

## Power of Attorney (WA)

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

Estate planning, estate and trust administration, and estate and trust taxation filing deadlines may be impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws and procedures impacted by COVID-19, including electronic signature, notarization, and witnessing laws and emergency orders, court closures, deadline extensions, and updated procedures, tax extensions, and general emergency estate planning guidance, see [Private Client Global Coronavirus Toolkit](#).

### DRAFTING NOTE: READ THIS BEFORE USING DOCUMENT

In Washington, an individual uses a power of attorney to authorize a third party to manage the individual's property and financial matters (RCW 11.125.010 to 11.125.903).

This Standard Document refers to the person:

- Executing the power of attorney as the principal.
- Appointed by the principal to make financial and property decisions for the principal as the agent, also commonly referred to as an attorney-in-fact.

In Washington, unless a power of attorney provides otherwise, a power of attorney:

- Is effective immediately when executed (RCW 11.125.090(1) and see Drafting Note, Effectiveness).
- Remains effective until:
  - the principal dies;
  - the principal becomes incapacitated, if the principal does not include language making the power of attorney durable (RCW 11.125.040 and see Drafting Note, Durability);
  - the principal revokes the power of attorney;

- the power of attorney provides that it terminates;
- the purpose of the power of attorney is accomplished; or
- the principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns and the power of attorney does not provide for another agent to act under the power of attorney.

(RCW 11.125.100 and see Drafting Note, Termination.)

Washington adopted the Uniform Power of Attorney Act and provides statutory guidance regarding powers of attorney. However, there is no statutory form power of attorney in Washington.

### Other Forms of Powers of Attorney

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

- Statutory powers of attorney for other states.
- Internal powers of attorney for financial institutions.



- Military powers of attorney.
- Separate powers of attorney for tax purposes (for example, [Internal Revenue Service: About Form 2848, Power of Attorney and Declaration of Representative](#)).
- Powers of attorney granting authority over health care decisions and advance directives for health care. Although Washington statute permits an agent under a power of attorney to make the principal's health care decisions or give informed consent to health care decisions for the principal, this Standard Document is limited to financial matters (RCW 11.125.240(1)(l)). The topic of the principal's health care decision-making is best covered in a more comprehensive advance health care directive. (See [Standard Document, Health Care Directive \(WA\)](#).)
- Limited powers of attorney. If the principal does not want to grant an agent broad fiduciary powers and instead wants to limit an agent's authority to only one particular transaction, counsel may prepare a separate special or limited power of attorney for that purpose.

### Custom Drafting Options

There is no statutory form power of attorney in Washington. However, Washington provides a principal with the ability to grant an agent broad powers as stated under its Uniform Power of Attorney Act (see Drafting Note, Powers). This form contains optional provisions that counsel should discuss with the principal, considering the principal's intent and situation, and then determine the appropriate provisions for the principal's needs. Counsel may revise provisions of this Standard Document as desired.

### 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.

#### DURABLE GENERAL POWER OF ATTORNEY

1. Agent Designation. I, [PRINCIPAL NAME], the Principal, designate [AGENT NAME] as my attorney-in-fact (my "agent"). If [AGENT NAME] at any time fails or ceases to act as my agent, I hereby designate [[SUCCESSOR AGENT NAME]/such person or entity as [AGENT NAME] shall designate in writing] as my agent.

#### OR

Agent Designation. I, [PRINCIPAL NAME], the Principal, designate [FIRST AGENT NAME] and [SECOND AGENT NAME] as my attorneys-in-fact (collectively, my "agents"). If either [FIRST AGENT NAME] or [SECOND AGENT NAME] at any time fails or ceases to act as my agent, I designate [[SUCCESSOR AGENT NAME]/the other of them/such person or entity as [AGENT NAME] shall appoint in writing] as my agent. All references to "my agent" shall include my agents whenever more than one agent is acting. While more than one agent is acting for me, [each may act for me, individually, without the necessity of approval or consent of the other/they must act unanimously, but any one agent shall have the right to delegate authority to any other agent in writing, and such delegation may be a general delegation or may be limited to one or more actions].]

#### DRAFTING NOTE: AGENT DESIGNATION

In this section, the drafting attorney should identify:

- The principal.
- The agent nominated to act under the power of attorney and, if there are two or more agents,

whether the agents may act independently or must act together (see Co-Agents).

- Any successor agents (see Successor Agents).

Unless otherwise provided in the power of attorney, a person accepts appointment as an agent by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance (RCW 11.125.130).

Counsel should select:

- The first option if the principal wants to designate one agent to serve at a time.
- The second option if the principal wants to designate multiple agents to serve at the same time and should select between the bracketed optional language within this option to indicate whether:
  - each agent can act independently; or
  - all agents must act jointly (in this case the language indicates that co-agents may delegate authority among themselves, but this language can be modified so that delegation is not permitted).

If a principal designates multiple agents, counsel should discuss with the principal whether the principal wants the last remaining agent to act alone or whether the principal wants to designate a successor co-agent for any co-agent unable or unwilling to act. Counsel should choose the appropriate option where indicated or revise accordingly, as the principal prefers.

### Co-Agents

A principal may designate two or more persons to act as co-agents. A power of attorney that nominates co-agents should always expressly indicate whether the co-agents can act independently or must act jointly. In the absence of a specific direction in the power of attorney, co-agents must exercise their authority jointly, but a co-agent can delegate that co-agent's authority to another co-agent. (RCW 11.125.110(1).)

