

## Chapter 32C.

### North Carolina Uniform Power of Attorney Act.

#### Article 1.

##### Definitions and General Provisions.

#### § 32C-1-101. Short title.

This Chapter may be cited as the North Carolina Uniform Power of Attorney Act. (2017-153, s. 1.)

#### § 32C-1-102. Definitions.

The following definitions apply in this Chapter:

- (1) Agent. – A person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated.
- (2) Durable. – With respect to a power of attorney, the incapacity of the principal does not terminate the power of attorney.
- (3) Electronic. – Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (4) Entity. – A sole proprietorship, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity whether or not organized for business purposes.
- (5) Good faith. – Honesty in fact.
- (6) Incapacity. – The inability of an individual to manage property or business affairs because the individual has any of the following statuses:
  - a. An impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
  - b. Is missing, detained, including incarcerated in a penal system, or outside the United States and unable to return.
- (7) Internal Revenue Code. – The Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Internal Revenue Code shall include any successor to that provision.
- (8) Person. – An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (9) Power of attorney. – A writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used.
- (10) Reserved.
- (11) Principal. – An individual who grants authority to an agent in a power of attorney.
- (12) Property. – Anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right therein.

- (13) Record. – Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- (14) Sign. – With the present intent to authenticate or adopt a record, (i) to execute or adopt a tangible symbol or (ii) to attach to or logically associate with the record an electronic sound, symbol, or process.
- (15) State. – A state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (16) Stocks and bonds. – Stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. The term does not include commodity futures contracts and call or put options on stocks or stock indexes. (2017-153, s. 1.)

**§ 32C-1-103. Applicability.**

This Chapter applies to all powers of attorney except the following:

- (1) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.
- (2) A power to make health care decisions.
- (3) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.
- (4) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose. (2017-153, s. 1.)

**§ 32C-1-104. Power of attorney; durability.**

A power of attorney created pursuant to this Chapter is durable unless the instrument expressly provides that it is terminated by the incapacity of the principal. (2017-153, s. 1.)

**§ 32C-1-105. Execution of power of attorney.**

A power of attorney must be (i) signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney and (ii) acknowledged. A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgements. (2017-153, s. 1.)

**§ 32C-1-106. Validity of power of attorney.**

(a) A power of attorney executed in this State on or after January 1, 2018, is valid if its execution complies with G.S. 32C-1-105.

(b) A power of attorney executed in this State before January 1, 2018, the effective date of this Chapter is valid if its execution complied with the law of this State as it existed at the time of execution.

(c) A power of attorney executed other than in this State is valid in this State if, when the power of attorney was executed, the execution complied with any of the following:

- (1) The law of the jurisdiction that determines the meaning and effect of the power of attorney pursuant to G.S. 32C-1-107.

(2) The requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended.

(d) Except as otherwise provided by statute other than this Chapter, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. (2017-153, s. 1.)

**§ 32C-1-107. Meaning and effect of power of attorney.**

The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power of attorney and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power of attorney was executed. (2017-153, s. 1.)

**§ 32C-1-108. Nomination of guardian; relation of agent to court-appointed fiduciary.**

(a) In a power of attorney, a principal may nominate a guardian of the principal's estate, or guardian of the principal's person, or general guardian for consideration by the clerk of superior court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. Except for good cause shown or disqualification, the clerk of superior court shall make its appointment in accordance with the principal's most recent nomination. If a guardian of the principal's person is nominated in a health care power of attorney, that nomination shall control over the nomination, if any, in a power of attorney.

(b) If, after a principal executes a power of attorney, the clerk of superior court appoints a guardian of the principal's estate, or general guardian or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the guardian or the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless suspended or terminated by the clerk of superior court pursuant to G.S. 32C-1-116(a)(2) or terminated by the guardian of the principal's estate or general guardian pursuant to G.S. 32C-1-110(a)(7) or G.S. 32C-1-110(b)(5). (2017-153, s. 1; 2018-142, s. 27(a).)

**§ 32C-1-109. When power of attorney effective.**

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

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

(c) If a power of attorney becomes effective upon the principal's incapacity and the principal has not authorized 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 upon a determination in a writing or other record in one of the following manners:

(1) After a personal examination of the principal, by two individuals who are either a physician, a licensed psychologist, or both, that the principal is incapacitated within the meaning of G.S. 32C-1-102(6)a.

(2) By an attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of G.S. 32C-1-102(6)b.

