12 attorney;

13                   (B) determine:

14                         (i) the location of its operation;

15                         (ii) the nature and extent of its business;

16                         (iii) the methods of manufacturing, selling, merchandising, financing,  
17 accounting, and advertising employed in its operation;

18                         (iv) the amount and types of insurance carried; and

19                         (v) the mode of engaging, compensating, and dealing with its employees and  
20 accountants, attorneys, or other advisors;

21                   (C) change the name or form of organization under which the entity or business  
22 is operated and enter into an ownership agreement with other persons to take over all or part of the  
23 operation of the entity or business; and

24                   (D) demand and receive money due or claimed by the principal or on the  
25 principal's behalf in the operation of the entity or business and control and disburse the money in  
26 the operation of the entity or business;

27                   (8) put additional capital into an entity or business in which the principal has an  
28 interest;

29                   (9) join in a plan of reorganization, consolidation, conversion, domestication, or  
30 merger of the entity or business;

31                   (10) sell or liquidate all or part of an entity or business;

32                   (11) establish the value of an entity or business under a buy-out agreement to which  
33 the principal is a party;

34                   (12) prepare, sign, file, and deliver reports, compilations of information, returns, or  
35 other papers with respect to an entity or business and make related payments; and

36                   (13) pay, compromise, or contest taxes, assessments, fines, or penalties and perform  
37 any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or

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1 penalties, with respect to an entity or business, including attempts to recover, in any manner  
2 permitted by law, money paid before or after the execution of the power of attorney.

3 564-E:210 Insurance And Annuities. Unless the power of attorney otherwise provides,  
4 language in a power of attorney granting general authority with respect to insurance and annuities  
5 authorizes the agent to:

6 (1) continue, pay the premium or make a contribution on, modify, exchange,  
7 rescind, release, or terminate a contract procured by or on behalf of the principal which insures or  
8 provides an annuity to either the principal or another person, whether or not the principal is a  
9 beneficiary under the contract;

10 (2) procure new, different, and additional contracts of insurance and annuities for  
11 the principal and the principal's spouse, children, and other dependents, and select the amount,  
12 type of insurance or annuity, and mode of payment;

13 (3) pay the premium or make a contribution on, modify, exchange, rescind, release,  
14 or terminate a contract of insurance or annuity procured by the agent;

15 (4) apply for and receive a loan secured by a contract of insurance or annuity;

16 (5) surrender and receive the cash surrender value on a contract of insurance or  
17 annuity;

18 (6) exercise an election;

19 (7) exercise investment powers available under a contract of insurance or annuity;

20 (8) change the manner of paying premiums on a contract of insurance or annuity;

21 (9) change or convert the type of insurance or annuity with respect to which the  
22 principal has or claims to have authority described in this section;

23 (10) apply for and procure a benefit or assistance under a statute or regulation to  
24 guarantee or pay premiums of a contract of insurance on the life of the principal;

25 (11) collect, sell, assign, hypothecate, borrow against, or pledge the interest of the  
26 principal in a contract of insurance or annuity;

27 (12) select the form and timing of the payment of proceeds from a contract of  
28 insurance or annuity; and

29 (13) pay, from proceeds or otherwise, compromise or contest, and apply for refunds  
30 in connection with, a tax or assessment levied by a taxing authority with respect to a contract of  
31 insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

32 564-E:211 Estates, Trusts, and Other Beneficial Interests.