Where the principal names multiple co-agents and does not specify that they can act independently, counsel should provide for the manner of delegation in the power of attorney to avoid confusion about when

a co-agent delegated a power. For more information regarding delegation, including delegation to individuals who are not co-agents, see Drafting Note, Specific Powers Requiring Express Authorization.

While there are benefits to appointing co-agents for oversight and balancing of responsibility, appointing multiple agents has the potential to cause delay, conflict, and confusion. The benefits and drawbacks should be discussed with the principal.

### Successor Agents

A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may also grant an agent or other person designated by name, office, or function the authority to designate one or more successor agents. (RCW 11.125.110(2) and see Drafting Note, Provisions Governing Agent and Miscellaneous Provisions.)

Unless the power of attorney provides otherwise, a successor agent:

- Has the same authority as that granted to the original agent.
- May not act until all predecessor agents resign, die, become incapacitated, are no longer qualified to serve, or decline to serve.

(RCW 11.125.110(2).) The option in this section for appointing co-agents includes additional language allowing a successor to one of multiple co-agents to act when any one co-agent ceases to act, rather than when all co-agents cease to act. Counsel should revise as the principal prefers.

The Washington statutes do not require the appointment of a successor agent. However, the principal generally should name one or more successor agents to minimize the need for the court to appoint a conservator of the principal's estate if the principal becomes incapacitated.

2. [Effectiveness. This Power of Attorney shall become effective immediately, shall not be affected by my incapacity, and shall continue until revoked or terminated, notwithstanding my incapacity or any uncertainty as to whether I am dead or alive. This Power of Attorney shall be terminated by: (a) my death upon actual knowledge or receipt of written notice of my death by my agent; (b) my written notice to my agent and, if this Power of Attorney has been recorded, by recording the written instrument of revocation in the office of the recorder or auditor of the place where the Power of Attorney was recorded; (c) my execution of a later Power of Attorney that expressly revokes this Power of Attorney or all prior powers

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of attorney executed by me; (d) destruction, cancellation, or obliteration of this Power of Attorney by me or by another person at my request; or (e) appointment of a guardian of my estate, unless otherwise directed by the court.

### OR

Effectiveness. This Power of Attorney shall not become effective until: (a) my agent receives written notice of: (i) my disability or incapacity from my attending physician; (ii) my confinement, detention, or disappearance from a representative of a governmental agency or a court of competent jurisdiction; or (iii) my incapacity from a court of competent jurisdiction; and (b) my agent agrees to serve, either in writing or by taking action under this Power of Attorney/[OTHER EFFECTIVENESS EVENT OR DATE]]. Once this Power of Attorney becomes effective, it shall continue until revoked or terminated, notwithstanding my incapacity or any uncertainty as to whether I am dead or alive. This Power of Attorney shall be terminated by: (a) my death upon actual knowledge or receipt of written notice of my death by my agent; (b) my written notice to my agent and, if this Power of Attorney has been recorded, by recording the written instrument of revocation in the office of the recorder or auditor of the place where the Power of Attorney was recorded; (c) my execution of a later Power of Attorney that expressly revokes this Power of Attorney or all prior Powers of Attorney executed by me; (d) destruction, cancellation, or obliteration of this Power of Attorney by me or by another person at my request; or (e) appointment of a guardian of my estate, unless otherwise directed by the court.]

My agent is a fiduciary who owes me general duties of loyalty, good faith, full disclosure, and honesty but is not a trustee under this Power of Attorney. My agent is required to act in my best interests. My agent shall not be liable for loss or diminution in value of my property, except for losses caused by a breach of duty committed dishonestly, with an improper motive, or with gross negligence to the purpose of this Power of Attorney or my best interest.

### DRAFTING NOTE: EFFECTIVENESS

A power of attorney is effective when validly executed unless the principal provides in the power of attorney that it becomes effective at a future date or on the occurrence of a future event or contingency (RCW 11.125.090(1) and see Drafting Note, Executing the Power of Attorney).

Counsel should include:

- The first optional paragraph to create a power of attorney that is effective immediately on execution of the power of attorney and remains effective throughout the principal's incapacity. This is typical for most powers of attorney created for estate planning purposes.
- The second optional paragraph to create a springing power of attorney (see Springing Power of Attorney).

Both options:

- Create a power of attorney that is durable (see Durability).
- Provide express termination language (see Termination).

The final paragraph in this section indicates the agent's general fiduciary duties to the principal and the agent's liability (see Agent Duties and Liability).

### Springing Power of Attorney

A springing power of attorney becomes effective on the occurrence of a future event or contingency. When creating a springing power of attorney, the principal may authorize one or more persons to determine in a writing that the event or contingency occurred (RCW 11.125.090(2)).

If a springing power of attorney becomes effective on the principal's incapacity and:

- A person is authorized in the power of attorney to determine whether the principal is incapacitated, that person may obtain the principal's protected health information as needed to make this determination (RCW 11.125.090(4)).
- The principal did not authorize a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective on a written determination that the principal is incapacitated under statute by:
  - a physician or licensed psychologist, unrelated to the principal or agent by blood or marriage, personally examining the principal;

- a judge; or
  - an appropriate governmental official.
- (RCW 11.125.020(5) and 11.125.090(3).)

