

# Power of Attorney (NV)

LAYNE T. RUSHFORTH, RUSHFORTH LEE & KIEFER LLP, WITH PRACTICAL LAW TRUSTS & ESTATES

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

## DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

An individual uses the Nevada power of attorney to authorize a third party to manage the individual's property and financial matters (NRS 162A.010 to 162A.660). All references to a "power of attorney" in this Standard Document are to this Nevada power of attorney for property and financial matters, unless otherwise stated.

Nevada's Power of Attorney Uniform Act governs powers of attorney (NRS 162A.200 to 162A.660). Nevada's Uniform Act does not apply to:

- A power of attorney coupled with an interest.
- A healthcare power of attorney.
- A proxy or other delegation to exercise voting or management rights over a business entity.
- A power of attorney prescribed by a government or government agency.

(NRS 162A.200.)

This Standard Document refers to the person who executes the power of attorney as the principal. The party appointed by the

principal to make financial and property decisions for the principal is referred to as the agent or attorney-in-fact. This document uses the term "agent."

This Standard Document does not give the agent authority to make health care decisions for the principal. An individual generally appoints an agent for this purpose in a separate document known as a durable power of attorney for health care (NRS 162A.700 to 162A.860). For more information on durable powers of attorney for health care, see Standard Document, Durable Power of Attorney for Health Care Decisions (NV).

## FORM OF POWERS OF ATTORNEY

This Standard Document is substantially in the form of the Nevada statutory form power of attorney (NRS 162A.620). Nevada law does not preclude the use of other forms of a power of attorney. However, counsel should generally use the statutory form as third parties are more familiar with it and it complies with the legal requirements to create a valid power of attorney.

Nevada permits out-of-state and military power of attorney forms if the execution complies with applicable law when executed (NRS 162A.230(3)).

**BRACKETED LANGUAGE**

The drafting party should replace bracketed language in ALL CAPS with case-specific

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

**STATUTORY FORM POWER OF ATTORNEY**

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY FOR FINANCIAL MATTERS. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

1. THIS DOCUMENT GIVES THE PERSON YOU DESIGNATE AS YOUR AGENT THE POWER TO MAKE DECISIONS CONCERNING YOUR PROPERTY FOR YOU. YOUR AGENT WILL BE ABLE TO MAKE DECISIONS AND ACT WITH RESPECT TO YOUR PROPERTY (INCLUDING YOUR MONEY) WHETHER OR NOT YOU ARE ABLE TO ACT FOR YOURSELF.
2. THIS POWER OF ATTORNEY BECOMES EFFECTIVE IMMEDIATELY UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.
3. THIS POWER OF ATTORNEY DOES NOT AUTHORIZE THE AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.
4. THE PERSON YOU DESIGNATE IN THIS DOCUMENT HAS A DUTY TO ACT CONSISTENT WITH YOUR DESIRES AS STATED IN THIS DOCUMENT OR OTHERWISE MADE KNOWN OR, IF YOUR DESIRES ARE UNKNOWN, TO ACT IN YOUR BEST INTERESTS.
5. YOU SHOULD SELECT SOMEONE YOU TRUST TO SERVE AS YOUR AGENT. UNLESS YOU SPECIFY OTHERWISE, GENERALLY THE AGENT’S AUTHORITY WILL CONTINUE UNTIL YOU DIE OR REVOKE THE POWER OF ATTORNEY OR THE AGENT RESIGNS OR IS UNABLE TO ACT FOR YOU.
6. YOUR AGENT IS ENTITLED TO REASONABLE COMPENSATION UNLESS YOU STATE OTHERWISE IN THE SPECIAL INSTRUCTIONS.
7. THIS FORM PROVIDES FOR DESIGNATION OF ONE AGENT. IF YOU WISH TO NAME MORE THAN ONE AGENT YOU MAY NAME A CO-AGENT IN THE SPECIAL INSTRUCTIONS. CO-AGENTS ARE NOT REQUIRED TO ACT TOGETHER UNLESS YOU INCLUDE THAT REQUIREMENT IN THE SPECIAL INSTRUCTIONS.
8. IF YOUR AGENT IS UNABLE OR UNWILLING TO ACT FOR YOU, YOUR POWER OF ATTORNEY WILL END UNLESS YOU HAVE NAMED A SUCCESSOR AGENT. YOU MAY ALSO NAME A SECOND SUCCESSOR AGENT.
9. YOU HAVE THE RIGHT TO REVOKE THE AUTHORITY GRANTED TO THE PERSON DESIGNATED IN THIS DOCUMENT.
10. THIS DOCUMENT REVOKES ANY PRIOR DURABLE POWER OF ATTORNEY.
11. IF THERE IS ANYTHING IN THIS DOCUMENT THAT YOU DO NOT UNDERSTAND, YOU SHOULD ASK A LAWYER TO EXPLAIN IT TO YOU.