Notwithstanding the subsequent capacity of the principal to manage property or business affairs, a power of attorney which becomes effective under this subsection shall remain effective

until its termination pursuant to G.S. 32C-1-110(a) or the agent's authority terminates pursuant to G.S. 32C-1-110(b).

(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal's personal representative pursuant to the Health Insurance Portability and Accountability Act, §§ 1171 through 1179 of the Social Security Act, 42 U.S.C. § 1320d, as amended, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider. (2017-153, s. 1; 2018-142, s. 28(a).)

### **§ 32C-1-110. Termination of power of attorney.**

- (a) A power of attorney terminates when any of the following occur:
- (1) The principal dies.
  - (2) If the power of attorney is not durable, the principal becomes incapacitated.
  - (3) The principal revokes the power of attorney.
  - (4) The power of attorney provides that it terminates.
  - (5) The purpose of the power of attorney is accomplished.
  - (6) 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.
  - (7) A guardian of the principal's estate or general guardian terminates it.
- (b) An agent's authority terminates when any of the following occur:
- (1) The principal revokes the authority in writing.
  - (2) The agent dies, becomes incapacitated, resigns, or is removed.
  - (3) The court enters a decree of divorce between the principal and the agent, unless the power of attorney otherwise provides.
  - (4) The power of attorney terminates.
  - (5) A guardian of the principal's estate or general guardian terminates the authority.
- (c) Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection (b) of this section, notwithstanding a lapse of time since the execution of the power of attorney.
- (d) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.
- (e) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.
- (f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.
- (g) A principal may revoke a power of attorney in one of the following manners:
- (1) If the power of attorney has been registered in an office of the register of deeds in this State, it shall be revoked by registration in that office by an instrument of revocation executed and acknowledged by the principal while the principal is

not incapacitated with proof of service on the agent in the manner prescribed for service under Rule 5 of the North Carolina Rules of Civil Procedure.

- (2) If the power of attorney has not been registered in an office of the register of deeds in this State, it may be revoked by one of the following methods:
  - a. A subsequent written revocatory document executed and acknowledged while not incapacitated.
  - b. Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal or by another person in the principal's presence and at the principal's direction, while the principal is not incapacitated.

(h) A guardian of the principal's estate or general guardian terminates a power of attorney that has been registered in an office of the register of deeds in this State by registering in that office an instrument of revocation executed and acknowledged by such guardian and with proof of service on the agent in the manner prescribed for service under Rule 5 of the North Carolina Rules of Civil Procedure. (2017-153, s. 1.)

### **§ 32C-1-111. Coagents and successor agents.**

(a) A principal may designate two or more persons to act as coagents. A principal may expressly require in the power of attorney that coagents act jointly. If a principal does not expressly require that coagents act jointly, each coagent may exercise the coagents' authority independently without the knowledge, consent, or joinder of any other coagent or coagents. Unless the power of attorney otherwise provides and if any one or more coagents resigns, dies, becomes incapacitated, or otherwise fails to act, the remaining agent or coagents may continue to act.

(b) 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 grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent shall have the following powers and limitations:

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

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

(d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal's best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action. (2017-153, s. 1.)

### **§ 32C-1-112. Reimbursement and compensation of agent.**

(a) If the terms of the power of attorney specify the amount or the way the compensation is to be determined, the agent is entitled to the compensation as specified.

(b) If the terms of the power of attorney do not specify the amount or the way the compensation is to be determined, and the principal thereafter becomes incapacitated, then subsequent to the principal's incapacity the agent is entitled to receive reasonable compensation as determined by the clerk of superior court in accordance with G.S. 32-59.

(c) Unless the power of attorney otherwise provides, an agent is entitled upon request to the clerk of superior court pursuant to G.S. 32-59 to be reimbursed for expenses properly incurred on behalf of the principal. (2017-153, s. 1; 2018-142, s. 29.)

**§ 32C-1-113. Agent's acceptance.**

Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance. (2017-153, s. 1.)

**§ 32C-1-114. Agent's duties.**

(a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment, when exercising a power under the power of attorney shall do all of the following:

- (1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest.
- (2) Act in good faith.
- (3) Act only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment has no affirmative duty to exercise the powers or to continue to exercise the powers granted to the agent by the power of attorney, but if the agent exercises any of the granted powers, the agent shall, in the exercise of such powers, do all of the following:

- (1) Act loyally for the principal's benefit.
- (2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.
- (3) Act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances.
- (4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal.
- (5) Cooperate with a person that has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.
- (6) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including the following:
  - a. The value and nature of the principal's property.
  - b. The principal's foreseeable obligations and need for maintenance.
  - c. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.
  - d. Eligibility for a benefit, a program, or assistance under a statute or regulation.
- (7) Repealed by Session Laws 2018-142, s. 30(a), effective December 14, 2018.