The second option creates a springing power of attorney and includes language to either:

- Indicate that the power of attorney becomes effective on the principal's incapacity and include criteria for determining whether the principal is incapacitated. Counsel may revise these criteria as the principal desires, considering the statutory rules.
- Include custom language for a different event on which the power of attorney becomes effective.

### Durability

A power of attorney may be durable or non-durable. A durable power of attorney remains effective during the principal's incapacity, while a non-durable power of attorney terminates on the principal's incapacity. Washington powers of attorney are non-durable unless they include words showing the principal's intent that the power of attorney be durable (for example, "This power of attorney shall not be affected by disability of the principal" or "This power of attorney shall become effective upon the disability of the principal") (RCW 11.125.040).

Washington defines incapacity as an individual's inability to manage property, business, personal, or health care affairs because the individual:

- Has an impairment in the ability to receive and evaluate information or make or communicate decisions, even with the use of technological assistance.
- Is an absentee as defined under RCW 11.80.010 to 11.80.130.
- Is outside of the United States and unable to return.

(RCW 11.125.020(5).)

Powers of attorney for estate planning purposes are most commonly durable because they are created to allow an individual to manage the principal's financial matters when the principal is unable to manage the principal's own finances or is otherwise unavailable.

### Termination

#### Termination of Power of Attorney

A power of attorney terminates when:

- The principal dies.
- The principal becomes incapacitated, if the power of attorney is not durable (see Durability).
- The principal revokes the power of attorney (see Drafting Note, Revocation of Existing Powers of Attorney).
- The power of attorney provides that it terminates.
- The purpose of the power of attorney is accomplished.
- The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(RCW 11.125.100(1).)

#### Termination of Agent's Authority

An agent's authority under the power of attorney terminates (but the power of attorney does not necessarily terminate) when:

- The principal revokes the agent's authority.
- The agent dies, becomes incapacitated, or resigns.
- A petition is filed for the dissolution or annulment of an agent's marriage to the principal or for their legal separation, or for dissolution or annulment of the agent's state-registered domestic partnership with the principal or for their legal separation, unless the power of attorney provides otherwise. The terminated agent's authority is reinstated if the action is dismissed with both parties' consent or the petition is withdrawn.
- The power of attorney terminates.

(RCW 11.125.100(2), (3).) Both drafting options in this section provide express termination language. Washington powers of attorney do not require this language to be included for the default rules to apply. However, Washington attorneys commonly include this language to clarify the termination events and to notify the agent and third parties of when the power of attorney is no longer effective.

### Notice of Termination Required

The termination of an agent's authority or a power of attorney is not effective as to an agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. Acts by the agent before the agent or third party has received this notice, unless otherwise invalid or unenforceable, bind the principal and the principal's successors in interest. (RCW 11.125.100(5).) The principal or counsel should therefore promptly notify any agents or third parties likely to act according to a power of attorney if the power of attorney or the agent's authority under the power of attorney terminates, preferably in writing by a method where receipt is acknowledged.

### Agent Duties and Liability

This section of the power of attorney provides notice to the agent and third parties of the agent's general statutory duties and liability.

#### Agent Duties

An agent's specific duties depend on the authority granted in the power of attorney and the principal's needs or preferences. An agent acting for the principal is a fiduciary and owes the principal certain general duties, including:

- The duty to act in good faith and within the scope of authority in the power of attorney.
- Except as otherwise provided in the power of attorney, the duty to act:
  - loyally for the principal's benefit;
  - so as not to create a conflict of interest impairing the agent's ability to act impartially in the principal's

best interest (see *Matter of Estate of Titus*, 2020 WL 5511331, \*4 (Wash. Ct. App. Sept. 14, 2020)); and

- with the care, competence, and diligence ordinarily exercised by agents in similar circumstances. If the principal selected an agent because the agent had or represented to the principal that they had special skills or expertise, the special skills or expertise are considered in determining whether the agent acted with care, competence, and diligence under the circumstances.

(RCW 11.125.140(1), (2), and (5).) The agent should act under the power of attorney only with a full understanding of the principal's property, expectations, and intentions (see Drafting Note, Agent's Knowledge of Property and Estate Plan).

#### Agent Liability

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

- Relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with gross negligence to the purposes of the power of attorney or the best interest of the principal.
- Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

(RCW 11.125.150.)

An agent violating the agent's duties to the principal is liable to the principal or to the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred (RCW 11.125.170).

3. Powers. My Agent shall have the general authority granted pursuant to RCW 11.125.250 to do all acts that I could do and shall have all of the powers of an absolute owner over my assets and liabilities, wherever located. These powers shall also include, without limitation, the following power and authority:

#### DRAFTING NOTE: POWERS

This section of the power of attorney includes the powers the principal grants to the agent. These

powers are generally intended to be broad, covering the most common types of financial and property

transactions. In Washington, the principal can grant to the agent:

- General authority to take all actions that the principal could take regarding the principal's own property. Though a broad general grant of authority is valid in Washington, the agent cannot take certain actions under this broad authority. (See General Powers.)
- Certain specific powers that must be granted expressly for the agent to have authority to exercise these powers. In addition to the broad grant of authority and the specific powers that must be expressly granted, Washington powers of attorney frequently include express powers when the principal wants to clarify to third parties that the agent has certain authorities. (See Drafting Note, Specific Powers.)

