

The Fifth Commandment & Estate Planning

1. Current Negative Perception of Estate Planning Lawyers
 - a. Perception as Scriveners – we use and re-use estate planning templates and simply fill in spaces based on what our clients tell us, without much legal analysis
 - b. DIY estate planning (Rocket Lawyer, Trust and Will, Law Depot) is more accessible and cost effective to the average person
 - c. Access to Google and Chat-GPT gives people the impression that estate planning laws are accessible and that they can do estate planning on their own
 - d. The perceived value of the advice and services provided by an estate planning lawyer is reduced
2. Is there any value to having an Estate Planning Lawyer?
 - a. Typical Answers: Yes, especially in situations of
 - i. Tax planning – if assets exceed state or federal estate tax exemption levels, there are mechanisms available to help defer payment of such taxes
 - ii. Planning for a child with special needs – outright inheritance would disqualify child from public benefits (e.g. SSI/Medicaid); Special Needs Trusts, ABLE accounts, and other mechanisms help ensure such assets do not count as a resource for these programs
 - iii. Planning for a family member who cannot properly manage funds – appointing a trustee/agent or nominating a guardian/conservator to steward such funds for them
 - iv. Blended families – in some blended families, the parent only wants to provide for their biological children and not for their step-children or the family of their spouse; prenuptial and antenuptial agreements help ensure assets are kept separate from different sides of the family
 - v. Non-Citizens – non-citizens who own assets in the U.S. may be subject to U.S. estate tax on the value of those assets upon death; however, the exemption level is typically lower than that of a U.S. citizen. Non-Resident Alien Trusts and Qualified Domestic Trusts (QDOTs) may allow for deferral of U.S. estate tax.
 - b. The Estate Planning Lawyer as a Facilitator of Peace
 - i. People don't think about how often families get torn apart through estate fights
 - ii. Failure to communicate ahead of time about how an estate will be administered causes ruptures even between the closest of family members
 1. I am in the middle of litigation involving two sisters who used to have a very healthy relationship. The older sister lived closer to their parents, and when the parents got older, she was largely responsible for managing their finances and taking care of them. Younger sister visited at times, but was not as involved in family's life as the older sister. Older sister was named POA for parents. The family didn't have explicit conversations about the daughters re: inheritance, but the parents felt like the younger sister abandoned the family and so wanted to "reward" the older daughter for her loyalty. Even though

the Will split residuary estate 50/50 between the two daughters, the Will gave sole discretion to the older sister on how to divide up tangible personal property (which was the bulk of the estate). House was given to the older daughter. It ended up that the older sister got most of the estate and the younger sister didn't get much of anything.

2. Even when clients make the right decision (e.g. limiting control of inheritance for a child with substance abuse issues), failing to discuss it ahead of time can deeply wound family members
3. The Fifth Commandment as Fundamental to Estate Planning
 - a. "Honor your father and your mother, as the LORD your God commanded you, that your days may be long, and that it may go well with you in the land that the Lord your God is giving you."
 - b. There is a particular blessing that comes from this intergenerational, parent-child relationship
 - c. What does it mean to honor our parents?
 - i. Cherish them – who they are, their talents, their time, their projects
 - ii. Caring for them – seek their welfare and flourishing, whether physically or keeping them informed
 - d. Corollary to the Fifth Commandment in Ephesians 6
 - i. "Fathers, do not provoke your children to anger, but bring them up in the discipline and instruction of the Lord."
 - ii. Authority is meant to provide order and flourishing to those who are subject to that authority.
 - iii. This responsibility comes into play when parents plan for disability and death. Parents are required, to the best of their ability, to depart this world in peace; to not leave a mess for their children to clean up when they cannot function or when they pass away.
 - e. Reciprocal Duties of Honor between Parents and Children
4. Being Image Bearers and Estate Planning
 - a. Biblical basis for estate planning comes from the idea that we are made in God's image.
 - i. Genesis 1:26 says "Then God said, "Let us make man in our image, after our likeness. And let them have dominion over the fish of the sea and over the birds of the heavens and over the livestock and over all the earth and over every creeping thing that creeps on the earth." And then down in verse 28, God says to Adam and Eve "Be fruitful and multiply and fill the earth and subdue it, and have dominion over the fish of the sea and over the birds of the heavens and over every living thing that moves on the earth."
 - ii. God creates man in his image, which separates mankind apart from any other creature, and gives mankind the authority to have dominion over all of creation.
 - iii. God requires man to make decisions that will cause the earth to be fruitful and full.

- iv. Human authority is to be utilized for the sake of flourishing of all of creation.
 - b. Principles for Estate Planning
 - i. We, as image bearers, are required to steward our resources well.
 - ii. Images bearers are called to defend and protect the vulnerable, including the aged, disabled, and incapacitated.
 - iii. Image bearers have the authority to accept or decline medical attention, or to make medical choices in advance.
 - iv. Image bearers are encouraged to remove any unnecessary distress from those we love and honor.
- 5. Implications for Estate Planning Lawyers
 - a. You are not merely a scrivener.
 - b. You are not merely drafting documents.
 - c. You are an agent of preserving peace in families.
 - i. Of course, your duties are to your client. But instead of agreeing with everything your client wants, explain the potential implications of their choices.
 - ii. Encourage transparency between family members to deter estate fights
- 6. General Approach to Estate Planning
 - a. Recognize ethical dilemmas early (Model Rule of Professional Conduct 1.7):
 - (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
 - (1) the representation of one client will be directly adverse to another client; or
 - (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
 - (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law;
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
 - (4) each affected client gives informed consent, confirmed in writing.

- b. Common Ethical Dilemmas in Estate Planning
 - i. Family member as spokesperson for the client
 - ii. Conflicts of interest in representing spouses
 - 1. Augmented estate – unequal contributions between spouses can lead to disagreement over a spouse’s right to inherit money that they “did not earn;” spouses may have different priorities in asset protection; spouses may have disagreements over the right to claim an elective share
 - a. Most common scenario is in Islamic estate planning (under Sunni inheritance law, wife inherits 1/8 of husband’s estate and must waive right to elective share; daughters inherit half of what sons inherit)
 - 2. Gifts – differing views on gifting (e.g. either as a way to limit estate taxes or as a way to provide for family members); also concerns about fairness in providing for one side of the family over the other; also concerns about preserving assets for future needs (e.g. liquidity for medical bills) vs. asset protection strategy
 - 3. Transfers of real property – the family home is not only an asset but also one of sentimental value; providing for needs or playing favorites?
 - 4. Second marriages – conflicts over distribution of assets between current spouse and children from a previous marriage (current financial security vs. inheritance rights); divide between spouse and stepchildren; disparities in wealth between the spouses; beneficiary designation conflicts; healthcare and end-of-life decisionmaking (differences in family values)
 - 5. Tax planning – minimizing estate taxes vs. preserving wealth; use of irrevocable trusts vs. losing control/access to assets; making gifts vs. concern with parting with property of sentimental value; incurring capital gains tax for ease of administration vs. minimizing tax liability
 - iii. Fraudulent conveyances
- b. Don’t just do what the client wants
 - i. E.g. client insists on a simple will even when additional tax planning is required
 - ii. If client insists, make sure that you document in writing your advice and client’s choice not to follow such advice
- c. Garbage In, Garbage Out – Get complete, accurate factual information from the client before drafting
 - i. Cause of action in Virginia against lawyers by third-party beneficiaries *Thorsen v. Richmond SPCA*, 292 Va. 257 (2016).
 - 1. In 2003, Alice Louise Cralle Dumville hired attorney James B. Thorsen to prepare her will. Dumville wanted her property to go to her mother or, if her mother predeceased her, to the Richmond Society for the Prevention of Cruelty to Animals (RSPCA), specifically

for the care of her cats. Thorsen drafted the will, but it didn't accurately reflect Dumville's intent regarding real estate.