(c) When exercising a power under the power of attorney, an agent that acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(d) When exercising a power under the power of attorney, an act by an agent that is in good faith for the best interest of the principal is not voidable and the agent is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) Reserved.

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

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

(h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal or a person designated by the principal in the power of attorney, a guardian of the estate, general guardian, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. (2017-153, s. 1; 2018-142, s. 30(a).)

#### **§ 32C-1-115. Exoneration of agent.**

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 (i) in bad faith or (ii) with reckless indifference to the purposes of the power of attorney or the best interest of the principal. (2017-153, s. 1.)

#### **§ 32C-1-116. Judicial relief.**

(a) The clerks of superior court of this State shall have original jurisdiction of proceedings under this Chapter. Except as provided in subdivision (4) of this subsection, the clerk of superior court's jurisdiction is exclusive. The following proceedings are included:

- (1) To compel an accounting by the agent, including the power to compel the production of evidence substantiating any expenditure made by the agent from the principal's assets.
- (2) To terminate a power of attorney or to suspend or terminate the authority of an agent where a guardian of the estate or a general guardian has been appointed.
- (3) To determine compensation and expenses for an agent under G.S. 32C-1-112(b) and G.S. 32C-1-112(c).
- (4) To determine an agent's authority and powers, to construe the terms of a power of attorney created or governed by this Chapter, and to determine any question arising in the performance by an agent of the agent's powers and authority under a power of attorney governed by this Chapter, including, but not limited to, the following proceedings:
  - a. To determine whether and to what extent an agent holds a specific grant of authority under G.S. 32C-2-201.
  - b. To approve an agent's ability to make a gift on behalf of the principal where the gift is governed by G.S. 32C-2-217 because the power of attorney grants the agent only general authority with respect to gifts.

- c. To authorize the agent to make a gift of the principal's property under G.S. 32C-2-218.
- d. To authorize the agent to do an act described in G.S. 32C-2-201(a), other than the act to make a gift, under G.S. 32C-2-219.
- e. To determine whether and to what extent acceptance of a power of attorney shall be mandated under G.S. 32C-1-120(f).

Any party may file a notice of transfer of a proceeding pursuant to this subdivision to the superior court division of the General Court of Justice as provided in G.S. 28A-2-6(h). In the absence of a removal to superior court, Article 26 of Chapter 1 of the General Statutes shall apply to a proceeding commenced under this Chapter to the extent consistent with this subsection.

(b) Without otherwise limiting the jurisdiction of the superior court division of the General Court of Justice, the clerk of superior court shall not have jurisdiction under this subsection over the following actions:

- (1) To modify or amend a power of attorney instrument.
- (2) By or against creditors or debtors of an agent or principal.
- (3) Involving claims for monetary damages, including claims for breach of fiduciary duty, fraud, and negligence.
- (4) To set aside a power of attorney based on undue influence or lack of capacity.
- (5) For the recovery of property transferred or conveyed by an agent on behalf of a principal with intent to hinder, delay, or defraud the principal's creditors.

(c) Proceedings brought under the provisions of subsection (a) of this section shall be commenced as prescribed for in, and shall be conducted in accordance with, estate proceedings under G.S. 28A-2-6 and may be brought by the following persons:

- (1) The principal or the agent.
- (2) A general guardian, guardian of the principal's estate, or guardian of the principal's person.
- (3) The personal representative of the estate of a deceased principal.
- (4) A person authorized to make health care decisions for the principal.
- (5) Any other interested person, including a person asked to accept a power of attorney.

(d) Venue of any proceeding brought under subsection (a) of this section, is proper in any of the following:

- (1) The county in which the principal resides or domiciled.
- (2) Any county in which an agent resides.
- (3) Any county in which property of the principal is located.

(e) Nothing in this section affects the right of a person to file an action in the Superior Court Division of the General Court of Justice for declaratory relief under Article 26 of Chapter 1 of the General Statutes.

(f) Upon motion by the principal, the clerk of superior court shall dismiss a petition filed under subsection (a) of this section, unless the clerk of superior court determines the principal is incapacitated within the meaning of G.S. 32C-1-102(6).

(g) Any party adversely affected by an order of the clerk of superior court in a proceeding commenced under subsection (a) of this section may appeal the clerk's order as provided in G.S. 1-301.3. (2017-153, s. 1; 2018-142, ss. 27(b), 28(b); 2019-243, s. 25.)