### General Powers

Paragraph 3 grants an agent authority to do all acts that a principal could do under RCW 11.125.250. Therefore, the agent has the general authority to act regarding the principal's asset categories described under RCW 11.125.260 through 11.125.410 (RCW 11.125.250(1)). These categories include:

- **Real property.** This authority generally includes the power to buy, sell, exchange, lease, mortgage, assign, manage, insure, and develop (RCW 11.125.270).
- **Tangible personal property.** This authority generally includes the power to buy, sell, manage, insure, possess, move, store, and perform other actions needed to manage or secure the personal property (RCW 11.125.280).
- **Stocks, bonds, and financial instruments.** This authority generally includes the power to buy, sell, pledge, open and close accounts, and exercise voting rights regarding stocks and bonds and to buy and sell commodities and options (RCW 11.125.290).
- **Banks and financial institutions.** This authority generally includes the power to continue, terminate, or modify an existing account, create a new account, make withdrawals from an account, receive statements for an account, borrow money, and pledge an account (RCW 11.125.300).
- **Operation of business.** This authority generally includes operating, buying, selling, voting stock,

and performing other acts necessary during the business (RCW 11.125.310).

- **Insurance and annuities.** This authority generally includes the power to continue to pay the premiums, exchange, modify, terminate, secure new or additional contracts of insurance or annuities, obtain a loan against the contract of insurance or annuity, exercise investment options, and determine how and when the contract of insurance or annuity will be paid out (RCW 11.125.320). However, these powers do not include the power to change a beneficiary, which the principal must expressly grant in the power of attorney if desired (see Specific Powers Requiring Express Authorization).
- **Estates, trusts, and other beneficial interests.** This authority generally includes the ability to accept an interest for the principal, to make demands for payment, to participate in alternative dispute resolution, and to take other actions necessary to protect the principal's interest in the trust or estate (RCW 11.125.330). However, this authority does not provide certain powers, including the power to amend, revoke, or create a revocable trust for the principal (or a will, which is not permitted in any case). The principal must expressly grant such powers in the power of attorney if desired (see Specific Powers Requiring Express Authorization).
- **Claims and litigation.** This authority generally authorizes the agent to start litigation and to participate in ongoing litigation on behalf of the principal, including making or accepting settlement offers, paying judgments, settlement amounts, or other awards, and receiving money or other valuables in settlement or because of a judgment or other award (RCW 11.125.340).
- **Personal and family maintenance.** This authority generally includes maintaining the current standard of living of the principal and those that the principal supports or who are legally entitled to the principal's support, paying the principal's child support, providing proper living quarters for the principal and those entitled to the principal's support, cooperating with an agent named in the principal's health care power of attorney regarding health care payments, paying expenses related to the health care and custodial care of the principal and those entitled to the principal's support, making payments for transportation, maintaining credit or debit cards, and making payments for religious or

social purposes. Personal and family maintenance powers include the ability to obtain the principal's protected health care information under HIPAA. (RCW 11.125.350.)

- **Government benefits and civil or military benefits.**

This authority generally allows the agent to handle all matters related to government, military, or civil benefits unless a particular government agency requires the use of the agency's own power of attorney form (RCW 11.125.360).

- **Retirement plans.** This authority generally authorizes

the agent to determine the form and timing of payments, withdraw benefits, make rollovers, establish a retirement plan for the principal, make contributions to a retirement plan, exercise investment options regarding a retirement plan, and borrow from a retirement plan (RCW 11.125.370). However, these powers do not include the power to change a beneficiary, which the principal must expressly grant in the power of attorney if desired (see Specific Powers Requiring Express Authorization).

- **Taxes.** This authority generally includes the authority for the agent to prepare, sign, and file the principal's tax returns, make claims for refunds, make requests for extensions of time, and pay the principal's taxes and collect refunds, unless the taxing authority requires use of its own forms (RCW 11.125.380 and see Drafting Note, Taxes).

- **Gifts.** A general grant of authority includes the authority for the agent to make certain gifts, not to exceed the annual federal gift tax exclusion amounts, that are consistent with the principal's objectives or, if unknown, the principal's best interest (RCW 11.125.390). The power to gift enables the agent to dispose of the principal's property in significant ways. Therefore, even though this power of attorney grants general gifting powers, it also includes specific language regarding the principal's intention regarding gifting (see Drafting Notes, Gifts and Specific Powers Requiring Express Authorization).

Except as otherwise provided in the power of attorney, under this general authority, the agent is authorized for the listed statutory categories to:

- Demand, receive, and obtain by litigation or otherwise, declaratory or injunctive relief, money, or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the intended purposes.

- Contract with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal.

- Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating a schedule listing some or all of the principal's property and attaching it to the power of attorney.

- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim.

- Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney.

- Engage, compensate, and discharge an attorney, accountant, investment manager, expert witness, or other advisor.

- Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation.

- Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal.

- Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means.

- Do any lawful act with respect to the subject and all property related to the subject.

(RCW 11.125.260.)

Counsel should take care when considering adding specific language regarding any of these incorporated general statutory powers.

### Customizing the Agent's Authority

Counsel can customize, add to, or delete both the broad grant of authority and the express grants of authority to the extent the principal desires.