**DRAFTING NOTE: INTRODUCTORY SECTION**

The statutory form includes an introductory section that explains the purpose, meaning, and limitations of the form to the principal. The principal should read and understand these provisions. However, there is nothing in Nevada law that requires including the introductory section or that affects the enforceability of a power of attorney form without an introductory section.

The form also includes additional instructions throughout that counsel and the principal

should consider when completing this form, including how to fill in or initial blanks to customize the form to carry out the principal's desires (see Drafting Notes, Grant of General Authority and Special Instructions).

Counsel should generally not delete or revise this section if using the statutory form.

1. DESIGNATION OF AGENT.

I, [PRINCIPAL NAME] (insert your name) do hereby designate and appoint:

Name: [AGENT NAME]

Address: [AGENT ADDRESS]

Telephone Number: [AGENT TELEPHONE NUMBER]

as my agent to make decisions for me and in my name, place, and stead and for my use and benefit, and to exercise the powers as authorized in this document.

2. DESIGNATION OF ALTERNATE AGENT.

(You are not required to designate any alternative agent but you may do so. Any alternative agent you designate will be able to make the same decisions as the agent designated above in the event that he or she is unable or unwilling to act as your agent. Also, if the agent designated in paragraph 1 is your spouse, his or her designation as your agent is automatically revoked by law if your marriage is dissolved.)

If my agent is unable or unwilling to act for me, then I designate the following person(s) to serve as my agent as authorized in this document, such person(s) to serve in the order listed below:

A. First Alternative Agent

Name: [FIRST ALTERNATIVE AGENT NAME]

Address: [FIRST ALTERNATIVE AGENT ADDRESS]

Telephone Number: [FIRST ALTERNATIVE AGENT TELEPHONE NUMBER]

B. Second Alternative Agent

Name: [SECOND ALTERNATIVE AGENT NAME]

Address: [SECOND ALTERNATIVE AGENT ADDRESS]

Telephone Number: [SECOND ALTERNATIVE AGENT TELEPHONE NUMBER]

**DRAFTING NOTE: APPOINTING AGENTS AND SUCCESSOR AGENTS**

The principal should include the principal's name and designate agents and successor agents in these paragraphs 1 and 2. An agent is a fiduciary for the principal and owes the principal related duties (see Drafting Note, Duties and Liabilities of the Agent). The principal should choose individuals who are trustworthy, capable, and able to timely act under the power of attorney.

If the principal resides or is about to reside in a hospital or an assisted living or skilled nursing facility when executing the power of attorney, the principal may not name as agent the facility or its owner, operator, or employee unless that person is the principal's spouse, legal guardian, or relative, or named only to establish Medicaid eligibility (NRS 162A.220(3), (4), and (5)).

**APPOINTING CO-AGENTS**

A statutory direction to the principal in the Introductory Section of this Standard Document provides that if a principal wishes to designate co-agents to serve at the same time, the principal may do so in the Special Instructions section (see Drafting Notes, Introductory Section, Special Instructions, and Appointing Co-Agents).

**SUCCESSOR AGENTS**

If the principal cannot choose a suitable successor agent (referred to in the form as alternate or alternative agents) or does not want to name a successor, counsel may exclude the section naming successor agents in its entirety or may include it with "N/A" rather than the agent's information

to show that the principal considered and declined to select a successor.

Counsel should advise the principal that, without a named successor agent, if the principal becomes incapacitated and the named agent can no longer serve, a court-appointed guardian may be required to act. The principal may include language allowing the named agent to appoint successor agents, if desired, such as:

"I grant my agent the authority to designate one or more successor agents [and to grant those agents the same authority]."

Counsel may include related language in the special instructions section of this Standard Document (see Drafting Note, Special Instructions). Most principals do not include this appointment language where they designate successor agents. However, it is common for principals to include this language where the principal does not name successor agents.

**AGENT RESIGNATION**

An agent may resign as provided in the power of attorney in the Special Instructions section (see Drafting Note, Special Instructions). If there are no provisions in the power of attorney to the contrary, an agent may resign by giving notice to the principal or, if the principal is incapacitated, to a co-agent or successor agents or, if none, to certain other individuals (NRS 162A.350). Nevada powers of attorney rarely include provisions for agent resignation. Principals generally rely on the statutory default for agent resignation.