**§ 32C-1-117. Agent's liability.**

- (a) A violation by an agent of this Chapter is a breach of fiduciary duty.
- (b) To remedy a breach of fiduciary duty that has occurred or may occur involving a power of attorney, the court may do the following:
  - (1) Enjoin an agent from committing a breach of fiduciary duty.
  - (2) Compel an agent to redress a breach of fiduciary duty by paying money, restoring property, or other means.
  - (3) Order an agent to account.
  - (4) Appoint a special fiduciary to take possession of the property subject to the power of attorney and administer that property.
  - (5) Suspend an agent.
  - (6) Remove an agent.
  - (7) Reduce or deny compensation to or reimbursement of an agent.
  - (8) Subject to G.S. 32C-1-119 and other laws governing the rights of third persons dealing in good faith with an agent, void an act of an agent, impose a lien or a constructive trust on property subject to the power of attorney, or trace property wrongfully disposed by an agent and recover the property or its proceeds.
  - (9) Order any other appropriate relief.
- (c) The court may, for good cause shown, relieve an agent from liability for any breach of fiduciary duty under a power of attorney, or wholly or partly excuse an agent who has acted honestly and reasonably from liability for a breach of fiduciary duty under a power of attorney.
- (d) An agent who commits a breach of fiduciary duty under a power of attorney is liable for the following:
  - (1) The amount required to restore the value of the property subject to the power of attorney and distributions from that property to what they would have been had the breach not occurred; and
  - (2) The profit the agent made by reason of the breach.
- (e) Except as otherwise provided in this subsection, if more than one agent is liable for a breach of fiduciary duty under a power of attorney, an agent is entitled to contribution from the other agent or agents. An agent is not entitled to contribution if the agent was substantially more at fault than another agent or if the agent committed the breach of fiduciary duty in bad faith or with reckless indifference to the purposes of the power of attorney or the best interests of the principal. An agent who received a benefit from the breach of fiduciary duty is not entitled to contribution from another agent to the extent of the benefit received.
- (f) An agent is liable for any profit made by the agent arising from dealings with property subject to the power of attorney, even absent a breach of fiduciary duty. Nothing in this section limits an agent's right to compensation under G.S. 32C-1-112.
- (g) Absent a breach of fiduciary duty under a power of attorney, an agent is not liable for a loss or depreciation in the value of property subject to the power of attorney or for not having made a profit.
- (h) In a judicial proceeding involving a claim for breach of fiduciary duty under a power of attorney, the court may award costs and expenses, including reasonable attorneys' fees, as provided in G.S. 6-21(2). (2017-153, s. 1.)

**§ 32C-1-118. Agent's resignation; notice.**

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving written notice of resignation to the following:

- (1) To the principal if the principal is not incapacitated.
- (2) If the principal is incapacitated, to (i) the guardian of the principal's estate, the guardian of the principal's person, or general guardian, if one has been appointed, and (ii) any coagent or, if none, the successor agent next designated. (2017-153, s. 1.)

**§ 32C-1-119. Acceptance of and reliance upon power of attorney.**

(a) For purposes of this section and G.S. 32C-1-120, the term "acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgements.

(b) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under G.S. 32C-1-105 that the signature is genuine.

(c) A person that in good faith accepts a power of attorney without actual knowledge that the power of attorney is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agent's authority (i) may rely upon the power of attorney as if the power of attorney were genuine, valid and still in effect, the agent's authority were genuine, valid and still in effect, and the agent had not exceeded and had properly exercised the authority and (ii) shall not be held responsible for any breach of fiduciary duty by the agent, including any breach of loyalty, any act of self-dealing, or any misapplication of money or other property paid or transferred as directed by the agent. This subsection applies without regard to whether or not the person dealing with the agent demands or receives a certification under subsection (d) of this section.

(d) A person that is asked to accept a power of attorney may request, and rely upon, without further investigation, any one or more of the following:

- (1) A certification executed by the agent to the effect that the agent did not have actual knowledge at the time of the presentation of the power of attorney to the person (i) that the power of attorney is void, invalid, or terminated; (ii) that the agent's authority is void, invalid, or terminated; or (iii) of facts that would cause the agent to question the authenticity or validity of the power of attorney. A certification meeting the requirements of this subdivision shall be sufficient proof to the requesting person that (i) the power of attorney is authentic and valid and has not been terminated, (ii) the agent's authority is valid and has not been terminated, and (iii) other factual matters stated in the certification regarding the principal, agent, or power of attorney are true. If the exercise of the power of attorney requires execution and delivery of an instrument that is recordable, the person accepting the certification may require that the certification be prepared and executed so as to be recordable. A certification in the form described in G.S. 32C-3-302 shall be deemed to meet the requirements of this subsection but shall not be the sole means of meeting those requirements.
- (2) An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English.