Counsel should thoroughly review the powers granted under RCW 11.125.260 to 11.125.410 before adding any powers already provided under statute and incorporated by the general grant of authority to avoid inadvertently authorizing, or appearing to authorize, a narrower scope than provided by statute (see General Powers).

Counsel should renumber the remaining powers and any applicable internal references to power numbers if counsel adds or deletes powers.

### Agent's Knowledge of Property and Estate Plan

The agent should fully understand all the principal's property and the principal's expectations and

intentions before and while exercising any authority under a power of attorney and should keep a record of all transactions made on the principal's behalf. The principal and agent should discuss, and may want to document:

- Any expected future inheritance and any account, insurance policy, annuity, jointly owned property, or property of which the principal expects to be a beneficiary.
- How the agent should manage the property if the principal is disabled or incapacitated.

An agent must attempt to preserve the principal's estate plan to the extent actually known by the agent if doing so is consistent with the principal's best interest (RCW 11.125.140(2)(f) and see Drafting Note, Agent Duties and Liability).

3.1 Access to Electronic Information. My agent shall have authority to access all computers, mobile computing devices, remote computing storage, electronic communications services, online or hosting services, and websites to which I have access, and to obtain, retrieve, and use any password, PIN, user ID, screen name, or other identifier to download, transfer, copy, remove, or delete any electronically stored information, including electronic communications, contacts, social media accounts, address books, calendars, postings, photos, music, videos, profile information, and documents of any kind.

3.2 Transfers to Trust. My agent shall have authority to transfer assets of all kinds to the trustee of any trust created by me or my agent that is for my benefit and that either:

- (a) terminates at my death as to my property, with my property distributable to the executor of my estate; or
- (b) has ultimate dispositive provisions that are identical to those that would have governed the property had such property not been transferred to the trust.

3.3 Gifts. My agent shall have authority to make gifts to, or for the benefit of, one or more individuals or organizations, subject to the following guidelines:

(a) Consistent with Objectives. Gifts shall be consistent with my objectives if actually known by my agent (including by reference to my estate plan as known to my agent), or, if unknown, shall be consistent with my best interest based on all relevant factors, as determined by my agent, including but not limited to:

- (i) the value and nature of my property;
- (ii) my foreseeable obligations and need for maintenance;
- (iii) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes;
- (iv) eligibility for a benefit, a program, or assistance under a statute or rule; and
- (v) my personal history of making or joining in making gifts.

(b) Gift Amount. [Gifts may be of any amount and may exceed the annual dollar limits of the federal gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended/Gifts, other than qualified transfers for educational and medical expenses, may not exceed the annual limits of the federal gift tax exclusion under Section 2503(b) of the Internal Revenue Code of 1986, as amended];

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(c) Gifts to Agent. [If my agent is a permitted donee of gifts under Section 3.3(a), any gifts made to my agent shall be limited to those necessary for my agent's maintenance, education, support, and health in my agent's accustomed manner of living/No gifts are permitted to be made to my agent];

(d) Gift Splitting. [My agent shall have authority on my behalf to split gifts with my spouse]; and

(e) Withdrawals. [My agent shall also have authority to make withdrawals from any trust over which I have a right of revocation or withdrawal for the purpose of making gifts on my behalf as described in this Section 3.3].

3.4 Change of Domicile and Residence. My agent shall have authority to change my domicile. If I am incapacitated as determined by my attending physician, I authorize my agent to change my residence.

3.5 Agent's Authority. Except for the authority specifically stated elsewhere in this instrument, my agent shall not exercise my authority to:

(a) create, amend, revoke, or terminate an *inter vivos* trust (including the authority to enter into a binding nonjudicial agreement under RCW 11.96A.220 through 11.96A.250 with respect to such *inter vivos* trust);

(b) make gifts;

(c) create or change rights of survivorship;

(d) create or change beneficiary designations;

(e) delegate some but not all of the authority granted under this instrument, unless such delegation is to another agent serving under this instrument;

(f) waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(g) exercise fiduciary powers;

(h) exercise any power of appointment in favor of anyone other than me;

(i) create, amend, or revoke a community property agreement;

(j) cause a trustee to make distributions of property held in trust; or

(k) make any other provisions for nonprobate transfers at death contained in nontestamentary instruments.

3.6 Taxes. Consistent with my grant of general authority above, my agent shall have the authority described under RCW 11.125.380, including, but not limited to, the authority to sign and file any tax return or related form or document and to represent me before the Internal Revenue Service or any other tax authority.

### DRAFTING NOTE: SPECIFIC POWERS

This power of attorney includes specific powers, some of which are:

- Included for clarity.
- Required by statute to be specifically authorized in the power of attorney, and which a principal cannot effectively grant under a general authority.

### Access to Electronic Information

The power over the principal's digital assets, stated in Section 3.1, is included for clarity and gives the

agent the ability to access the principal's electronic information, including computers, online or hosting services, websites, social media accounts, and documents of any kind. However, some custodians of digital assets may have their own internal policies and procedures regarding the principal's digital accounts. Counsel should advise the principal accordingly. In addition, state laws regarding management of digital assets are evolving. Counsel should review the relevant laws to ensure that the authority granted to the agent over digital assets is consistent with the client's intent.

### Transfers to Trust

This power stated in Section 3.2 is included for clarity and gives the agent authority to transfer assets to any trust created by the principal that is for the principal's benefit and that does not alter the ultimate disposition of the property placed in trust.