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

36 (b) Unless the power of attorney otherwise provides, language in a power of attorney  
37 granting general authority with respect to estates, trusts, and other beneficial interests authorizes

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1 the agent to:

2 (1) accept, receive, receipt for, sell, assign, pledge, or exchange a share in or  
3 payment from an estate, trust, or other beneficial interest;

4 (2) demand or obtain money or another thing of value to which the principal is, may  
5 become, or claims to be, entitled by reason of an estate, trust, or other beneficial interest, by  
6 litigation or otherwise;

7 (3) exercise for the benefit of the principal a presently exercisable general power of  
8 appointment held by the principal;

9 (4) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
10 propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or  
11 effect of a deed, will, declaration of trust, or other instrument or transaction affecting the interest of  
12 the principal;

13 (5) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or  
14 propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a  
15 fiduciary;

16 (6) conserve, invest, disburse, or use anything received for an authorized purpose;

17 (7) transfer an interest of the principal in real property, stocks and bonds, accounts  
18 with financial institutions or securities intermediaries, insurance, annuities, and other property to  
19 the trustee of a revocable trust created by the principal as settlor; and

20 (8) reject, renounce, disclaim, release, or consent to a reduction in or modification of  
21 a share in or payment from an estate, trust, or other beneficial interest.

22 564-E:212 Claims and Litigation. Unless the power of attorney otherwise provides, language in  
23 a power of attorney granting general authority with respect to claims and litigation authorizes the  
24 agent to:

25 (1) assert and maintain before a court or administrative agency a claim, claim for  
26 relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover  
27 property or other thing of value, recover damages sustained by the principal, eliminate or modify  
28 tax liability, or seek an injunction, specific performance, or other relief;

29 (2) bring an action to determine adverse claims or intervene or otherwise  
30 participate in litigation;

31 (3) seek an attachment, garnishment, order of arrest, or other preliminary,  
32 provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment,  
33 order, or decree;

34 (4) make or accept a tender, offer of judgment, or admission of facts, submit a  
35 controversy on an agreed statement of facts, consent to examination, and bind the principal in  
36 litigation;

37 (5) submit to alternative dispute resolution, settle, and propose or accept a

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1     compromise;

2                     (6) waive the issuance and service of process upon the principal, accept service of  
3     process, appear for the principal, designate persons upon which process directed to the principal  
4     may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings,  
5     seek appellate review, procure and give surety and indemnity bonds, contract and pay for the  
6     preparation and printing of records and briefs, receive, execute, and file or deliver a consent,  
7     waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other  
8     instrument in connection with the prosecution, settlement, or defense of a claim or litigation;

9                     (7) act for the principal with respect to bankruptcy or insolvency, whether  
10    voluntary or involuntary, concerning the principal or some other person, or with respect to a  
11    reorganization, receivership, or application for the appointment of a receiver or trustee which  
12    affects an interest of the principal in property or other thing of value;

13                    (8) pay a judgment, award, or order against the principal or a settlement made in  
14    connection with a claim or litigation; and

15                    (9) receive money or other thing of value paid in settlement of or as proceeds of a  
16    claim or litigation.

17       564-E:213 Personal and Family Maintenance.

18                    (a) Unless the power of attorney otherwise provides, language in a power of attorney  
19    granting general authority with respect to personal and family maintenance authorizes the agent  
20    to:

21                    (1) perform the acts necessary to maintain the customary standard of living of the  
22    principal, the principal's spouse, and the following individuals, whether living when the power of  
23    attorney is executed or later born:

24                         (A) individuals legally entitled to be supported by the principal; and

25                         (B) the individuals whom the principal has customarily supported or indicated  
26    the intent to support;

27                    (2) make periodic payments of child support and other family maintenance required  
28    by a court or governmental agency or an agreement to which the principal is a party;

29                    (3) provide living quarters for the individuals described in subsection (1) by:

30                         (A) purchase, lease, or other contract; or

31                         (B) paying the operating costs, including interest, amortization payments,  
32    repairs, improvements, and taxes, for premises owned by the principal or occupied by those  
33    individuals;

34                    (4) provide normal domestic help, usual vacations and travel expenses, and funds  
35    for shelter, clothing, food, appropriate education, including postsecondary and vocational education,  
36    and other current living costs for the individuals described in subsection (1);

37                    (5) pay expenses for necessary health care and custodial care on behalf of the

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1 individuals described in subsection (1);