**3. OTHER POWERS OF ATTORNEY.**

This Power of Attorney is intended to, and does, revoke any prior Power of Attorney for financial matters I have previously executed.

**DRAFTING NOTE: REVOKING A PRIOR POWER OF ATTORNEY**

A principal may revoke a power of attorney at any time in a subsequent power of attorney or in a separate writing. A new power of attorney executed by the principal does not revoke a previously executed power of attorney unless the new document specifically states that it revokes the old power of attorney or that all other powers of attorney are revoked. (NRS 162A.270(5).)

The statutory form contains language revoking all prior powers of attorney for financial matters (the Introductory Section refers to revoking all powers of attorney, but in the context of this form, this revocation refers to powers of attorney for financial matters and not health care powers of attorney). This language should generally be included in the statutory form even if there are no known powers of attorney that the principal wishes to revoke.

If the principal has any previous powers of attorney that the principal wishes to maintain despite executing this Standard Document (for example, a limited power of attorney for a specific transaction), counsel should:

- Revise the language of this section to exclude revocation of that prior limited power and add “Except as otherwise expressly stated in this document” to the related provision number ten in the introductory section relating to revoking

prior power of attorney documents (see Drafting Note, Introductory Section).

- Make sure any power granted to the agent in this Standard Document is consistent with the language of the previous power of attorney. For example, if the principal wishes the previous limited power to govern a specific transaction, counsel should expressly carve out any authority to engage in that transaction from the agent’s authority under this statutory power of attorney in the special instructions section (see Drafting Note, Special Instructions).

Revocation of a previously executed power of attorney in a new power of attorney or otherwise is only effective as to the agent and third parties if they are given actual notice of the revocation (NRS 162A.270(4)). Though written notice is not required, it is recommended to provide a record of the notifications. If this Standard Document revokes any known prior powers of attorney, the principal should provide written notice to the agent named in the revoked power of attorney and third parties.

A revocation of a recorded power of attorney is not effective until that revocation is recorded in the same office where the power of attorney was recorded (NRS 162A.480(3)).

**4. NOMINATION OF GUARDIAN.**

If, after execution of this Power of Attorney, proceedings seeking an adjudication of incapacity are initiated [either] for my estate [or for my person], I hereby nominate as my [guardian or] conservator for consideration by the court my agent herein named, in the order named.

**DRAFTING NOTE: NOMINATION OF GUARDIAN**

Paragraph 4 of the statutory form offers options to nominate the named agent as both the principal’s conservator and guardian. A conservator is appointed by the court to act as guardian of the principal’s estate (property and financial matters) on the principal’s incapacity. A guardian is appointed by the court to act

as to the principal’s person (personal, non-property-related matters) on the principal’s incapacity. (NRS 162A.800 and 162A.860(11).)

Though the statutory form includes both nominations, it is common practice to instead name:

- The conservator in the individual's power of attorney for financial matters.
- The guardian in the individual's power of attorney for health care.

However, if this is desired, both the statutory power of attorney for financial matters and the statutory power of attorney for health care require modification to make this clear (see Standard Document, Durable Power of Attorney for Health Care Decisions (NV)). If the principal wants to nominate the agent named in this statutory power of attorney for financial matters as:

- Both conservator and guardian on the principal's incapacity, which is the default in the statutory form but also less common in practice, counsel should include the bracketed language in this section.
- Only conservator on the principal's incapacity, which is not the default in the statutory form but is most common in practice, counsel should delete the bracketed language in this section.

Counsel should also revise this language if the principal wishes to name a person other than the agent as guardian or conservator.

#### **NOMINATIONS IN DIFFERENT DOCUMENTS MUST BE CONSISTENT**

Nevada law does not require a person to nominate a guardian of the person or of the estate in any specific document. Nevada previously required that the nomination of a conservator (guardian of the estate) be

made in the person's will to waive the bond requirement. However, this nomination waiving bond may now be made in a will, power of attorney, or other written instrument, including an electronic will (NRS 159.028, 159.0613(9), and 159.065(5)).

Because guardians and conservators can also be nominated in other documents, such as a will, it is important to coordinate the designations. If nominations conflict, the presumption is that the most recent designation controls. However, counsel should generally include language saying that the designation revokes all prior designations for clarity even if there are no prior designations (see Drafting Note, Revoking a Prior Power of Attorney). If counsel intends to make sure that the principal's will contains the most up-to-date designation for a guardian, counsel should modify paragraph 4 to refer to the nomination of the guardian in the principal's will. For example, paragraph 4 might be modified to read as follows:

"If, after execution of this Power of Attorney, proceedings seeking an adjudication of incapacity are initiated [either] for my estate [or for my person], my [guardian of the person and] conservator shall be as nominated in my most recently executed will. If that nomination fails, I hereby nominate as my [guardian or] conservator for consideration by the court my agent herein named, in the order named."