### Gifts

Given the complexity of Washington statutes regarding an agent's gifting authority, this power of attorney includes express language regarding gifting in Section 3.3 to make the principal's intent clear.

This gifting power can be beneficial to the principal. Gifting is an estate planning tool used to minimize the value of an individual's estate and related estate taxes, to preserve wealth within the family, or in preparation for medical assistance. A principal can reduce the estate value by gifting to family members, charities or other organizations, or to any other person. Counsel may include the first optional clause in Section 3.3(b) to authorize gifting of any amount or the second optional clause to limit gifting in the amount of the federal gift tax exclusion.

If the principal wants to authorize the agent to make gifts, the principal must include express authorizing language in the power of attorney (RCW 11.125.240(1)(b)). If the power of attorney does not include a specific gifting limit or allow for unrestricted giving, Washington statute limits the agent's authority to making gifts only up to the annual exclusion amount (RCW 11.125.390(2)).

Granting an agent the power to make unrestricted gifts (especially gifts to the agent or to someone to whom the agent owes a duty of support) may cause gift and estate tax issues. If the principal wants to authorize this power, counsel and the principal may want to consider adding provisions for an independent agent to make unrestricted gifts or exercise other powers that can benefit the agent.

Alternatively, counsel may include the optional language in Section 3.3(c) to limit or prohibit gifting to the agent. Counsel may also consider including language in Section 3.3(d) providing the agent authority to split gifts with principal's spouse.

Counsel should discuss with the principal the benefits and drawbacks of authorizing the power to gift,

including income tax and basis issues that may arise when an agent makes lifetime gifts and the possibility of abuse of the gifting power (see [Practice Note, Federal Gift Tax](#)). If the principal includes the power to gift, the agent should also be informed of the scope of the power and the inherent scrutiny to which gifting transactions may be subject, as gifts made by the agent may be voidable (see Restatement (Third) of Property: Wills & Don. Trans. § 8.1(l) (2003)). The principal and agent should also discuss a gifting plan and consider documenting any plan in writing.

### Domicile

The power granted in Section 3.4 allows an agent to change the principal's domicile, which may be beneficial as a tool for income and estate tax planning.

### Specific Powers Requiring Express Authorization

Despite the broad general authority that the principal may grant to an agent, Washington statute provides that there are certain specific powers that provide the agent significant control over the disposition of the principal's assets that are not included in the general grant of authority. Under statute, the agent has these enumerated powers only if both:

- The power of attorney specifically grants the agent the authority for these powers.
- The agent's exercise of authority under these powers (the agent's ability to perform a specific act under these powers) is not otherwise prohibited by an agreement or instrument to which the authority or property is subject.

(RCW 11.125.240(1).)

These powers include the power to:

- Create, amend, revoke, or terminate an *inter vivos* trust (though the principal can fund certain trusts of the principal without this specific authorization).
- Make a gift, subject to the limitations of RCW 11.125.390 (RCW 11.125.240(5)). If the principal wants to authorize this gifting power but expand or restrict it, counsel must include specific language to do so (see Gifts). Counsel and the principal should carefully discuss gifting powers before including

them. The principal should also be aware that, even without including any specific gifting power, a general grant of authority under a power of attorney enables the agent to transfer certain resources to qualify the principal for medical assistance or the limited casualty program for the medically needy (RCW 11.125.240(3) and see Drafting Note, General Powers).

- Create or change survivorship rights.
- Create or change beneficiary designations.
- Delegate some but not all of the authority granted under the power of attorney.
- Waive the principal's right to be a beneficiary of a joint and survivor annuity (including a survivor benefit under a retirement plan).
- Exercise fiduciary powers the principal has authority to delegate.
- Exercise any power of appointment in favor of anyone other than the principal.
- Create, amend, or revoke a community property agreement.
- Cause a trustee to make distributions of trust property under the same conditions the principal could.
- Make certain other provisions for nonprobate transfer at death in nontestamentary instruments under RCW 11.02.091. For example, this power can include the ability to create or revoke a transfer on death deed (see [Standard Document, Revocable Transfer on Death Deed \(WA\): Drafting Notes: Execution of TODD by Agent and Revocation of a TODD](#)).
- Create in the agent, or in a person to whom the agent owes a legal obligation of support, an interest in the principal's property, unless the agent is

the principal's ancestor, spouse, state-registered domestic partner, or descendant.

(RCW 11.125.240(1), (4).)

This statute includes the power to make health care decisions or give informed consent to those decisions for the principal. However, this Standard Document does not include these powers because Washington health care directives, and not financial powers of attorney, typically include these health care powers (RCW 11.125.240(1)(l) and 11.125.400, and see [Standard Documents, Power of Attorney for Health Care Decisions \(WA\)](#) and [Health Care Directive \(WA\)](#)).

Granting an agent one or more of these specific powers gives the agent significant authority over the disposition of the principal's assets. Therefore, Section 3.5 is included to expressly restate the statutory rule that the agent may not exercise any of these specific, listed powers unless the principal expressly authorizes the agent to have the power (RCW 11.125.240(1), (4)). For an example of a provision expressly authorizing the agent to have one of these specific powers (the power to gift), see Gifts.