2 (6) act as the principal's personal representative pursuant to the Health Insurance  
3 Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C.  
4 section 1320d, as amended, and applicable regulations, in making decisions related to the past,  
5 present, or future payment for the provision of health care consented to by the principal or anyone  
6 authorized under the law of this state to consent to health care on behalf of the principal;

7 (7) continue any provision made by the principal for automobiles or other means of  
8 transportation, including registering, licensing, insuring, and replacing them, for the individuals  
9 described in subsection (1);

10 (8) maintain credit and debit accounts for the convenience of the individuals  
11 described in subsection (1) and open new accounts; and

12 (9) continue payments incidental to the membership or affiliation of the principal in  
13 a religious institution, club, society, order, or other organization or continue contributions to those  
14 organizations.

15 (b) Authority with respect to personal and family maintenance is neither dependent  
16 upon, nor limited by, authority that an agent may or may not have with respect to gifts under this  
17 chapter.

18 564-E:214 Benefits From Governmental Programs or Civil or Military Service.

19 (a) In this section, "benefits from governmental programs or civil or military service"  
20 means any benefit, program or assistance provided under a statute or regulation including Social  
21 Security, Medicare, and Medicaid.

22 (b) Unless the power of attorney otherwise provides, language in a power of attorney  
23 granting general authority with respect to benefits from governmental programs or civil or military  
24 service authorizes the agent to:

25 (1) execute vouchers in the name of the principal for allowances and  
26 reimbursements payable by the United States or a foreign government or by a state or subdivision  
27 of a state to the principal, including allowances and reimbursements for transportation of the  
28 individuals described in RSA 564-E:213(a)(1), and for shipment of their household effects;

29 (2) take possession and order the removal and shipment of property of the principal  
30 from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental  
31 or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket,  
32 certificate, or other instrument for that purpose;

33 (3) enroll in, apply for, select, reject, change, amend, or discontinue, on the  
34 principal's behalf, a benefit or program;

35 (4) prepare, file, and maintain a claim of the principal for a benefit or assistance,  
36 financial or otherwise, to which the principal may be entitled under a statute or regulation;

37 (5) initiate, participate in, submit to alternative dispute resolution, settle, oppose, or



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propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and

(6) receive the financial proceeds of a claim described in subsection (4) and conserve, invest, disburse, or use for a lawful purpose anything so received.

**564-E:215 Retirement Plans.**

(a) In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

(1) an individual retirement account under Internal Revenue Code section 408, 26 U.S.C. section 408, as amended;

(2) a Roth individual retirement account under Internal Revenue Code section 408A, 26 U.S.C. section 408A, as amended;

(3) a deemed individual retirement account under Internal Revenue Code section 408(q), 26 U.S.C. section 408(q), as amended;

(4) an annuity or mutual fund custodial account under Internal Revenue Code section 403(b), 26 U.S.C. section 403(b), as amended;

(5) a pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code section 401(a), 26 U.S.C. section 401(a), as amended;

(6) a plan under Internal Revenue Code section 457(b), 26 U.S.C. section 457(b), as amended; and

(7) a nonqualified deferred compensation plan under Internal Revenue Code section 409A, 26 U.S.C. section 409A, as amended.

(b) Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

(1) select the form and timing of payments under a retirement plan and withdraw benefits from a plan;

(2) make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;

(3) establish a retirement plan in the principal's name;

(4) make contributions to a retirement plan;

(5) exercise investment powers available under a retirement plan; and

(6) borrow from, sell assets to, or purchase assets from a retirement plan.