#### 5. GRANT OF GENERAL AUTHORITY.

I grant my agent and any successor agent(s) general authority to act for me with respect to the following subjects:

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

[.....] Real Property

[.....] Tangible Personal Property

[.....] Stocks and Bonds

[.....] Commodities and Options

[.....] Banks and Other Financial Institutions

[.....] Safe Deposit Boxes

- [.....] Operation of Entity or Business
- [.....] Insurance and Annuities
- [.....] Estates, Trusts, and Other Beneficial Interests
- [.....] Legal Affairs, Claims, and Litigation
- [.....] Personal Maintenance
- [.....] Benefits from Governmental Programs or Civil or Military Service
- [.....] Retirement Plans
- [.....] Taxes
- [.....] All Preceding Subjects

#### DRAFTING NOTE: GRANT OF GENERAL AUTHORITY

There is no automatic general grant of authority in the statutory form (the form is not a general power of attorney automatically authorizing the agent to act for the principal in all financial matters). Paragraph 5 allows the principal to initial the subject matter for which the power of attorney is effective. The principal may initial next to the line reading all preceding subjects if the agent wishes to grant all the powers stated in this section to the agent.

Counsel should discuss the implications of granting each of these powers and the principal should know exactly what it means to authorize the agent to act with respect to each subject matter. Nevada statutes expressly specify the scope of the authority granted when an agent is authorized in a statutory power of attorney to act with respect to a subject matter, including:

- Real property (NRS 162A.480).
- Tangible personal property (NRS 162A.490).
- Stocks and bonds (NRS 162A.500).
- Commodities and options (NRS 162A.510).
- Banks and other financial institutions and safe deposit boxes (NRS 162A.520).
- Operation of entity or business (NRS 162A.530).
- Insurance and annuities (NRS 162A.540). The scope of statutory authority does not include the power to designate or change a beneficiary on an insurance policy or annuity. The principal must expressly grant

this power in the Grant of Specific Authority section if this power is desired (see Drafting Note, Grant of Specific Authority).

- Estates, trusts, and other beneficial interests (NRS 162A.550). The scope of statutory authority does not include the ability to create, amend, revoke, or terminate the principal's trust. The principal must expressly grant this power in the Grant of Specific Authority section if this power is desired (see Drafting Note, Grant of Specific Authority).
- Legal affairs, claims, and litigation (NRS 162A.560).
- Personal maintenance (NRS 162A.570).
- Benefits from governmental programs or civil or military Service (NRS 162A.580).
- Retirement plans (NRS 162A.590). The scope of statutory authority does not include the power to designate or change a beneficiary on a retirement plan. The principal must expressly grant this power in the Grant of Specific Authority section if this power is desired (see Drafting Note, Grant of Specific Authority).
- Taxes (NRS 162A.600).

These statutory provisions apply as if they were contained in the power of attorney form unless the executed form expressly provides otherwise. If the principal initials next to a power authorizing the agent to have that power but wishes to limit or alter the scope of the agent's authority as to that power, the principal must expressly do so in the Special Instructions section (see Drafting Note, Special Instructions).

Certain federal authorities may require additional powers of attorney documents to engage in certain transactions with the authorities granted in this power of attorney (such as the Internal Revenue Service's Form 2848). Counsel should discuss those issues with the client.

#### **REAL ESTATE POWERS: RECORDING AND NON-NEVADA TRANSACTIONS**

If the agent will use this power of attorney for real estate transactions, the power of attorney must be recorded in the county or counties where the real estate subject to the transactions is located (NRS 162A.480(2)). The power of attorney should therefore be

prepared in a format that is acceptable to the pertinent county recorders (the general requirements for recorded documents are found in NRS 247.110(3)). Counsel may check on the website of the county recorder in which the related real property is located for the applicable recording requirements for that county.

If the agent will use this power of attorney for non-Nevada real property or for transactions outside of Nevada, it is advisable to consult with counsel in the other jurisdictions involved to determine if the Nevada statutory form will be acceptable.