### Taxes

Section 3.6, included for clarity, grants the agent the authority to sign and file tax returns for the principal and represent the principal before the IRS or any other tax authority. Counsel and the principal should be aware that, while an agent has this power under a general grant of authority under RCW 11.125.380, Treas. Reg. 601.504(a)(6) permits an agent to sign only if it is permitted under the Internal Revenue Code and accompanying regulations, and if it is specifically authorized in the power of attorney. Counsel should reference [IRS Publication 947](#) regarding ways to perfect a non-IRS power of attorney regarding this authority.

#### 4. Provisions Governing Agent & Miscellaneous.

4.1 [\[Appointment of Successor Agents\]](#). If a vacancy exists in the position of my agent, the last agent to serve shall have the right to appoint one or more successor agents in a signed writing.]

4.2 [Accounting](#). Upon my request or the request of the guardian of my estate, if any, or the personal representative of my estate, my agent shall account for all actions taken by my agent for me or on my behalf.

4.3 [Indemnity](#). My estate shall hold harmless and indemnify my agent from all liability except for losses caused by a breach of duty committed dishonestly, with an improper motive or with gross negligence with respect to the purpose of this Power of Attorney or my best interest.

4.4 Duty to Act. If my agent acts with respect to one or more matters, my agent is not obligated to act with respect to any other matters. However, my agent is required to complete a transaction that my agent initiated.

4.5 Compensation. My agent shall be entitled to reasonable compensation for serving as my agent and shall be reimbursed for all reasonable expenses incurred on my behalf under any provision of this instrument, including all attorneys' fees and costs associated with interpreting or effecting the provisions of this instrument. I direct that this provision be interpreted liberally in favor of full and complete reimbursement.

4.6 Nomination of Conservator of Estate and Guardian. I nominate my agent as the conservator of my estate and/or as guardian of my person if the appointment of a conservator and/or guardian cannot be avoided.

4.7 Nomination of Guardian or Temporary Health Care Agent for Children. If it becomes necessary to appoint a guardian for any child of mine, or if I am temporarily unavailable and health care decisions must be made for a child of mine, I nominate my agent to act in such role.

4.8 Revocation of Existing Powers of Attorney. I hereby revoke all powers of attorney previously executed by me other than any Power of Attorney conveying authority to make health care decisions on my behalf.

4.9 Reliance. Any person acting in good faith and without negligence in reliance on this Power of Attorney shall not incur any liability thereby. Any action so taken, unless otherwise invalid or unenforceable, shall be binding on my heirs and personal representatives.

4.10 Savings Clause. Any provision prohibited by law or unenforceable shall not affect the remaining provisions of this instrument.

4.11 Law Governing. Whether or not I am domiciled in the State of Washington, I direct that all provisions of this instrument shall be governed by the laws of the State of Washington.

### DRAFTING NOTE: PROVISIONS GOVERNING AGENT AND MISCELLANEOUS PROVISIONS

This section includes miscellaneous provisions governing the agent and the power of attorney. These include provisions regarding:

- The appointment of a successor agent by the last agent to serve if there would otherwise be a vacancy. Counsel should discuss this optional provision with the client before including it in this power of attorney to ensure it is consistent with the principal's preferences. If the principal wants to remove this optional provision (or any others in this section), counsel should renumber the remaining provisions accordingly.
- A duty of the agent to account to any guardian or personal representative of the principal, if requested.
- Indemnification and reliance provisions, generally restating the applicable law in Washington.
- Agent compensation and reimbursement provisions (see Compensation).

- Conservator and guardian nomination provisions (see Nomination of Conservator or Guardian and Nomination of Guardian or Temporary Health Care Agent for Children).
- Revocation of previous powers of attorney (see Revocation of Existing Powers of Attorney).
- Severance (savings) clause preserving the power of attorney if a provision is found to be unenforceable.
- The governance of the power of attorney by Washington state law.

### Compensation

An agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to reasonable compensation (RCW 11.125.120). Though not necessary, Section 4.5 explicitly provides that the agent is entitled to reimbursement and compensation for clarity. If the principal does not want the agent

to receive reimbursement for reasonable expenses or reasonable compensation, counsel should modify Section 4.5 and explicitly provide for that prohibition.

### Nomination of Conservator or Guardian

In Section 4.6, the principal nominates the agent as conservator of the principal's estate and guardian of the principal's person for consideration by the court if it needs to appoint a conservator or guardian (for example, if the principal is incapacitated and the agent is not authorized to act regarding a specific relevant asset category). If the principal wants to nominate a different individual, counsel should revise this nomination.

If after a principal executes a power of attorney, a court appoints a conservator or guardian other than the agent, the agent is accountable to the fiduciary and to the principal. If the court limits, suspends, or terminates the agent's authority under this power of attorney, the agent's authority is limited or suspended or terminates accordingly. (RCW 11.125.080(2).)

Effective January 1, 2022, Washington changed its guardian language to refer to conservators of the estate (and guardians of the person) (RCW 11.125.080, 11.130.305(1)(b), and 11.130.415(1)(b)). Prior powers of attorney may include different guardian terminology.

### Nomination of Guardian or Temporary Health Care Agent for Children

Because a will does not take effect until the testator's death, clients may want to nominate a temporary guardian or health care agent in the power of attorney, which is effective during life. A parent of any minor child can nominate a guardian or guardians for minor children in that parent's will, durable power of attorney, or both, to serve if the nominating parent is incapacitated (or dies) and the child has no other parent or legal representative readily available and authorized to act. (RCW 11.125.410.)