2. After Dumville's death, it was discovered that the will only left tangible property to the RSPCA, not real estate. Thorsen tried to correct this error in court but was unsuccessful. The RSPCA then sued Thorsen for breach of contract and professional negligence, claiming to be a third-party beneficiary of the contract between Thorsen and Dumville.
 3. Thorsen argued that the RSPCA wasn't an intended beneficiary and that the action should be governed by a statute requiring a written agreement. The court disagreed, overruling Thorsen's arguments and denying his plea in bar.
 4. During the trial, it was established that Thorsen failed to accurately reflect Dumville's intentions in the will regarding real estate. The court found in favor of the RSPCA, awarding damages based on what the organization would have received if the error hadn't occurred.
 5. On appeal, the Virginia Supreme Court found that the RSPCA, as a third-party beneficiary of a will contract, who was supposed to benefit from the will but couldn't due to the attorney's mistake, was able to sue the attorney for malpractice. This effectively created a new cause of action in Virginia by third party beneficiaries against estate planning lawyers who fail to properly draft a Will.
- d. Representing Clients with Diminished Capacity (Rule 1.14) – common occurrence
- (a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.
 - (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.
 - (c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

- i. Confidentiality – lawyer may reasonably disclose confidential information if it is necessary to protect the interests of the client when there is a risk of substantial harm
 - 1. E.g. Consulting with neuropsychologist to determine testamentary capacity
 - 2. E.g. initiating guardianship/conservatorship to protect the client
 - 3. Consult with trusted family members or friends
 - ii. Nature of Advice – Must, as far as reasonably possible, maintain a normal lawyer-client relationship
- 7. Financial Power of Attorney – Va. Code 64.2-1600 et seq.(Attached hereto; Virginia Code is referenced by way of example)
 - a. Financial and legal decision making when a person cannot make their own decisions
 - b. Witnessed by two individuals and signed in front of a notary – Va. Code 64.2-1603
 - c. A POA defines the scope of an agent’s power
 - d. Durable vs. Springing Power of Attorney
 - i. Durable POA – remains valid even if the person who granted it becomes incapacitated or unable to make decisions; takes effect immediately upon signing and the appointed agent can start making decisions on behalf of the principal right away
 - ii. Springing POA – only becomes effective under specific conditions e.g. incapacity or disability of the principal; agent does not have authority until the specified triggering event occurs
 - e. Only effective when principal is alive or when revoked/terminates - Va. Code 64.2-1608
 - f. Avoids conservatorships
 - i. A conservatorship is a legal arrangement where a court appoints a person or organization to manage the financial affairs and/or personal care of another individual who is unable to do so themselves. This process typically occurs when someone is deemed incapable of making sound decisions due to age, illness, disability, or other factors.
 - ii. The process usually begins with someone filing a petition with the court requesting the establishment of a conservatorship for the individual in question. This petitioner is often a family member, friend, or concerned party who believes the individual needs assistance managing their affairs.
 - iii. In many jurisdictions, the court requires a medical evaluation or assessment by a qualified healthcare professional to determine the individual's mental or physical capacity. This evaluation helps the court determine whether a conservatorship is necessary and what specific powers the conservator should have.
 - iv. The court will notify the individual who is the subject of the conservatorship petition, as well as their close relatives or other interested parties, about the upcoming hearing. The individual has the right to contest the conservatorship and present evidence in their defense.

- v. A hearing is held where evidence is presented, and the judge decides whether to grant the conservatorship. The court considers factors such as the individual's capacity, the necessity of the conservatorship, and the suitability of the proposed conservator.
 - vi. If the court grants the conservatorship, it will appoint a conservator to act on behalf of the incapacitated individual. The conservator can be a family member, friend, professional fiduciary, or a public or private agency, depending on the circumstances.
 - vii. The court may grant either a conservatorship of the estate (financial affairs) or a conservatorship of the person (personal care and medical decisions), or both, depending on the individual's needs.
 - viii. Once appointed, the conservator is responsible for managing the individual's affairs according to the court's directives and in the individual's best interests.
 - ix. The conservator typically must file regular reports with the court detailing their actions and expenditures to ensure transparency and accountability.
 - x. A conservatorship may be terminated or modified if the individual's condition improves, if the conservator is not fulfilling their duties properly, or if other circumstances warrant a change.
 - xi. Interested parties can petition the court for termination or modification, and the court will hold a hearing to consider the request.
- g. Story of Michael Oher: is the football player whose life is the subject of the movie *The Blind Side*. He grew up in poverty and the foster care system, and the movie details how a family took him in to help him achieve his dream of becoming an NFL football player. Last year, Michael Oher filed a lawsuit against the family that took him in because he was never told that the family established a conservatorship over him. All this time he thought that he was adopted by this family. But instead, at least according to the lawsuit, the family established a conservatorship over him that granted them the legal authority to profit off of business deals by using his name and likeness.
- h. As you can see, conservatorships can turn into hotly contested legal proceedings. A Power of Attorney allows you to avoid the unnecessary expense and potentially destructive effect that a conservatorship can have on a family. A Power of Attorney looks simple, but when drafted properly it can be an instrument of peace.
- i. Goal: Make sure a responsible person is appointed and guard against POA abuse as best as possible
- i. Make sure that it is the principal's wishes, not the agent's wishes, that are put into effect
 - ii. Don't be afraid to limit the scope of authority of the POA, especially if there isn't 100% trust between principal and agent
- j. Goal: Make sure the authority granted is proportionate to what you want the agent to have power over – for example:
- i. Gifts – as mentioned earlier it can be a helpful tax-avoidance tool; but it can also lead to abuse

- ii. Creating, amending, revoking, terminating an estate plan or designated beneficiary form – can help change estate plan for elderly; but can lead to abuse
 - iii. Access to content of electronic communications under the Uniform Fiduciary Access to Digital Assets Act at Va. Code 64.2-116 et seq – ease of access to social media accounts, digital photos, cryptocurrency etc. vs. privacy concerns
 - iv. Authority over the content of an electronic communication of the principal under VA Code 64.2-123 – privacy concerns vs. accessing important emails
 - v. Exercising fiduciary powers that the principal has authority to delegate – e.g. principal is executor of another person’s estate but isn’t in the right mind to manage
 - vi. Disclaiming an interest in property – can disclaim to limit tax liability; protect property from creditors; avoid responsibility for maintenance; preserve government benefits
 - vii. HIPAA Authorization – do you want your agent to have the right to see your medical information?
8. Advance Medical Directive – Va Code 54.1-2981 et seq. (attached hereto)
- a. Healthcare decision making when a person cannot make their own decisions
 - b. Appoints a healthcare agent who can make healthcare decisions when a person is incapacitated or otherwise unable to make those decisions for themselves
 - c. Includes a Living Will
 - i. Specifies what type of treatment you will allow in the event you become incapacitated (e.g. terminal illness, persistent vegetative state)
 - d. Organ Donation
 - e. Priority of Agent: Virginia Code 54.1-2986(A)
 - i. Not everyone will agree with these default provisions
 - f. Goal: Make sure a responsible person who knows the values and preferences of the client is appointed.
 - g. Goal: Explain in detail the extent of power that the client is giving to the agent – For example
 - i. Broad rights to psychiatric admission even over client’s protest
 - ii. Authorizing participation in a healthcare study even if it doesn’t offer any prospect of direct therapeutic benefit to the client
 - h. Goal: If donating organs, make sure that they are used for the purposes the client desires.
 - i. For example, in some living wills you are given the option to use remains for research or education purposes. While many people think of their bodies being used in medical schools, some people don’t think of their bodies being used as exhibits in a museum.
9. Important Decision Points in Healthcare Decision Making
- a. How do I want to be treated when
 - i. I am dependent on others for daily living?
 - ii. I become terminally ill?