**564-E:216 Taxes.** Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests

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1 for extension of time, petitions regarding tax matters, and any other tax-related documents,  
2 including receipts, offers, waivers, consents, including consents and agreements under Internal  
3 Revenue Code section 2032A, 26 U.S.C. section 2032A, as amended, closing agreements, and any  
4 power of attorney required by the Internal Revenue Service or other taxing authority with respect  
5 to a tax year upon which the statute of limitations has not run and the following 25 tax years;

6 (2) pay taxes due, collect refunds, post bonds, receive confidential information, and  
7 contest deficiencies determined by the Internal Revenue Service or other taxing authority;

8 (3) exercise any election available to the principal under federal, state, local, or  
9 foreign tax law; and

10 (4) act for the principal in all tax matters for all periods before the Internal Revenue  
11 Service, or other taxing authority.

12 564-E:217 Gifts.

13 (a) In this section, a "gift" for the benefit of a person includes, without limitation, a gift  
14 to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings account or  
15 prepaid tuition plan as defined under Internal Revenue Code section 529, 26 U.S.C. section 529, as  
16 amended.

17 (b) An agent may make a gift of the principal's property only as the agent determines is  
18 consistent with the principal's objectives if actually known by the agent or, if unknown, as the agent  
19 determines is consistent with the principal's best interest based on all relevant factors, including,  
20 without limitation:

21 (1) evidence of the principal's intent;

22 (2) the principal's personal history of making or joining in the making of lifetime  
23 gifts;

24 (3) the principal's estate plan;

25 (4) the principal's foreseeable obligations and maintenance needs and the impact of  
26 the proposed gift on the principal's housing options, access to care and services, and general  
27 welfare;

28 (5) the income, gift, estate or inheritance tax consequences of the transaction;

29 (6) whether the proposed gift creates a foreseeable risk that the principal will be  
30 deprived of sufficient assets to cover his or her needs during any period of Medicaid ineligibility that  
31 would result from the proposed gift; and

32 (7) whether the proposed gift is likely to result in premature or unnecessary  
33 nursing home placement or institutionalization of the principal, or compromise the principal's  
34 access to care or services in the least restrictive setting in which his or her needs can be met.

**ARTICLE 3**

**STATUTORY FORMS**

35  
36  
37 564-E:301 Statutory Form Power Of Attorney. A document substantially in the following form

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may be used to create a power of attorney that is in compliance with the provisions of this chapter:

**NEW HAMPSHIRE**

**STATUTORY POWER OF ATTORNEY**

**INFORMATION CONCERNING THE POWER OF ATTORNEY**

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Notice to the Principal: As the "Principal," you are using this Power of Attorney to grant power to another person (called the "Agent") to make decisions, including, but not limited to, decisions concerning your money, property, or both, and to use your money, property, or both on your behalf. If this Power of Attorney does not limit the powers that you give to your Agent, your Agent will have broad and sweeping powers to sell or otherwise dispose of your property, and to spend your money without advance notice to you or approval by you. Unless you have expressly provided otherwise in this Power of Attorney, your Agent will have these powers before you become incapacitated, and unless you have expressly provided otherwise in this Power of Attorney, your Agent will continue to have these powers after you become incapacitated. You have the right to retain this Power of Attorney and to release it later or to request that another person retain this Power of Attorney on your behalf and release it only if one or more conditions specified in advance by you are satisfied. You have the right to revoke or take back this Power of Attorney at any time, so long as you are of sound mind. If there is anything about this Power of Attorney that you do not understand, you should seek professional advice.

Principal's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**1. DESIGNATION OF AGENT**

I, (Name of Principal) \_\_\_\_\_, of \_\_\_\_\_ (Address of Principal), name the following person as my agent:

Name of Agent: \_\_\_\_\_

Agent's Address: \_\_\_\_\_

**2. DESIGNATION OF SUCCESSOR AGENT(S) (OPTIONAL)**

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

Name of Successor Agent: \_\_\_\_\_

Successor Agent's Address: \_\_\_\_\_

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

Name of Second Successor Agent: \_\_\_\_\_

Second Successor Agent's Address: \_\_\_\_\_

**3. REVOCATION OF EXISTING POWERS OF ATTORNEY**

(Initial the following statement if it is your choice.)