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

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

(f) For purposes of this section and G.S. 32C-1-120, a person that conducts activities through employees is without actual knowledge of a fact relating to a power of attorney, a principal, or an agent if the employee conducting the transaction involving the power of attorney is without actual knowledge of the fact.

(g) This section does not affect any provision in a power of attorney for its termination by expiration of time or occurrence of an event other than an express revocation or a change in the principal's capacity. (2017-153, s. 1.)

**§ 32C-1-120. Liability for refusal to accept acknowledged power of attorney.**

(a) A person is not required to accept, and is not liable for refusing to accept, a power of attorney that has not been duly acknowledged.

(b) Except as otherwise provided in this section:

(1) No later than seven business days after presentation of an acknowledged power of attorney for acceptance, a person shall (i) accept the power of attorney; (ii) refuse to accept the power of attorney pursuant to subsections (c) and (d) of this section; or (iii) request a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d).

(2) If a person requests a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d), then within five business days after receipt of the requested items in reasonably satisfactory form, the person shall either (i) accept the power of attorney or (ii) refuse to accept the power of attorney pursuant to subsections (c) and (d) of this section.

(3) A person may not require an additional or different form of power of attorney if the power of attorney presented reasonably appears to authorize the agent to conduct the business the agent desires to conduct.

(c) A person is not required to accept an acknowledged power of attorney if any of the following circumstances exist:

(1) The person is not otherwise required to engage in a transaction with the principal in the same circumstances.

(2) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with applicable federal law.

(3) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power.

(4) A request for a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d) is refused.

(5) The person requesting a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d) does not receive the requested items in reasonably satisfactory form within a reasonable period of time.

(6) The person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a

certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d) has been requested or provided.

- (7) The person has reasonable cause to question the authenticity or validity of the power of attorney or the appropriateness of its exercise by the agent.
- (8) The agent or principal has previously breached any agreement with the person, whether in an individual or fiduciary capacity.
- (9) The person makes, or has actual knowledge that another person has made, a report to the local adult protective services office or law enforcement stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(d) Without limiting the generality of subsection (c) of this section, nothing in this Chapter requires a person to do any of the following:

- (1) Open an account for a principal at the request of an agent if the principal is not currently a customer of the person.
- (2) Make a loan to the principal at the request of the agent.
- (3) Permit an agent to conduct business not authorized by the terms of the power of attorney, or otherwise not permitted by applicable statute or regulation.

(e) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to all of the following:

- (1) A court order mandating acceptance of the power of attorney.
- (2) Liability for reasonable attorney's fees and costs incurred in any action or proceeding that mandates acceptance of the power of attorney.
- (3) Any other remedy available under applicable law.

(f) The principal, the agent, or a person presented with a power of attorney may initiate a proceeding to determine whether and to what extent acceptance of a power of attorney shall be mandated. The court may award costs and expenses, including reasonable attorneys' fees in its discretion, but may award attorneys' fees to the agent only where the proceeding has substantial merit.

(g) Nothing in this Chapter amends or modifies the rights of banks and other depository institutions to terminate any deposit account in accordance with applicable law.

(h) A person who is presented with a power of attorney shall not be deemed to have unreasonably refused to accept the power of attorney solely on the basis of failure to accept the power of attorney within seven business days.

(i) A person who promptly requests a certification, a translation, or an opinion of counsel pursuant to G.S. 32C-1-119(d) is not deemed to have unreasonably refused to accept a power of attorney prior to receipt of the requested items in reasonably acceptable form. (2017-153, s. 1.)

### **§ 32C-1-121. Principles of law and equity.**

The common law, including the common law of agency, and principles of equity supplement this Chapter, except to the extent modified by this Chapter or another provision of the General Statutes. (2017-153, s. 1.)

### **§ 32C-1-122. Laws applicable to financial institutions and other entities.**

This Chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with the provisions of this Chapter. (2017-153, s. 1.)

**§ 32C-1-123. Remedies under other law.**

The remedies under this Chapter are not exclusive and do not abrogate any right or remedy under the law of this State, other than this Chapter. (2017-153, s. 1.)