

Amendment to SB 230-FN

1 Amend RSA 564-E:102 as inserted by section 1 of the bill by replacing it with the following:

2  
3 564-E:102 Definitions. In this chapter:

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

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

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

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

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

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

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

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

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

25 (10) "Guardian of the person" means a person appointed by a court to make  
26 decisions regarding the support, care, education, health, and welfare of an adult individual,  
27 including a person appointed pursuant to RSA 464-A. The term does not include a guardian ad  
28 litem.

29 (11) "Good faith" means honesty in fact.

30 (12) "Incapacity" means inability of an individual to manage property or business  
31 affairs because the individual:

32 (A) has an impairment in the ability to receive and evaluate information or

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1 make or communicate decisions even with the use of technological assistance; or

2 (B) is:

3 (i) missing;

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

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

6 (13) "Include" and "including" means the same as "include, without limitation" and  
7 "including, without limitation," regardless of whether expressly specified.

8 (14) "Person" means an individual, corporation, business trust, estate, trust,  
9 partnership, limited liability company, association, joint venture, public corporation, government or  
10 governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

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

13 (16) "Presently exercisable general power of appointment," with respect to property  
14 or a property interest subject to a power of appointment, means power exercisable at the time in  
15 question to vest absolute ownership in the principal individually, the principal's estate, the  
16 principal's creditors, or the creditors of the principal's estate. The term includes a power of  
17 appointment not exercisable until the occurrence of a specified event, the satisfaction of an  
18 ascertainable standard, or the passage of a specified period only after the occurrence of the specified  
19 event, the satisfaction of the ascertainable standard, or the passage of the specified period. The  
20 term does not include a power exercisable in a fiduciary capacity or only by will.

21 (17) "Principal" means an individual who grants authority to an agent in a power of  
22 attorney.

23 (18) "Property" means anything that may be the subject of ownership, whether real  
24 or personal, or legal or equitable, or any interest or right therein.

25 (19) "Record" means information that is inscribed on a tangible medium or that is  
26 stored in an electronic or other medium and is retrievable in perceivable form.

27 (20) "Sign" means, with present intent to authenticate or adopt a record:

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

29 (B) to attach to or logically associate with the record an electronic sound,  
30 symbol, or process.

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

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

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indexes.

Amend RSA 564-E:105 as inserted by section 1 of the bill by replacing it with the following:

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 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.

(b) A power of attorney to convey real estate 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 general power of attorney and must be acknowledged before a notary public or other individual authorized by law to take acknowledgments.

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

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1 the power of attorney.

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

5  
6 Amend RSA 564-E:109(c)(1) and (2) as inserted by section 1 of the bill by replacing it with the  
7 following:

8  
9 (1) a physician that the principal is incapacitated within the meaning of RSA 564-  
10 E:102(12)(A); or

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

13  
14 Amend RSA 564-E:113(a), as inserted by section 1 of the bill, by replacing it with the following:

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

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

36  
37 Amend the introductory paragraph of RSA 564-E:116(g) as inserted by section 1 of the bill by

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replacing it with the following:

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

Amend RSA 564-E:117 as inserted by section 1 of the bill by replacing it with the following:

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

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

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

Amend RSA 564-E:118, as inserted by section 1 of the bill, by replacing it with the following:

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

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

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

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

(B) the principal's caregiver;

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

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

Amend RSA 564-E:301 as inserted by section 1 of the bill by replacing it with the following:

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

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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.

4. GRANT OF GENERAL AUTHORITY

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

\_\_\_\_\_ A. I grant my agent general authority to act for me in all matters, including, without

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1 limitation, all of the subjects enumerated in B below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 \_\_\_\_\_ Digital Assets

20 **5. GRANT OF SPECIFIC AUTHORITY (OPTIONAL)**

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

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

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

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

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

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

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

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

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- 1     \_\_\_\_\_ Create or change a beneficiary designation
- 2     \_\_\_\_\_ Delegate authority granted under this Power of Attorney to another person
- 3     \_\_\_\_\_ Waive my right to be a beneficiary of a joint and survivor annuity, including a survivor
- 4     benefit under a retirement plan
- 5     \_\_\_\_\_ Exercise the fiduciary power(s) that I have the authority to delegate as specified in the
- 6     “Special Instructions” in Paragraph 7 of this Power of Attorney
- 7     \_\_\_\_\_ Exercise authority over the content of electronic communication sent or received by me
- 8     \_\_\_\_\_ Exercise authority with respect to intellectual property, including, without limitation,
- 9     copyrights, contracts for payment of royalties, and trademarks
- 10    **6. LIMITATION ON AGENT’S AUTHORITY (OTHER THAN GIFTING)**
- 11    (If an agent (including successor agent) named in this Power of Attorney is someone other than an
- 12    ancestor of yours, your spouse, or a descendant of yours, you must initial the following statement if
- 13    it is your choice that such agent have the following authority. An agent who is an ancestor of yours,
- 14    your spouse, or a descendant of yours already has the following authority under New Hampshire
- 15    law.)
- 16    \_\_\_\_\_ My agent may exercise authority under this Power of Attorney to create in my agent, or in
- 17    an individual to whom my agent owes a legal obligation of support, an interest in my property by
- 18    any manner (other than a gift), including, without limitation, by right of survivorship, beneficiary
- 19    designation, or disclaimer.
- 20    **7. SPECIAL INSTRUCTIONS (OPTIONAL)**
- 21    (Here you may include special instructions. You may leave this Paragraph blank. You may attach
- 22    additional pages as necessary.)
- 23    \_\_\_\_\_
- 24    **8. EFFECTIVE DATE AND AUTHORITY OF AGENT**
- 25    This Power of Attorney is effective immediately unless I have stated otherwise in the Special
- 26    Instructions in Paragraph 7 of this Power of Attorney. An agent (including successor agent) named
- 27    in this Power of Attorney will have no authority to act as my agent until he or she has signed and
- 28    affixed to this Power of Attorney an acknowledgment that is substantially the same as the
- 29    Acknowledgment at the end of this Power of Attorney.
- 30    **9. GOVERNING LAW**
- 31    This Power of Attorney shall be governed by the laws of the State of New Hampshire.
- 32    **10. RELIANCE ON THIS POWER OF ATTORNEY**
- 33    Any person, including my agent, may rely upon this Power of Attorney if it is acknowledged before
- 34    a notary public or other individual authorized to take acknowledgements (or a copy of the
- 35    acknowledged Power of Attorney), unless that person knows it is void, invalid, or terminated.
- 36    **SIGNATURE AND ACKNOWLEDGMENT**
- 37    (You must date and sign this Power of Attorney. If you are physically unable to sign, it may be



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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: \_\_\_\_\_