\_\_\_\_\_ This Power of Attorney revokes all existing powers of attorney previously executed by me.

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1    4. GRANT OF GENERAL AUTHORITY

2    (Initial beside your choice of A or B, but not both.)

3    \_\_\_\_ A. I grant my agent general authority to act for me in all matters, including, without  
4    limitation, all of the subjects enumerated in B below.

5    \_\_\_\_ B. I grant my agent general authority over the following subjects as defined in the following  
6    sections of the Uniform Power of Attorney Act:

7    (Initial each subject you want to include in the agent's general authority.)

8    \_\_\_\_ Real Property as defined in RSA 564-E:204

9    \_\_\_\_ Tangible Personal Property as defined in RSA 564-E:205

10    \_\_\_\_ Stocks and Bonds as defined in RSA 564-E:206

11    \_\_\_\_ Commodities and Options as defined in RSA 564-E:207

12    \_\_\_\_ Banks and Other Financial Institutions as defined in RSA 564-E:208

13    \_\_\_\_ Operation of Entity or Business as defined in RSA 564-E:209

14    \_\_\_\_ Insurance and Annuities as defined in RSA 564-E:210

15    \_\_\_\_ Estates, Trusts and Other Beneficial Interests as defined in RSA 564-E:211

16    \_\_\_\_ Claims and Litigation as defined in RSA 564-E:212

17    \_\_\_\_ Personal and Family Maintenance as defined in RSA 564-E:213

18    \_\_\_\_ Benefits from Governmental Programs or Civil or Military Service as defined in RSA 564-  
19    E:214

20    \_\_\_\_ Retirement Plans as defined in RSA 564-E:215

21    \_\_\_\_ Taxes as defined in RSA 564-E:216

22    \_\_\_\_ Digital Assets

23    5. GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

24    (Initial each subject you want to include in the agent's authority. CAUTION: As to some of the  
25    following subjects, granting your agent authority will give your agent the authority to take actions  
26    that could significantly reduce your property or change how your property is distributed at your  
27    death.)

28    My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the  
29    specific authority listed below:

30    \_\_\_\_ Create, amend, revoke, or terminate an inter vivos trust

31    \_\_\_\_ Make a gift, subject to the limitations of RSA 564-E:217 of the Uniform Power of Attorney  
32    Act

33                    (If you have granted your agent the authority to make a gift, then as to each of the  
34                    following statements, initial beside it if it is your choice.)

35            \_\_\_\_ My agent may make a gift, even if it will leave me without sufficient assets or  
36            income to provide for my care without relying on Medicaid, other public assistance  
37            or charity.

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1           \_\_\_ My agent may make a gift to himself or herself and to any individual to whom my  
2           agent owes a legal obligation of support.

3 \_\_\_\_\_ Create or change rights of survivorship

4 \_\_\_\_\_ Create or change a beneficiary designation

5 \_\_\_\_\_ Delegate authority granted under this Power of Attorney to another person

6        \_\_\_\_\_ Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor  
7        benefit under a retirement plan

8 \_\_\_\_\_ Exercise the fiduciary power(s) that I have the authority to delegate as specified in the  
9 “Special Instructions” in Paragraph 7 of this Power of Attorney

10 \_\_\_\_\_ Exercise authority over the content of electronic communication sent or received by me

11 \_\_\_\_\_ Exercise authority with respect to intellectual property, including, without limitation,  
12 copyrights, contracts for payment of royalties, and trademarks

13 6. LIMITATION ON AGENT'S AUTHORITY (OTHER THAN GIFTING)

14 (If an agent (including successor agent) named in this Power of Attorney is someone other than an  
15 ancestor of yours, your spouse, or a descendant of yours, you must initial the following statement if  
16 it is your choice that such agent have the following authority. An agent who is an ancestor of yours,  
17 your spouse, or a descendant of yours already has the following authority under New Hampshire  
18 law.)