- iii. I enter a state of permanent confusion?
 - iv. I become permanently unconscious?
 - b. Treatment Options
 - i. CPR
 - ii. Life Support
 - iii. Treatment of a New Condition
 - iv. Artificial Nutrition and Hydration
- 10. Goals in Drafting Wills and Trusts
 - a. Direct property to the people your client wants to inherit, avoiding intestacy
 - b. Direct how you want beneficiaries to receive their inheritance (either outright or in trust)
 - c. Designate the right person to manage the estate
 - d. Foster transparency among family members
 - e. Posture of the Lawyer during a Will Signing
 - i. Make the Will as hard to challenge as possible
 - 1. If testamentary capacity is difficult to discern, have the client evaluated by a neuropsychologist or other diagnostician
 - 2. Do not have interested witnesses at the signing
 - a. Protect against undue influence
 - b. Recent anecdote
 - 3. Have witnesses initial each page of the Will
 - 4. Do a self-proving affidavit Va Code 64.2-452
 - 5. Don't take short cuts
 - ii. If the client lacks testamentary capacity, refrain from drafting documents
 - 1. Must go through guardianship and conservatorship process
- 11. Conclusion
 - a. Frame your estate planning practice within the context of the Fifth Commandment
 - b. We are here to help families flourish
 - c. Requires intentionality to allow parents and children to honor each other during this process
 - i. When we get together with our families, the last thing we want to do is to talk about disability and death. These aren't fun things to talk about. And yet, these issues are storms that every family will have to go through at some point.
 - ii. Tell your clients: Don't wait until you are in the middle of the storm to plan! Don't wait until you are in the middle of triaging one crisis after another to put your legal documents together! And don't leave your family members in the dark!
 - d. But also we have to advocate for our clients when drafting their documents. We are not scribes; we are here to accomplish their goals while also preserving intergenerational peace as best as we can.

Chapter 16. Uniform Power of Attorney Act.

Article 1. General Provisions.

§ 64.2-1600. Definitions.

For the purposes of this chapter, unless the context requires otherwise:

"Agent" means 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.

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

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Good faith" means honesty in fact.

"Incapacity" means inability of an individual to manage property or business affairs because the individual:

1. Has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance; or
2. Is missing or outside the United States and unable to return.

"Person" means 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.

"Power of attorney" means 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.

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

"Principal" means an individual who grants authority to an agent in a power of attorney.

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

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

"Sign" means, with 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.

"State" means 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.

"Stocks and bonds" means 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.

2010, cc. 455, 632, § 26-73; 2012, c. 614.

§ 64.2-1601. Applicability.

This chapter applies to all powers of attorney except:

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; and
 5. A power to make arrangements for burial or disposition of remains pursuant to § 54.1-2825.
- 2010, cc. 455, 632, § 26-74; 2012, c. 614.

§ 64.2-1602. Power of attorney is durable.

A power of attorney created under this chapter is durable unless it expressly provides that it is terminated by the incapacity of the principal.

2010, cc. 455, 632, § 26-75; 2012, c. 614.

§ 64.2-1603. Execution of power of attorney.

A power of attorney shall be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. 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 acknowledgments. A power of attorney in order to be recordable shall satisfy the requirements of § 55.1-600.

2010, cc. 455, 632, § 26-76; 2012, c. 614.

§ 64.2-1604. Validity of power of attorney.

A. A power of attorney executed in the Commonwealth on or after July 1, 2010, is valid if its execution complies with § 64.2-1603.

B. A power of attorney executed in the Commonwealth before July 1, 2010, is valid if its execution complied with the law of the Commonwealth as it existed at the time of execution.

C. A power of attorney executed other than in the Commonwealth is valid in the Commonwealth if, when the power of attorney was executed, the execution complied with (i) the law of the

jurisdiction that determines the meaning and effect of the power of attorney pursuant to § 64.2-1605; (ii) the requirements for a military power of attorney pursuant to 10 U.S.C. § 1044b, as amended; or (iii) the laws of the Commonwealth.

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.

E. An agent in possession of a general, special, or limited power of attorney or other writing vesting any power or authority in him shall, where the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure of the principal to deliver the instrument to him, and persons dealing with such agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired, provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in any proceeding brought to terminate, suspend, or limit the authority of the agent.

2010, cc. 455, 632, § 26-77; 2012, c. 614.

§ 64.2-1605. 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.

2010, cc. 455, 632, § 26-78; 2012, c. 614.

§ 64.2-1606. Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

A. In a power of attorney, a principal may nominate a conservator or guardian of the principal's estate or guardian of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney.

B. If, after a principal executes a power of attorney, a court appoints a conservator or guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.

2010, cc. 455, 632, § 26-79; 2012, c. 614.

§ 64.2-1607. 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 by (i) the principal's attending physician and a second physician or licensed clinical psychologist after personal examination of the principal that the principal is incapacitated within the meaning of subdivision 1 of the definition of incapacity in § 64.2-1600 or (ii) an attorney-at-law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of subdivision 1 of the definition of incapacity in § 64.2-1600.

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.

2010, cc. 455, 632, § 26-80; 2012, c. 614.

§ 64.2-1608. Termination of power of attorney or agent's authority.

A. A power of attorney terminates when:

1. The principal dies;
2. The principal becomes a vulnerable adult, if the power of attorney is not durable;
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; or
6. The principal revokes the agent's authority or the agent dies, becomes a vulnerable adult, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

B. An agent's authority terminates when:

1. The principal revokes the authority;
2. The agent dies, becomes a vulnerable adult, or resigns;
3. Unless the power of attorney otherwise provides, an action is filed (i) for the divorce or annulment of the agent's marriage to the principal or their legal separation, (ii) by either the agent or principal for separate maintenance from the other, or (iii) by either the agent or principal for custody or visitation of a child in common with the other;
4. The agent is convicted of financial exploitation of the principal under § 18.2-178.2; or
5. The power of attorney terminates.

C. Unless the power of attorney otherwise provides, an agent's authority is exercisable until the authority terminates under subsection B, 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.

2010, cc. 455, 632, § 26-81; 2012, cc. 57, 614; 2022, cc. 397, 654.

§ 64.2-1609. Coagents and successor agents.

A. A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.

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 (i) has the same authority as that granted to the original agent; and (ii) 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 and subsection D, 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.