#### 6. GRANT OF SPECIFIC AUTHORITY.

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

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

[.....] Create, amend, revoke, or terminate an inter vivos, family, living, irrevocable, or revocable trust

[.....] Make a gift, subject to the limitations of NRS and any special instructions in this Power of Attorney

[.....] Create or change rights of survivorship

[.....] Create or change a beneficiary designation

[.....] Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

[.....] Exercise fiduciary powers that the principal has authority to delegate

[.....] Disclaim or refuse an interest in property, including a power of appointment

#### 7. LIMITATION ON AGENT'S AUTHORITY.

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

#### **DRAFTING NOTE: GRANT OF SPECIFIC AUTHORITY**

Paragraph 6 identifies special powers that are not effective unless specifically initialed. These are powers that can trigger unintended consequences, especially tax

consequences. Except for powers that are initialed, the agent has no power under the grant of general authority section powers to:



- Create, amend, revoke, or terminate an *inter vivos* trust for the principal.
- Make gifts.
- Create or change rights of survivorship.
- Create or change a beneficiary designation.
- Waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that the principal has authority to delegate.
- Disclaim or refuse an interest in property, including a power of appointment.

(NRS 162A.450(1).)

The principal may want the agent to have some of these powers in certain circumstances. For example, if the principal has one or more trusts, it may be appropriate to allow the agent to make the trust the beneficiary of appropriate assets. If any of the powers in this paragraph are desired, it is possible that counsel will need to draft custom provisions to provide limits and possible exceptions or refer to specific situations, property, or persons.

**GIFTS**

If the principal wishes to authorize the agent to make gifts, NRS 162A.610 provides guidelines and limits related to those gifts. For example, the agent may make gifts of the principal’s property:

- Within certain limits related to the annual federal gift tax exclusion (NRS 162A.610(2)).

- Only as the agent determines is consistent with the principal’s known objectives or, if the principal’s objectives are not known, with the principal’s best interest based on all relevant factors (NRS 162A.610(3)).

Counsel may include sample language authorizing the agent to make gifts in the Special Instructions section (Drafting Note, Special Instructions). An example of a common gifting provision (which counsel may revise per the client’s wishes) is:

“During each calendar year, my agent has the authority to make gifts to one or more of my descendants that are excluded as taxable gifts under Internal Revenue Code 2503(b). [During each calendar year, my agent may also make gifts for educational expenses and/or medical expenses of up to \$[NUMBER] that are excluded as taxable gifts under Internal Revenue Code 2503(e).] This authority to make gifts may [not] be exercised in favor of my agent.”

**BENEFITTING THE AGENT OR AGENT’S SPOUSE**

Paragraph 7 provides that an agent that is not the principal’s spouse cannot use the principal’s property to benefit the agent or a person to whom the agent owes support unless the principal expressly includes that authority in the Special Instructions section (see Drafting Note, Special Instructions).

8. SPECIAL INSTRUCTIONS OR OTHER OR ADDITIONAL AUTHORITY GRANTED TO AGENT:

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**DRAFTING NOTE: SPECIAL INSTRUCTIONS**

Paragraph 8 provides a place for the principal to provide custom powers and specific limitations for powers authorized in other parts of this Standard Document. If no additional language is to be included, counsel should insert “None” into the form to indicate that this was intentionally left blank.

**INSTRUCTIONS FOR CO-AGENTS**

A principal should make co-agent appointments in the Special Instructions section, as provided in the direction to the principal in the Introductory Section (see Drafting Note, Introductory Section). If the principal designates co-agents to serve at the same time, the co-agents may act independently unless the power of attorney states that the co-agents must act jointly (NRS 162A.280(1)). If the principal would like co-agents’ actions to require unanimous or majority consent, the form must be customized to say so, for example:

“When two co-agents are serving, both must act together on my behalf. When more than two co-agents are serving, a majority of the co-agents have the authority to act on my behalf. [Notwithstanding the foregoing, with respect to [all financial and investment accounts/ account [ACCOUNT NUMBER] with [INSTITUTION NAME]], the co-agents, acting unanimously, may agree to allow any one of them to act

unilaterally with respect to financial transactions of \$[NUMBER] or less.]”

However, even though a principal may wish to appoint co-agents (for example, by appointing the principal’s children), co-agents are generally not recommended as having more than one agent may lead to confusion or delay in handling the principal’s financial affairs.

An agent may not delegate authority unless the principal expressly grants this authority in the power of attorney (NRS 162A.450(1) (e)). If the principal expects the agent to participate in regular financial or property transactions, counsel should draft the power of attorney to permit any co-agent to act alone regarding these transactions or allow an agent to delegate the power to engage in these transactions (or with respect to a specific type of transaction) to a co-agent even if the power of attorney otherwise requires the agents to act together. For example:

“My agent has the authority to delegate my agent’s authority to act hereunder with respect to the sale of [stock in [CORPORATION NAME]/the real property known as [PROPERTY ADDRESS] in [COUNTY], Nevada, identified with Assessor’s Parcel Number [ASSESSOR’S PARCEL NUMBER]] [to [BUYER NAME]]. My agent shall otherwise have no power to delegate authority to any other person.”