19        \_\_\_\_ My agent may exercise authority under this Power of Attorney to create in my agent, or in  
20        an individual to whom my agent owes a legal obligation of support, an interest in my property by  
21        any manner (other than a gift), including, without limitation, by right of survivorship, beneficiary  
22        designation, or disclaimer.

## 23 7. SPECIAL INSTRUCTIONS (OPTIONAL)

24 (Here you may include special instructions. You may leave this Paragraph blank. You may attach  
25 additional pages as necessary.)

---

26

27 8. EFFECTIVE DATE AND AUTHORITY OF AGENT

28 This Power of Attorney is effective immediately unless I have stated otherwise in the Special  
29 Instructions in Paragraph 7 of this Power of Attorney. An agent (including successor agent) named  
30 in this Power of Attorney will have no authority to act as my agent until he or she has signed and  
31 affixed to this Power of Attorney an acknowledgment that is substantially the same as the  
32 Acknowledgment at the end of this Power of Attorney.

33 9. GOVERNING LAW

34 This Power of Attorney shall be governed by the laws of the State of New Hampshire.

35 10. RELIANCE ON THIS POWER OF ATTORNEY

36 Any person, including my agent, may rely upon this Power of Attorney if it is acknowledged before  
37 a notary public or other individual authorized to take acknowledgements (or a copy of the

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acknowledged Power of Attorney), unless that person knows it is void, invalid, or terminated.

**SIGNATURE AND ACKNOWLEDGMENT**

(You must date and sign this Power of Attorney. If you are physically unable to sign, it may be signed by someone else writing your name, in your presence and at your express direction. This Power of Attorney must be acknowledged before a notary public or other individual authorized by law to take acknowledgments.)

Principal's Signature: \_\_\_\_\_

Principal's Printed Name: \_\_\_\_\_

Principal's Address: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF NEW HAMPSHIRE**

**COUNTY OF \_\_\_\_\_**

The foregoing Power of Attorney was acknowledged before me on \_\_\_\_\_, by \_\_\_\_\_, known to me or satisfactorily proven to be the person named herein

Signature of Notarial Officer: \_\_\_\_\_

Title (and Rank): \_\_\_\_\_

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

**AGENT ACKNOWLEDGMENT**

Notice to Agent: You will have no authority to act as agent under this Power of Attorney until you sign and affix this acknowledgment to the Power of Attorney.

I, \_\_\_\_\_, have read the attached power of attorney and am the person identified as the agent for the principal. I hereby acknowledge that when I act as agent I am given power under the power of attorney to make decisions about money, property, or both belonging to the principal, and to spend the principal's money, property, or both on the principal's behalf, in accordance with the terms of the power of attorney. When acting as agent, I have duties (called "fiduciary duties") to act in the principal's best interest, to act in good faith, and to act only within the scope of authority granted in the power of attorney, as well as other duties imposed by law to the extent not provided otherwise in the power of attorney. As an agent, I am not entitled to use the money or property for my own benefit or to make gifts to myself or others unless the power of attorney specifically gives me the authority to do so. As an agent, my authority under the power of attorney will end when the principal dies and I will not have authority to manage or dispose of any property or administer the estate of the principal. If I violate a fiduciary duty under the power of attorney, I may be liable for damages and may be subject to criminal prosecution. If there is anything about this power of attorney, or my duties under it, that I do not understand, I understand that I should seek professional advice.

Agent's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

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564-E:302 Agent's Certification. The following optional form may be used by an agent to certify facts concerning a power of attorney:

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

STATE OF NEW HAMPSHIRE

COUNTY OF \_\_\_\_\_

I, \_\_\_\_\_, certify under penalty of perjury that \_\_\_\_\_ granted me authority as an agent in a power of attorney dated \_\_\_\_\_.

I further certify that to my knowledge:

(1) the principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) (Insert Other Relevant Statement(s)).