2010, cc. 455, 632, § 26-82; 2012, c. 614.

§ 64.2-1610. Reimbursement and compensation of agent.

Unless the power of attorney otherwise provides, an agent is entitled to reimbursement of expenses reasonably incurred on behalf of the principal and to compensation that is reasonable under the circumstances.

2010, cc. 455, 632, § 26-83; 2012, c. 614.

§ 64.2-1611. 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.

2010, cc. 455, 632, § 26-84; 2012, c. 614.

§ 64.2-1612. Agent's duties.

A. Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

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; and
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 shall:

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; and
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:
 - 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; and
 - d. Eligibility for a benefit, a program, or assistance under a statute or regulation.

C. 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. An agent that acts with care, competence, and diligence for the best interest of the principal 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. If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the

special skills or expertise shall be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

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; however, nothing herein is intended to abrogate any duty of the agent under the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

H. Except as otherwise provided in the power of attorney, an agent shall disclose receipts, disbursements, or transactions conducted on behalf of the principal if requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal's estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

I. Except as otherwise provided in the power of attorney, an agent shall, on reasonable request made by a person listed in subdivisions A 3 through A 9 of § 64.2-1614 who has a good faith belief that the principal suffers an incapacity or, if deceased, suffered incapacity at the time the agent acted, disclose to such person the extent to which he has chosen to act and the actions taken on behalf of the principal within the five years prior to either (i) the date of the request or (ii) the date of the death of the principal, if the principal is deceased at the time such request is made, and shall permit reasonable inspection of records pertaining to such actions by such person. In all cases where the principal is deceased at the time such request is made, such request shall be made within one year after the date of the death of the principal. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.

2010, cc. 455, 632, § 26-85; 2012, c. 614.

§ 64.2-1613. 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:

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

2010, cc. 455, 632, § 26-86; 2012, c. 614.

§ 64.2-1614. Judicial relief.

A. In addition to the remedies referenced in § 64.2-1621, the following persons may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief:

1. The principal or the agent;

2. A guardian, conservator, personal representative of the estate of a deceased principal, or other fiduciary acting for the principal;
3. A person authorized to make health care decisions for the principal;
4. The principal's spouse, parent, or descendant;
5. An adult who is a brother, sister, niece, or nephew of the principal;
6. A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;
7. The adult protective services unit of the local department of social services for the county or city where the principal resides or is located;
8. The principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and
9. A person asked to accept the power of attorney.

B. 1. Whether or not supplemental relief is sought in the proceeding, where an agent has violated duties of disclosure imposed by § 64.2-1612, any person to whom such duties are owing may, for the purpose of obtaining information pertinent to the need or propriety of (i) instituting a proceeding under Chapter 20 (§ 64.2-2000 et seq.); (ii) terminating, suspending, or limiting the authority of the agent; or (iii) bringing a proceeding to hold the agent, or a transferee from such agent, liable for breach of duty or to recover particular assets or the value of such assets of a principal or deceased principal, petition a circuit court for discovery from the agent of information and records pertaining to actions taken pursuant to a power of attorney.

2. The petition may be filed in the circuit court of the county or city in which the agent resides or has his principal place of employment, or, if a nonresident, in any court in which a determination of incompetency or incapacity of the principal is proper under Chapter 20 (§ 64.2-2000 et seq.), or, if a conservator or guardian has been appointed for the principal, in the court that made the appointment. The court, after reasonable notice to the agent and to the principal, if no guardian or conservator has been appointed, or to the conservator or guardian, if one has been appointed, may conduct a hearing on the petition. The court, upon the hearing on the petition and upon consideration of the interest of the principal and his estate, may dismiss the petition or may enter such order or orders respecting discovery as it may deem appropriate, including an order that the agent respond to all discovery methods that the petitioner might employ in a civil action or suit subject to the Rules of Supreme Court of Virginia. Upon the failure of the agent to make discovery, the court may make and enforce further orders respecting discovery that would be proper in a civil action subject to such Rules and may award expenses, including reasonable attorney fees, as therein provided. Furthermore, upon completion of discovery, the court, if satisfied that prior to filing the petition the petitioner had requested the information or records that are the subject of ordered discovery pursuant to § 64.2-1612, may, upon finding that the failure to comply with the request for information was unreasonable, order the agent to pay the petitioner's expenses in obtaining discovery, including reasonable attorney fees.

3. A determination to grant or deny in whole or in part discovery sought hereunder shall not be considered a finding regarding the competence, capacity, or impairment of the principal, nor

shall the granting or denial of discovery hereunder preclude the availability of other remedies involving protection of the person or estate of the principal or the rights and duties of the agent.

C. The agent may, after reasonable notice to the principal, petition the circuit court for authority to make gifts of the principal's property to the extent not inconsistent with the express terms of the power of attorney or other writing. The court shall determine the amounts, recipients, and proportions of any gifts of the principal's property after considering all relevant factors including, without limitation, those contained in subsection C of § 64.2-1638.

D. Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.

E. In a judicial proceeding under this chapter, if the court finds that the agent breached his fiduciary duty in violation of the provisions of this chapter, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney fees, to any person who petitions the court for relief under subdivisions A 1 through 8, to be paid by the agent found in violation. This provision applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2019.

2010, cc. 455, 632, § 26-87; 2012, c. 614; 2019, c. 520.

§ 64.2-1615. Agent's liability.

An agent that violates this chapter is liable to the principal or the principal's successors in interest for the amount required to:

1. Restore the value of the principal's property to what it would have been had the violation not occurred; and
2. Reimburse the principal or the principal's successors in interest for the attorney fees and costs paid on the agent's behalf.

2010, cc. 455, 632, § 26-88; 2012, c. 614.

§ 64.2-1616. Agent's resignation; notice.

Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:

1. To the conservator or guardian, if one has been appointed for the principal, and a coagent or successor agent;
2. If there is no person described in subdivision 1, to an adult who is a spouse, child or other descendant, parent, brother, or sister of the principal;
3. If none of the foregoing persons is reasonably available, another person reasonably believed by the agent to have sufficient interest in the principal's welfare; or
4. If none of the foregoing persons is reasonably available, the adult protective services unit of the local department of social services for the county or city where the principal resides or is located.

2010, cc. 455, 632, § 26-89; 2012, c. 614.

§ 64.2-1617. Acceptance of and reliance upon acknowledged power of attorney.

A. For purposes of this section and § 64.2-1618, "acknowledged" means verified before a notary public or other individual authorized to take acknowledgments.

B. A person that in good faith accepts an acknowledged power of attorney that has been signed in accordance with § 64.2-1603 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 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. The preceding sentence shall not apply to an acknowledged power of attorney that contains a forged signature of the principal.

C. A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation, any or all of the following:

1. An agent's certification under oath of any factual matter concerning the principal, agent, or power of attorney;
2. An English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and
3. An opinion of the counsel for the principal or the agent, or the opinion of counsel for the person, 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.

D. An English translation or an opinion of counsel for the principal or the agent requested under this section shall be provided at the principal's expense.

E. An agent's certification, an English translation, or an opinion of counsel shall be in recordable form if the exercise of the power requires recordation of any instrument under the laws of the Commonwealth.

F. For purposes of this section and § 64.2-1618, a person that conducts activities through employees and exercises commercially reasonable procedures to communicate information concerning powers of attorney among its 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 has followed such procedures and is nonetheless without actual knowledge of the fact.