9. DURABILITY AND EFFECTIVE DATE. (INITIAL the clause(s) that applies.)

[.....] DURABLE. This Power of Attorney shall not be affected by my subsequent disability or incapacity.

[.....] SPRINGING POWER. It is my intention and direction that my designated agent, and any person or entity that my designated agent may transact business with on my behalf, may rely on a written medical opinion issued by a licensed medical doctor stating that I am disabled or incapacitated, and incapable of managing my affairs, and that said medical opinion shall establish whether or not I am under a disability for the purpose of establishing the authority of my designated agent to act in accordance with this Power of Attorney.

[.....] I wish to have this Power of Attorney become effective on the following date: [DATE]

[.....] I wish to have this Power of Attorney end on the following date: [DATE]

**DRAFTING NOTE: DURABILITY AND EFFECTIVE DATE****DURABILITY**

A power of attorney created under Nevada law remains in effect during any period of the principal's disability or incapacity (the power of attorney is durable) unless it expressly states otherwise (NRS 162A.210). However, since the statutory form includes the option to choose durability, the principal should initial the first optional section in all cases if the principal wishes the form to be durable. It is most common to create durable powers of attorney for financial matters.

If the principal does not wish this form to be durable, the principal should:

- Not initial the first option.
- Include an instruction in the Special Instructions section (see Drafting Note, Special Instructions). For example:
  - "This power of attorney shall expire upon a determination in a writing or other record by a physician, psychiatrist or licensed psychologist that I am incapacitated or when a court issues an order determining that I am in need of a conservator or a guardian of my estate."

**EFFECTIVE PERIOD**

Powers of attorney are effective on execution unless the principal otherwise provides in the power of attorney (NRS 162A.260). This is most common in Nevada. If the principal desires for the power of attorney to be effective immediately, the principal should not initial the second or third optional sections.

However, a power of attorney (whether durable or not) may provide that it is effective beginning on a specific date or event, such as on the principal's incapacity. In the second optional section, incapacity is determined when a licensed medical doctor provides a written opinion stating that the principal is incapable of managing the principal's affairs. However, the principal could provide otherwise by striking this

language and providing otherwise in the Special Instructions section (see Drafting Note, Special Instructions).

Powers of attorney made effective in the future (referred to as springing powers) are not generally recommended because they may delay the use of the power, trigger additional medical or court costs, or become subject to dispute (for example, providing a third party asked to honor the power an excuse not to do so).

The principal should initial next to the second or third optional sections, as desired, if the principal wishes to create a springing power of attorney.

The principal must make sure the principal's desires here and in the Special Instructions section regarding the power of attorney's effective period are clear and consistent (for example, if the principal wishes the power not to be durable during the principal's incapacity, the principal cannot also include the option that it is springing and comes into effect on incapacity).

**Date of Termination of Power of Attorney**

A power of attorney generally terminates on the principal's death unless the power of attorney provides otherwise (see Drafting Note, Termination of Agent's Authority). The principal may elect to have the power of attorney expire on either:

- A specific date (in which case the principal should initial next to the fourth optional section and include the relevant date).
- An event as specified in the Special Instructions section of the power, if desired.

(NRS 162A.270 and see Drafting Note, Revoking a Prior Power of Attorney). It is generally not recommended to have the power of attorney terminate on a specific date or event unless there is a specific reason for doing so. Most principals intend for the power of attorney to be effective until the principal's death.

## 10. THIRD PARTY PROTECTION.

Third parties may rely upon the validity of this Power of Attorney or a copy and the representations of my agent as to all matters relating to any power granted to my agent, and no person or agency who relies upon the representation of my agent, or the authority granted by my agent, shall incur any liability to me or my estate as a result of permitting my agent to exercise any power unless a third party knows or has reason to know this Power of Attorney has terminated or is invalid.

**DRAFTING NOTE: THIRD PARTY PROTECTION**

This paragraph effectively restates the general rule that a third party may rely on the power of attorney as if it were in effect if that third party accepts an acknowledged power of attorney in good faith without knowledge that either:

- The power or the agent's authority is invalid or terminated.
- An agent is not properly exercising the agent's authority.

(NRS 162A.360).