Section 4.7 designates the agent as guardian or temporary health care agent for any minor children in case of death or incapacity of the nominating

parent. Counsel should discuss with the principal the person the principal wants to designate as guardian and may need to revise this provision accordingly. The designated guardian does not need to be the agent.

In Washington a principal may include these designations under both the power of attorney (operative if the agent is incapacitated but living) and the principal's will (operative if the agent is deceased). Designations of guardians under the principal's will, if any, generally should match any guardian designations under the power of attorney to avoid confusion. If the court finds a conflict between the two documents, the court likely will give the most recent designation more weight in the court's appointment of guardian.

Where the principal prefers to name two individuals to serve as co-guardians, counsel should confirm whether the designation is contingent on both guardians being married and living together and provide in the designation which individual will serve as guardian if they are no longer married and living together. The guardian language in the power of attorney should accurately state the principal's preferences.

The principal should name a successor guardian as well, in case the primary guardian is unable or unwilling to serve as guardian or is not qualified to serve.

### Revocation of Existing Powers of Attorney

Section 4.8 provides that all powers of attorney the principal previously executed are revoked, except for any power of attorney conveying authority to make health care decisions. Counsel should revise this section as appropriate, depending on the principal's circumstances and executed documents.

If the principal has a power of attorney for a limited purpose that the principal wants to preserve despite executing this general power of attorney for estate planning purposes, counsel should revise this language to specifically exclude that limited power of attorney from revocation.

For more information on termination of powers of attorney, including by revocation, see Drafting Notes, Durability and Termination.

## Power of Attorney (WA)

I understand that this is a durable power of attorney and that the powers of the Agent described above shall be exercisable by the Agent on my behalf even though I may become legally disabled or financially incapable.

Executed on [DATE], at [CITY], Washington.

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

STATE OF WASHINGTON )  
COUNTY OF [COUNTY NAME] ) ss.  
)

This document was acknowledged before me on [DATE] by [PRINCIPAL NAME].

\_\_\_\_\_  
[Signature of Notary Public]

Notary Public

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

### DRAFTING NOTE: EXECUTING THE POWER OF ATTORNEY

In Washington, powers of attorney must be signed and dated by the principal, and the signature must be either:

- Acknowledged before a notary public or other individual authorized by law to take acknowledgements.
- Attested by two or more competent witnesses who are unrelated to the principal or agent by blood, marriage, or state registered domestic partnership and who are not:
  - home care providers for the principal; or
  - care providers at an adult family home or long-term care facility in which the principal resides.

(RCW 11.125.050(1).) Witnesses must subscribe their names to the power of attorney while in the presence of the principal and at the principal's direction or request (RCW 11.125.050(1)).

In Washington, notarization (acknowledgment) of powers of attorney is more common than witnessing them. While Washington permits a power of attorney to be witnessed rather than notarized, there are benefits to notarization rather than witnessing, and many financial institutions and title companies prefer

or require notarization. A person accepting a notarized power of attorney in good faith can rely on that power and the presumption of a genuine signature without further investigation (RCW 11.125.190). The statute does not offer the same benefit to a witnessed power of attorney. Further, under certain circumstances, third parties presented with a notarized power of attorney (as opposed to one that was only witnessed) may be required to accept the power of attorney. (See *Petitioning the Court and Certification for Notarized Powers of Attorney*.)

Before executing a power of attorney, counsel should review all places throughout the document that require personalized information, including the nomination of the agent or co-agents and guardians. Counsel should also make sure that the powers granted, not granted, or limited accurately reflect the principal's preferences.

### Certification for Notarized Powers of Attorney

A third party presented with a notarized power of attorney (not a witnessed power of attorney) must

## Power of Attorney (WA)

either accept the power of attorney or request a certification (or translation if the document is not written in English) within seven business days of presentation (RCW 11.125.200(1)(a)). No later than five business days after receipt of the certification or translation, and subject to certain exceptions, the third party must accept the power of attorney (RCW 11.125.200(1)(b), (c) and (2)).

If the third party refuses to accept the notarized power of attorney and no statutory exception applies, that third party may be held liable for reasonable attorneys' fees and costs incurred in any action or proceeding to confirm or mandate the acceptance of the power of attorney (RCW 11.125.200(3)).

Washington provides a statutory form of certification of power of attorney for the agent to complete and certify (RCW 11.125.430).

### Petitioning the Court

A power of attorney is generally used without court intervention. However, unless otherwise provided in the power of attorney, certain interested individuals can petition the court to:

- Determine whether a power of attorney is effective or terminated.
- Compel the agent to submit reports or accounts.
- Ratify past acts or approve proposed acts of the agent.
- Issue an order directing the agent to exercise or refrain from exercising authority in a power of attorney in a particular manner.
- Modify the authority of an agent under a power of attorney.
- Remove the agent.
- Approve of the resignation of the agent and the final accounting.
- Confirm the authority of a successor agent.
- Compel a third person to honor the authority. (RCW 11.125.160.)

Agents can, in certain circumstances, also petition the court for a third party to accept an acknowledged power of attorney (RCW 11.125.200 and see Certification for Notarized Powers of Attorney).

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