2010, cc. 455, 632, § 26-90; 2012, c. 614.

§ 64.2-1618. Liability for refusal to accept acknowledged power of attorney.

A. Except as otherwise provided in subsection B:

1. A person shall either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel under subsection C of § 64.2-1617 no later than seven business days after presentation of the power of attorney for acceptance;
2. If a person requests a certification, a translation, or an opinion of counsel under subsection C of § 64.2-1617, the person shall accept the power of attorney no later than five business days after receipt of the certification, translation, or opinion of counsel; and

3. A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

B. A person is not required to accept an acknowledged power of attorney for a transaction if:

1. The person is not otherwise required to engage in the transaction with the principal in the same circumstances, or the principal has otherwise relieved the person from an obligation to engage in the transaction with an agent representing the principal under a power of attorney;

2. Engaging in the transaction with the agent or the principal in the same circumstances would be inconsistent with 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 under subsection C of § 64.2-1617 is refused;

5. 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 under subsection C of § 64.2-1617 has been requested or provided; or

6. The person makes, or has actual knowledge that another person has made, a report to the local adult protective services department or adult protective services hotline 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.

C. A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:

1. A court order mandating acceptance of the power of attorney; and

2. Liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

D. For purposes of this section, "business day" shall refer to any day other than Saturday, Sunday, or any day designated as a holiday by the Commonwealth or the federal government.

2010, cc. 455, 632, § 26-91; 2012, c. 614.

§ 64.2-1619. Principles of law and equity.

Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

2010, cc. 455, 632, § 26-92; 2012, c. 614.

§ 64.2-1620. Laws applicable to financial institutions and entities.

This chapter does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this chapter.

2010, cc. 455, 632, § 26-93; 2012, c. 614.

§ 64.2-1621. Remedies under other law.

The remedies under this chapter are not exclusive and do not abrogate any right, remedy, or penalty, including a court-supervised accounting or criminal prosecution, under the laws of the Commonwealth other than this chapter.

2010, cc. [455](#), [632](#), § 26-94; 2012, c. [614](#); 2022, cc. [397](#), [654](#).

Article 2. Authority.

§ 64.2-1622. Authority that requires specific grant; grant of general authority.

A. Subject to the provisions of subsection H, an agent under a power of attorney 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 the authority and exercise of the authority is not otherwise prohibited or limited by another statute, agreement, or instrument to which the authority or property is subject:

1. Create, amend, revoke, or terminate an inter vivos trust;
2. Make a gift;
3. Create or change rights of survivorship;
4. Create or change a beneficiary designation;
5. Delegate authority granted under the power of attorney;
6. Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
7. Exercise fiduciary powers that the principal has authority to delegate; or
8. Have authority over the content of an electronic communication of the principal as provided by § [64.2-123](#).

B. Notwithstanding a grant of authority to do an act described in subsection A or H, unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal 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.

C. Subject to subsections A, B, D, and E, 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 § [64.2-124](#) and §§ [64.2-1625](#) through [64.2-1637](#).

D. Unless the power of attorney otherwise provides and subject to subsection H, a grant of authority to make a gift is subject to § [64.2-1638](#).

E. Subject to subsections A, B, and D, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

F. 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 the Commonwealth and whether or not the authority is exercised or the power of attorney is executed in the Commonwealth.

G. 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.

H. Notwithstanding the provisions of subsection A, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent shall have the authority to make gifts in any amount of any of the principal's property to any individuals or to organizations described in §§ 170(c) and 2522(a) of the Internal Revenue Code or corresponding future provisions of federal tax law, or both, in accordance with the principal's personal history of making or joining in the making of lifetime gifts. This subsection shall not in any way impair the right or power of any principal, by express words in the power of attorney, to authorize, or limit the authority of, an agent to make gifts of the principal's property.

2010, cc. 455, 632, § 26-95; 2012, c. 614; 2017, cc. 33, 80.

§ 64.2-1623. Incorporation of authority.

A. An agent has authority described in this article if the power of attorney refers to general authority with respect to the descriptive term for the subjects stated in §§ 64.2-1625 through 64.2-1638, or cites the section in which the authority is described.

B. A reference in a power of attorney to general authority with respect to the descriptive term for a subject in §§ 64.2-1625 through 64.2-1638 or a citation to a section of §§ 64.2-1625 through 64.2-1638 incorporates the entire section as if it were set out in full in the power of attorney.

C. A principal may modify authority incorporated by reference.

2010, cc. 455, 632, § 26-96; 2012, c. 614.

§ 64.2-1624. Construction of authority generally.

Except as otherwise provided in the power of attorney, by executing a power of attorney that incorporates by reference a subject described in §§ 64.2-1625 through 64.2-1638 or that grants to an agent authority to do all acts that a principal could do pursuant to subsection C of § 64.2-1622, a principal authorizes the agent, with respect to that subject, to:

1. Demand, receive, and obtain by litigation or otherwise, 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 purposes intended;
2. Contract in any manner 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;
3. Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;
4. 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;
5. 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;

6. Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;
7. Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;
8. Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;
9. Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and
10. Do any lawful act with respect to the subject and all property related to the subject.

2010, cc. 455, 632, § 26-97; 2012, c. 614.

§ 64.2-1625. Real property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to real property authorizes the agent to:

1. Demand, buy, lease, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject an interest in real property or a right incident to real property;
2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; retain title for security; encumber; partition; consent to partitioning; subject to an easement or covenant; subdivide; apply for zoning or other governmental permits; plat or consent to platting; develop; grant an option concerning; lease; sublease; contribute to an entity in exchange for an interest in that entity; or otherwise grant or dispose of an interest in real property or a right incident to real property;
3. Pledge or mortgage an interest in real property or right incident to real property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
4. Release, assign, satisfy, or enforce by litigation or otherwise a mortgage, deed of trust, conditional sale contract, encumbrance, lien, or other claim to real property that exists or is asserted;
5. Manage or conserve an interest in real property or a right incident to real property owned or claimed to be owned by the principal, including:
 - a. Insuring against liability or casualty or other loss;
 - b. Obtaining or regaining possession of or protecting the interest or right by litigation or otherwise;
 - c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with them; and
 - d. Purchasing supplies, hiring assistance or labor, and making repairs or alterations to the real property;

6. Use, develop, alter, replace, remove, erect, or install structures or other improvements upon real property in or incident to which the principal has, or claims to have, an interest or right;
7. Participate in a reorganization with respect to real property or an entity that owns an interest in or right incident to real property and receive, hold, and act with respect to stocks and bonds or other property received in a plan of reorganization, including:
 - a. Selling or otherwise disposing of them;
 - b. Exercising or selling an option, right of conversion, or similar right with respect to them; and
 - c. Exercising any voting rights in person or by proxy;
8. Change the form of title of an interest in or right incident to real property; and
9. Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

2010, cc. [455](#), [632](#), § 26-98; 2012, c. [614](#).