**LIABILITY FOR NONACCEPTANCE**

Third parties must accept acknowledged powers of attorney or request certain

statutory confirmations of those powers. A third party may be liable for court costs to confirm a power of attorney's validity (unless an exception applies) if the third party either:

- Refuses to accept an acknowledged power of attorney within ten days after presentation.
- Fails to request a certification, translation, or counsel's opinion under statute within ten days after the power's presentation and does not, within five days after receipt of the certification, translation, or counsel's opinion, accept the power.

(NRS 162A.370.)

## 11. RELEASE OF INFORMATION.

I agree to, authorize, and allow full release of information, by any government agency, business, creditor, or third party who may have information pertaining to my assets or income, to my agent named herein.

**DRAFTING NOTE: RELEASE OF INFORMATION**

The statutory form includes a general release enabling third parties to release any financial information to the agent.

The agent acting under a durable power of attorney is not automatically entitled to the principal's health care information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and this statutory form does not expressly

include a HIPAA release granting this type of access (nor, generally, should it). An agent named in a health care power of attorney has the authority to act as the principal's personal representative under HIPAA (NRS 162A.260(4)). However, this Standard Document does not authorize the agent to make health care decisions for the principal.

12. SIGNATURE AND ACKNOWLEDGMENT. YOU MUST DATE AND SIGN THIS POWER OF ATTORNEY. THIS POWER OF ATTORNEY WILL NOT BE VALID UNLESS IT IS ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

I sign my name to this Power of Attorney on [DATE] at [CITY], [STATE].

\_\_\_\_\_  
[PRINCIPAL NAME]

#### CERTIFICATE OF ACKNOWLEDGMENT OF NOTARY PUBLIC

State of Nevada }  
County of [COUNTY] } ss.  
}

On this [DATE] day of [MONTH] in the year [YEAR], before me, [NOTARY PUBLIC NAME] (here insert name of notary public) personally appeared [PRINCIPAL NAME] (here insert name of principal) personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that he or she executed it. I declare under penalty of perjury that the person whose name is ascribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.

NOTARY SEAL

\_\_\_\_\_  
(Signature of Notary Public)

#### DRAFTING NOTE: EXECUTION OF POWER OF ATTORNEY BY PRINCIPAL

A power of attorney must be signed either:

- By the principal.
- In the principal's conscious presence by another individual the principal directs to sign the principal's name.

(NRS 162A.220(1)).

If the principal resides in a hospital, group residence, skilled nursing facility, or home for individual residential care, a certification of the principal's competency from a physician (or psychologist or psychiatrist) must be attached to the power of attorney at execution (NRS 162A.220(2)).

If the principal resides or is about to reside in a hospital or an assisted living or skilled nursing facility, then when executing the power of attorney, the principal may not name as agent the facility, or its owner, operator, or employee, unless that person is the principal's spouse, legal guardian, or relative, or named only to establish Medicaid eligibility (NRS 162A.220(3) to (5)).

#### NOTARIZATION OF POWER OF ATTORNEY

The principal must acknowledge the principal's signature (or the signature of someone authorized by the principal under statute) in front of a notary public for the power of attorney to be valid (NRS 162A.220(1)).

The statutory power of attorney form contains a statement of witnesses and the sentence:

"(You may use acknowledgment before a notary public instead of the statement of witnesses.)"

However, this Standard Document does not include the statement of witnesses or that sentence because a witnessed form is not eligible for recording, which is required for any power of attorney that may affect real property.

### [Acknowledgement and Acceptance of Appointment as Attorney-in-Fact

I, [AGENT NAME] have read the foregoing STATUTORY FORM POWER OF ATTORNEY, and I am the person identified as the agent for [PRINCIPAL NAME], the principal. I hereby accept my appointment as agent and that when I act as agent I shall exercise the powers for the benefit of the principal; I shall keep the assets of the principal separate from my assets; I shall exercise reasonable caution and prudence; and I shall keep a full and accurate record of all actions, receipts, and disbursements on behalf of the principal.

\_\_\_\_\_  
Signature of Attorney-in-Fact

\_\_\_\_\_  
Date]

### IMPORTANT INFORMATION FOR AGENT

1. Agent's Duties. When you accept the authority granted under this Power of Attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the Power of Attorney is terminated or revoked. You must:

- (a) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
- (b) Act in good faith;
- (c) Do nothing beyond the authority granted in this Power of Attorney; and
- (d) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's Name) by (Your Signature) as Agent

2. Unless the Special Instructions in this Power of Attorney state otherwise, you must also:

- (a) Act loyally for the principal's benefit;
- (b) Avoid conflicts that would impair your ability to act in the principal's best interest;
- (c) Act with care, competence, and diligence;
- (d) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
- (e) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
- (f) Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

3. Termination of Agent's Authority. You must stop acting on behalf of the principal if you learn of any event that terminates this Power of Attorney or your authority under this Power of Attorney. Events that terminate a Power of Attorney or your authority to act under a Power of Attorney include:

- (a) Death of the principal;
- (b) The principal's revocation of the Power of Attorney or your authority;
- (c) The occurrence of a termination event stated in the Power of Attorney;
- (d) The purpose of the Power of Attorney is fully accomplished; or
- (e) If you are married to the principal, your marriage is dissolved.