**SIGNATURE AND ACKNOWLEDGMENT**

Agent's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Agent's Name Printed \_\_\_\_\_

Agent's Address \_\_\_\_\_

Agent's Telephone Number \_\_\_\_\_

Signed and sworn to (or affirmed) before me on \_\_\_\_\_, by \_\_\_\_\_, known to me or satisfactorily proven to be the person named herein

Signature of Notarial Officer: \_\_\_\_\_

Title (and Rank): \_\_\_\_\_

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

**ARTICLE 4**

**MISCELLANEOUS PROVISIONS**

564-E:401 Uniformity of Application and Construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact the Uniform Power of Attorney Act.

564-E:402 Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

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1       564-E:403 Effect on Existing Powers of Attorney. Except as otherwise provided in this chapter,  
2 on the effective date of this chapter:

3               (1) this chapter applies to a power of attorney created before, on, or after its  
4 effective date;

5               (178:178:2) this chapter applies to a judicial proceeding concerning a power of  
6 attorney commenced on or after its effective date;

7               (3) this chapter applies to a judicial proceeding concerning a power of attorney  
8 commenced before its effective date unless the court finds that application of a provision of this  
9 chapter would substantially interfere with the effective conduct of the judicial proceeding or  
10 prejudice the rights of a party, in which case that provision does not apply and the superseded law  
11 applies; and

12              (4) an act done before the effective date of this chapter is not affected by this  
13 chapter.

14       178:2 Reference to Durable Power of Attorney Removed. Amend RSA 137-J:15, I(b) - (d) to read  
15 as follows:

16              (b) By execution by the principal of a subsequent advance directive; **or**

17              (c) By the filing of an action for divorce, legal separation, annulment or protective  
18 order, where both the agent and the principal are parties to such action, except when there is an  
19 alternate agent designated, in which case the designation of the primary agent shall be revoked and  
20 the alternate designation shall become effective. Re-execution or written re-affirmation of the  
21 advance directive following a filing of an action for divorce, legal separation, annulment, or  
22 protective order shall make effective the original designation of the primary agent under the  
23 advance directive[; ~~or~~

24              ~~(d) By a determination by a court under RSA 506:7 that the agent's authority has been~~  
25 ~~revoked].~~

26       178:3 Power of Attorney; Incompetence of Principal; Reference Removed. Amend RSA 137-J:22,  
27 I to read as follows:

28              I. The principal or any person who is a near relative of the principal, or who is a responsible  
29 adult who is directly interested in the principal by personal knowledge and acquaintance, including,  
30 but not limited to a guardian, social worker, physician, or **member of the** clergy, may file an action  
31 in the probate court of the county where the principal is located at the time:

32              (a) Requesting that the authority granted to an agent by an advance directive be  
33 revoked on the grounds that the principal was not of sound mind or was under duress, fraud, or  
34 undue influence when the advance directive was executed, and shall have all the rights and  
35 remedies provided by ~~[RSA 506:7]~~ **RSA 564-E:116** which shall apply to directives executed under  
36 this chapter and persons acting pursuant to this chapter.

37              (b) Challenging the right of any agent who is acting or who proposes to act as such



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1 pursuant to this chapter and naming another person, who agrees to so act, to be appointed guardian  
2 over the person of the principal for the sole purpose of making health care decisions, as provided for  
3 in RSA 464-A.

4 178:4 Judges of Probate; Jurisdiction; Cross Reference. Amend RSA 547:3, II(b) to read as  
5 follows:

6 (b) Durable powers of attorney under ~~[RSA 506:6 and 506:7]~~ ***RSA 564-E***.

7 178:5 Repeal. The following are repealed:

8 I. RSA 506:5, relative to powers of attorney and effect of death of principal.

9 II. RSA 506:6, relative to powers of attorney and disability or incompetence of the principal.

10 III. RSA 506:7 relative to powers of attorney and limitations on the agent.

11 178:6 Effective Date. This act shall take effect January 1, 2018.

Approved: June 28, 2017

Effective Date: January 01, 2018