§ 64.2-1626. Tangible personal property.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to tangible personal property authorizes the agent to:

1. Demand, buy, receive, accept as a gift or as security for an extension of credit, or otherwise acquire or reject ownership or possession of tangible personal property or an interest in tangible personal property;
2. Sell; exchange; convey with or without covenants, representations, or warranties; quitclaim; release; surrender; create a security interest in; grant options concerning; lease; sublease; or otherwise dispose of tangible personal property or an interest in tangible personal property;
3. Grant a security interest in tangible personal property or an interest in tangible personal property as security to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
4. Release, assign, satisfy, or enforce by litigation or otherwise, a security interest, lien, or other claim on behalf of the principal, with respect to tangible personal property or an interest in tangible personal property;
5. Manage or conserve tangible personal property or an interest in tangible personal property on behalf of the principal, including:
 - a. Insuring against liability or casualty or other loss;
 - b. Obtaining or regaining possession of or protecting the property or interest, by litigation or otherwise;
 - c. Paying, assessing, compromising, or contesting taxes or assessments or applying for and receiving refunds in connection with taxes or assessments;
 - d. Moving the property from place to place;

- e. Storing the property for hire or on a gratuitous bailment; and
 - f. Using and making repairs, alterations, or improvements to the property; and
6. Change the form of title of an interest in tangible personal property.

2010, cc. [455](#), [632](#), § 26-99; 2012, c. [614](#).

§ 64.2-1627. Stocks and bonds.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to stocks and bonds authorizes the agent to:

1. Buy, sell, and exchange stocks and bonds;
2. Establish, continue, modify, or terminate an account with respect to stocks and bonds;
3. Pledge stocks and bonds as security to borrow, pay, renew, or extend the time of payment of a debt of the principal;
4. Receive certificates and other evidences of ownership with respect to stocks and bonds; and
5. Exercise voting rights with respect to stocks and bonds in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote.

2010, cc. [455](#), [632](#), § 26-100; 2012, c. [614](#).

§ 64.2-1628. Commodities and options.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to commodities and options authorizes the agent to:

1. Buy, sell, exchange, assign, settle, and exercise commodity futures contracts and call or put options on stocks or stock indexes traded on a regulated option exchange; and
2. Establish, continue, modify, and terminate option accounts.

2010, cc. [455](#), [632](#), § 26-101; 2012, c. [614](#).

§ 64.2-1629. Banks and other financial institutions.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to banks and other financial institutions authorizes the agent to:

1. Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
2. Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
3. Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
4. Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;

5. Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
6. Enter a safe deposit box or vault and withdraw or add to the contents;
7. Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
8. Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
9. Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
10. Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
11. Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

2010, cc. [455](#), [632](#), § 26-102; 2012, c. [614](#).

§ 64.2-1630. Operation of entity or business.

Subject to the terms of a document or an agreement governing an entity or an entity ownership interest, and unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to operation of an entity or business authorizes the agent to:

1. Operate, buy, sell, enlarge, reduce, or terminate an ownership interest;
2. Perform a duty or discharge a liability and exercise in person or by proxy a right, power, privilege, or option that the principal has, may have, or claims to have;
3. Enforce the terms of an ownership agreement;
4. Initiate, participate in, submit to alternative dispute resolution of, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party because of an ownership interest;
5. Exercise in person or by proxy, or enforce by litigation or otherwise, a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds;
6. Initiate, participate in, submit to alternative dispute resolution of, settle, oppose, or propose or accept a compromise with respect to litigation to which the principal is a party concerning stocks and bonds;
7. With respect to an entity or business owned solely by the principal:

- a. Continue, modify, renegotiate, extend, and terminate a contract made by or on behalf of the principal with respect to the entity or business before execution of the power of attorney;
 - b. Determine (i) the location of its operation; (ii) the nature and extent of its business; (iii) the methods of manufacturing, selling, merchandising, financing, accounting, and advertising employed in its operation; (iv) the amount and types of insurance carried; and (v) the mode of engaging, compensating, and dealing with its employees and accountants, attorneys, or other advisors;
 - c. Change the name or form of organization under which the entity or business is operated and enter into an ownership agreement with other persons to take over all or part of the operation of the entity or business; and
 - d. Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the entity or business and control and disburse the money in the operation of the entity or business;
8. Put additional capital into an entity or business in which the principal has an interest;
 9. Join in a plan of reorganization, consolidation, conversion, domestication, or merger of the entity or business;
 10. Sell or liquidate all or part of an entity or business;
 11. Establish the value of an entity or business under a buyout agreement to which the principal is a party;
 12. Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to an entity or business and make related payments; and
 13. Pay, compromise, or contest taxes, assessments, fines, or penalties and perform any other act to protect the principal from illegal or unnecessary taxation, assessments, fines, or penalties, with respect to an entity or business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

2010, cc. [455](#), [632](#), § 26-103; 2012, c. [614](#).

§ 64.2-1631. Insurance and annuities.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to insurance and annuities authorizes the agent to:

1. Continue, pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract procured by or on behalf of the principal that insures or provides an annuity to either the principal or another person, whether or not the principal is a beneficiary under the contract;
2. Procure new, different, and additional contracts of insurance and annuities for the principal and the principal's spouse, children, and other dependents and select the amount, type of insurance or annuity, and mode of payment;

3. Pay the premium or make a contribution on, modify, exchange, rescind, release, or terminate a contract of insurance or annuity procured by the agent;
4. Apply for and receive a loan secured by a contract of insurance or annuity;
5. Surrender and receive the cash surrender value on a contract of insurance or annuity;
6. Exercise an election;
7. Exercise investment powers available under a contract of insurance or annuity;
8. Change the manner of paying premiums on a contract of insurance or annuity;
9. Change or convert the type of insurance or annuity with respect to which the principal has or claims to have authority described in this section;
10. Apply for and procure a benefit or assistance under a statute or regulation to guarantee or pay premiums of a contract of insurance on the life of the principal;
11. Collect, sell, assign, hypothecate, borrow against, or pledge the interest of the principal in a contract of insurance or annuity;
12. Select the form and timing of the payment of proceeds from a contract of insurance or annuity; and
13. Pay, from proceeds or otherwise, compromise or contest, and apply for refunds in connection with a tax or assessment levied by a taxing authority with respect to a contract of insurance or annuity or its proceeds or liability accruing by reason of the tax or assessment.

2010, cc. [455](#), [632](#), § 26-104; 2012, c. [614](#).

§ 64.2-1632. Estates, trusts, and other beneficial interests.

- A. In this section, "estate, trust, or other beneficial interest" means a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which the principal is, may become, or claims to be entitled to a share or payment.
- B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to estates, trusts, and other beneficial interests authorizes the agent to:
1. Accept, receive, receipt for, sell, assign, pledge, or exchange a share in or payment from an estate, trust, or other beneficial interest;
 2. Demand or obtain money or another thing of value to which the principal is, may become, or claims to be entitled by reason of an estate, trust, or other beneficial interest, by litigation or otherwise;
 3. Exercise for the benefit of the principal a presently exercisable general power of appointment held by the principal;
 4. Initiate, participate in, submit to alternative dispute resolution of, settle, oppose, or propose or accept a compromise with respect to litigation to ascertain the meaning, validity, or effect of a

deed, will, declaration of trust, or other instrument or transaction affecting the interest of the principal;

5. Initiate, participate in, submit to alternative dispute resolution of, settle, oppose, or propose or accept a compromise with respect to litigation to remove, substitute, or surcharge a fiduciary;
6. Conserve, invest, disburse, or use anything received for an authorized purpose;
7. Transfer an interest of the principal in real property, stocks and bonds, accounts with financial institutions or securities intermediaries, insurance, annuities, and other property to the trustee of a revocable trust created by the principal as settlor; and
8. Reject, renounce, disclaim, release, or consent to a reduction in or modification of a share in or payment from an estate, trust, or other beneficial interest.

