

Article 2.

Authority.

§ 32C-2-201. Authority requiring specific grant; grant of general authority.

(a) Unless the exercise of the authority by an agent under a power of attorney is otherwise prohibited by another agreement or instrument to which the authority or property is subject, then the following apply:

- (1) An agent may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent that authority:
 - a. Make a gift.
 - b. Create or change rights of survivorship.
 - c. Create or change a beneficiary designation.
 - d. Delegate authority granted under the power of attorney.
 - e. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
 - f. Exercise fiduciary powers that the principal has authority to delegate.
 - g. Renounce or disclaim property, including a power of appointment.
 - h. Exercise authority over the content of electronic communication, as defined in 18 U.S.C. § 2510(12), sent or received by the principal.
- (2) An agent may do the following only if the power of attorney or terms of the trust expressly grants the agent that authority:
 - a. Exercise the powers of the principal as settlor of a revocable trust in accordance with G.S. 36C-6-602.1.
 - b. Exercise the powers of the principal as settlor of an irrevocable trust to consent to the trust's modification or termination in accordance with G.S. 36C-4-411(a).

(b) Notwithstanding a grant of authority to do an act described in subsection (a) of this section, an agent may exercise such authority only as the agent determines is consistent with the principal's objectives if actually known by the agent and, if unknown, as the agent determines is consistent with the principal's best interest based on all relevant factors, which may include the following:

- (1) The value and nature of the principal's property.
- (2) The principal's foreseeable obligations and need for maintenance.
- (3) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
- (4) Eligibility for a benefit, a program, or assistance under a statute or regulation.
- (5) The principal's personal history of making or joining in making gifts.
- (6) The principal's existing estate plan.

(c) Notwithstanding a grant of authority to do an act described in subsection (a) of this section, unless the power of attorney otherwise provides, an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.

(d) Subject to subsections (a), (b), (c), (e), and (f) of this section, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in G.S. 32C-2-204 through G.S. 32C-2-216.

(e) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to subsections (b) and (c) of this section and G.S. 32C-2-217.

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

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

(h) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act. (2017-153, s. 1; 2018-142, s. 31(a).)