4. Liability of Agent. The meaning of the authority granted to you is defined in NRS 162A.200 to 162A.660, inclusive. If you violate NRS 162A.200 to 162A.660, inclusive, or act outside the authority granted in this Power of Attorney, you may be liable for any damages caused by your violation.

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

#### DRAFTING NOTE: EXECUTION BY AGENT

An agent does not need to sign the statutory power of attorney form (there is no signature line for the agent) (NRS 162A.620). An agent accepts the appointment by acting under the power of attorney (NRS 162A.300). No additional form of acceptance is required. However, it may be advisable to add the optional signature block for the agent. This allows the agent to accept the designation and acknowledge the agent's powers and duties. Among other benefits, this also provides an exemplar of the agent's signature for those who are asked to honor the power of attorney.

If the anticipated duties of the agent are to be extensive, this statutory power of attorney is probably not the appropriate form to use. Instead, the power of attorney may be more appropriately in the form of an agreement between the principal and the agent that contains provisions relating to the specific duties and appropriate compensation.

#### AGENT COMPENSATION

The introductory section of the form mentions that the agent is entitled to reasonable compensation. However, Nevada does not define reasonable compensation. Providing for more specific compensation for an agent is not common, but it is permissible. Counsel may include this language or language providing for no compensation in the Special Instructions section (see Drafting Note, Special Instructions). For example:

"My agent is entitled to reasonable compensation for the agent's actions on my behalf. Such compensation shall be based on the time expended by the agent at the rate of \$[NUMBER] per hour. [Notwithstanding the foregoing, my agent is a professional, my agent shall be entitled to

compensation at the agent's standard professional billing rate.]"

"My agent shall not be entitled to compensation for acting on my behalf under this power of attorney."

#### DUTIES AND LIABILITY OF THE AGENT

An agent is a fiduciary of the principal and owes the principal a fiduciary duty while acting for the principal under a power of attorney (NRS 162.020(b)). This section generally restates the statutory duties, which include acting:

- Under the principal's reasonable expectations to the extent known and, otherwise, in the principal's best interest.
- In good faith.
- Within the scope of the authority granted in the power of attorney.

(NRS 162A.310(1).) Agents have additional duties, including the duties of loyalty, not to create certain conflicts, to act with care, competence, and diligence, to keep records, and to preserve the principal's estate plan. These duties apply unless the power of attorney provides otherwise. (NRS 162A.310(2).)

If the principal selects the agent because of special skills or expertise or in reliance on the agent's representation of these special skills or expertise, the skills and expertise are considered in determining whether the agent acted with care, competence, and diligence (NRS 162A.310(5)).

An agent is liable to the principal or the principal's successors if the principal's property is damaged as the result of the agent's breach of fiduciary duties to the principal (NRS 162A.340). This section may be customized to provide specific instructions to the agent if the principal desires. For example, the principal may

wish to include language enumerating specific conduct that is not authorized or that would constitute a breach of fiduciary duty.

### **TERMINATION OF AGENT'S AUTHORITY**

This subparagraph explains to the agent the circumstances under which the agent's authority terminates. These circumstances include termination resulting from the principal's death, revocation of the power of attorney, under circumstances as stated in the power of attorney, or on dissolution of the principal's marriage if the agent is the principal's spouse (NRS 162A.270).

If the power of attorney is granted for a specific purpose (such as a specific transaction), the power of attorney can be customized for it to expire when its purpose is accomplished (such as the consummation

of the transaction) (see Drafting Note, Date of Termination of Power of Attorney).

### **Notice of Termination**

Revocation of a power of attorney is only effective as to the agent and third parties if they are given actual notice of the revocation (NRS 162A.270(4)). Though written notice is not required, it is recommended to provide a record of the notifications. If the principal revokes any known prior powers of attorney (or later revokes this power of attorney), the principal should provide written notice to the agent named in the revoked power of attorney and third parties with which the agent is likely to engage.

A revocation of a recorded power of attorney is not effective until that revocation is recorded in the same office where the power of attorney was recorded (NRS 162A.480(3) and see Drafting Note, Revoking a Prior Power of Attorney).

### **ABOUT PRACTICAL LAW**

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