2010, cc. 455, 632, § 26-105; 2012, c. 614.

§ 64.2-1633. Claims and litigation.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to claims and litigation authorizes the agent to:

1. Assert and maintain before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, recoupment, or defense, including an action to recover property or other thing of value, recover damages sustained by the principal, eliminate or modify tax liability, or seek an injunction, specific performance, or other relief;
2. Bring an action to determine adverse claims or intervene or otherwise participate in litigation;
3. Seek an attachment, garnishment, order of arrest, or other preliminary, provisional, or intermediate relief and use an available procedure to effect or satisfy a judgment, order, or decree;
4. Make or accept a tender, offer of judgment, or admission of facts; submit a controversy on an agreed statement of facts; consent to examination; and bind the principal in litigation;
5. Submit to alternative dispute resolution, settle, and propose or accept a compromise;
6. Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon which process directed to the principal may be served, execute and file or deliver stipulations on the principal's behalf, verify pleadings, seek appellate review, procure and give surety and indemnity bonds, contract and pay for the preparation and printing of records and briefs, and receive, execute, and file or deliver a consent, waiver, release, confession of judgment, satisfaction of judgment, notice, agreement, or other instrument in connection with the prosecution, settlement, or defense of a claim or litigation;
7. Act for the principal with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning the principal or some other person, or with respect to a reorganization, receivership, or application for the appointment of a receiver or trustee that affects an interest of the principal in property or other thing of value;

8. Pay a judgment, award, or order against the principal or a settlement made in connection with a claim or litigation; and

9. Receive money or other thing of value paid in settlement of or as proceeds of a claim or litigation.

2010, cc. 455, 632, § 26-106; 2012, c. 614.

§ 64.2-1634. Personal and family maintenance.

A. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to personal and family maintenance authorizes the agent to:

1. Perform the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, and the following individuals, whether living when the power of attorney is executed or later born:

a. The individuals legally entitled to be supported by the principal; and

b. The individuals whom the principal has customarily supported or indicated the intent to support;

2. Make periodic payments of child support and other family maintenance required by a court or governmental agency or an agreement to which the principal is a party;

3. Provide living quarters for the individuals described in subdivision 1 by:

a. Purchase, lease, or other contract; or

b. Paying the operating costs, including interest, amortization payments, repairs, improvements, and taxes, for premises owned by the principal or occupied by those individuals;

4. Provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, including postsecondary and vocational education, and other current living costs for the individuals described in subdivision 1;

5. Pay expenses for necessary health care and custodial care on behalf of the individuals described in subdivision 1;

6. 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, in making decisions related to the past, present, or future payment for the provision of health care consented to by the principal or anyone authorized under the law of the Commonwealth to consent to health care on behalf of the principal;

7. Continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them, for the individuals described in subdivision 1;

8. Maintain credit and debit accounts for the convenience of the individuals described in subdivision 1 and open new accounts; and

9. Continue payments incidental to the membership or affiliation of the principal in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.

B. Authority with respect to personal and family maintenance is neither dependent upon, nor limited by, authority that an agent may or may not have with respect to gifts under this chapter.

2010, cc. 455, 632, § 26-107; 2012, c. 614.

§ 64.2-1635. Benefits from governmental programs or civil or military service.

A. In this section, "benefits from governmental programs or civil or military service" means any benefit, program, or assistance provided under a statute or regulation including, but not limited to, Social Security, Medicare, Medicaid, and the Department of Veterans Affairs.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to benefits from governmental programs or civil or military service authorizes the agent to:

1. Execute vouchers in the name of the principal for allowances and reimbursements payable by the United States or a foreign government or by a state or subdivision of a state to the principal, including allowances and reimbursements for transportation of the individuals described in subdivision A 1 of § 64.2-1634 and for shipment of their household effects;
2. Take possession and order the removal and shipment of property of the principal from a post, warehouse, depot, dock, or other place of storage or safekeeping, either governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;
3. Enroll in, apply for, select, reject, change, amend, or discontinue, on the principal's behalf, a benefit or program;
4. Prepare, file, and maintain a claim of the principal for a benefit or assistance, financial or otherwise, to which the principal may be entitled under a statute or regulation;
5. Initiate, participate in, submit to alternative dispute resolution of, settle, oppose, or propose or accept a compromise with respect to litigation concerning any benefit or assistance the principal may be entitled to receive under a statute or regulation; and
6. Receive the financial proceeds of a claim described in subdivision 4 and conserve, invest, disburse, or use for a lawful purpose anything so received.

2010, cc. 455, 632, § 26-108; 2012, c. 614.

§ 64.2-1636. Retirement plans.

A. In this section, "retirement plan" means a plan or account created by an employer, the principal, or another individual to provide retirement benefits or deferred compensation of which the principal is a participant, beneficiary, or owner, including a plan or account under the following sections of the Internal Revenue Code:

1. An individual retirement account under Internal Revenue Code 26 U.S.C. § 408, as amended;
2. A Roth individual retirement account under Internal Revenue Code 26 U.S.C. § 408A, as amended;

3. A deemed individual retirement account under Internal Revenue Code 26 U.S.C. § 408 (q), as amended;
4. An annuity or mutual fund custodial account under Internal Revenue Code 26 U.S.C. § 403 (b), as amended;
5. A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code 26 U.S.C. § 401 (a), as amended;
6. A plan under Internal Revenue Code 26 U.S.C. § 457 (b), as amended; and
7. A nonqualified deferred compensation plan under Internal Revenue Code 26 U.S.C. § 409A, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to retirement plans authorizes the agent to:

1. Select the form and timing of payments under a retirement plan and withdraw benefits from a plan;
2. Make a rollover, including a direct trustee-to-trustee rollover, of benefits from one retirement plan to another;
3. Establish a retirement plan in the principal's name;
4. Make contributions to a retirement plan;
5. Exercise investment powers available under a retirement plan; and
6. Borrow from, sell assets to, or purchase assets from a retirement plan.

2010, cc. [455](#), [632](#), § 26-109; 2012, c. [614](#).

§ 64.2-1637. Taxes.

Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to taxes authorizes the agent to:

1. Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, property, Federal Insurance Contributions Act, and other tax returns, claims for refunds, requests for extension of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents, including consents and agreements under Internal Revenue Code 26 U.S.C. § 2032A, as amended, closing agreements, and any power of attorney required by the Internal Revenue Service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax years;
2. Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the Internal Revenue Service or other taxing authority;
3. Exercise any election available to the principal under federal, state, local, or foreign tax law; and

4. Act for the principal in all tax matters for all periods before the Internal Revenue Service or other taxing authority.

2010, cc. 455, 632, § 26-110; 2012, c. 614.

§ 64.2-1638. Gifts.

A. In this section, a gift "for the benefit of" a person includes a gift to a trust, a custodial trust under the Uniform Custodial Trust Act (§ 64.2-900 et seq.), an account under the Uniform Transfers to Minors Act (§ 64.2-1900 et seq.), and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code 26 U.S.C. § 529, as amended.

B. Unless the power of attorney otherwise provides, language in a power of attorney granting general authority with respect to gifts authorizes the agent only to:

1. Make outright to, or for the benefit of, a person a gift of any of the principal's property, including by the exercise of a presently exercisable general power of appointment held by the principal, in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion under Internal Revenue Code 26 U.S.C. § 2503 (b), as amended, without regard to whether the federal gift tax exclusion applies to the gift, or if the principal's spouse agrees to consent to a split gift pursuant to Internal Revenue Code 26 U.S.C. § 2513, as amended, in an amount per donee not to exceed twice the annual federal gift tax exclusion limit; and

2. Consent, pursuant to Internal Revenue Code 26 U.S.C. § 2513, as amended, to the splitting of a gift made by the principal's spouse in an amount per donee not to exceed the aggregate annual gift tax exclusions for both spouses.

C. An agent may make a gift of the principal's property 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, including:

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; and
5. The principal's personal history of making or joining in making gifts.

2010, cc. 455, 632, § 26-111; 2012, c. 614.

Article 3. Statutory Forms.

§ 64.2-1639. Agent's certification.

The following optional form may be used by an agent to certify facts concerning a power of attorney.

**AGENT'S CERTIFICATION AS TO THE VALIDITY OF POWER OF ATTORNEY AND
AGENT'S AUTHORITY**

State of _____

County/City of _____

I, _____ (Name of Agent), certify under penalty of perjury that
_____ (Name of Principal) granted me authority as an agent or successor
agent in a power of attorney dated _____.

I further certify that to my knowledge:

(1) The Principal is alive and has not revoked the power of attorney or my authority to act under the power of attorney and the power of attorney and my authority to act under the power of attorney have not terminated;

(2) If the power of attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) If I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) _____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed

Agent's Address

Agent's Telephone Number

This document was acknowledged before me on _____ (Date), by
_____ (Name of Agent).

Signature of Notary

My commission expires: _____ (Seal, if any)

Notary Registration Number: _____

This document prepared by:

2010, cc. 455, 632, § 26-113; 2012, c. 614.

Article 4. Miscellaneous Provisions.

§ 64.2-1640. Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it.

2010, cc. 455, 632, § 26-114; 2012, c. 614.

§ 64.2-1641. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.), but does not modify, limit, or supersede § 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103(b) of that act (15 U.S.C. § 7003 (b)).

2010, cc. 455, 632, § 26-115; 2012, c. 614.

§ 64.2-1642. Effect on existing powers of attorney.

Except as otherwise provided in this chapter, on July 1, 2010:

1. This chapter applies to a power of attorney created before, on, or after July 1, 2010;
2. This chapter applies to a judicial proceeding concerning a power of attorney commenced on or after July 1, 2010;
3. This chapter applies to a judicial proceeding concerning a power of attorney commenced before July 1, 2010, unless the court finds that application of a provision of this chapter would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies; and
4. Notwithstanding any other provision of this chapter, an act done before July 1, 2010, is not affected by this chapter.

2010, cc. 455, 632, § 26-116; 2012, c. 614.

Article 8. Health Care Decisions Act.

§ 54.1-2981. Short title.

The provisions of this article shall be known and may be cited as the "Health Care Decisions Act."

1983, c. 532, § 54-325.8:1; 1988, c. 765; 1992, cc. 748, 772.

§ 54.1-2982. Definitions.

As used in this article:

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provisions of § 54.1-2983.

"Agent" means an adult appointed by the declarant under an advance directive, executed or made in accordance with the provisions of § 54.1-2983, to make health care decisions for him. The declarant may also appoint an adult to make, after the declarant's death, an anatomical gift of all or any part of his body pursuant to Article 2 (§ 32.1-291.1 et seq.) of Chapter 8 of Title 32.1.

"Attending physician" means the primary physician who has responsibility for the health care of the patient.

"Capacity reviewer" means a licensed physician or clinical psychologist who is qualified by training or experience to assess whether a person is capable or incapable of making an informed decision.

"Declarant" means an adult who makes an advance directive, as defined in this article, while capable of making and communicating an informed decision.

"Durable Do Not Resuscitate Order" means a written physician's order issued pursuant to § 54.1-2987.1 to withhold cardiopulmonary resuscitation from a particular patient in the event of cardiac or respiratory arrest. For purposes of this article, cardiopulmonary resuscitation shall include cardiac compression, endotracheal intubation and other advanced airway management, artificial ventilation, and defibrillation and related procedures. As the terms "advance directive" and "Durable Do Not Resuscitate Order" are used in this article, a Durable Do Not Resuscitate Order is not and shall not be construed as an advance directive.

"Health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or

other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

"Health care provider" shall have the same meaning as provided in § 8.01-581.1.

"Incapable of making an informed decision" means the inability of an adult patient, because of mental illness, intellectual disability, or any other mental or physical disorder that precludes communication or impairs judgment, to make an informed decision about providing, continuing, withholding or withdrawing a specific health care treatment or course of treatment because he is unable to understand the nature, extent or probable consequences of the proposed health care decision, or to make a rational evaluation of the risks and benefits of alternatives to that decision. For purposes of this article, persons who are deaf, dysphasic or have other communication disorders, who are otherwise mentally competent and able to communicate by means other than speech, shall not be considered incapable of making an informed decision.

"Life-prolonging procedure" means any medical procedure, treatment or intervention which (i) utilizes mechanical or other artificial means to sustain, restore or supplant a spontaneous vital function, or is otherwise of such a nature as to afford a patient no reasonable expectation of recovery from a terminal condition and (ii) when applied to a patient in a terminal condition, would serve only to prolong the dying process. The term includes artificially administered hydration and nutrition. However, nothing in this act shall prohibit the administration of medication or the performance of any medical procedure deemed necessary to provide comfort care or to alleviate pain, including the administration of pain relieving medications in excess of recommended dosages in accordance with §§ 54.1-2971.01 and 54.1-3408.1. For purposes of §§ 54.1-2988, 54.1-2989, and 54.1-2991, the term also shall include cardiopulmonary resuscitation.

"Patient care consulting committee" means a committee duly organized by a facility licensed to provide health care under Title 32.1 or Title 37.2, or a hospital or nursing home as defined in § 32.1-123 owned or operated by an agency of the Commonwealth that is exempt from licensure pursuant to § 32.1-124, to consult on health care issues only as authorized in this article. Each patient care consulting committee shall consist of five individuals, including at least one physician, one person licensed or holding a multistate licensure privilege under Chapter 30 (§ 54.1-3000 et seq.) to practice professional nursing, and one individual responsible for the provision of social services to patients of the facility. At least one committee member shall have experience in clinical ethics and at least two committee members shall have no employment or contractual relationship with the facility or any involvement in the management, operations, or governance of the facility, other than serving on the patient care consulting committee. A patient care consulting committee may be organized as a subcommittee of a standing ethics or other committee established by the facility or

may be a separate and distinct committee. Four members of the patient care consulting committee shall constitute a quorum of the patient care consulting committee.

"Persistent vegetative state" means a condition caused by injury, disease or illness in which a patient has suffered a loss of consciousness, with no behavioral evidence of self-awareness or awareness of surroundings in a learned manner, other than reflex activity of muscles and nerves for low level conditioned response, and from which, to a reasonable degree of medical probability, there can be no recovery.

"Physician" means a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.

"Qualified advance directive facilitator" means a person who has successfully completed a training program approved by the Department of Health for providing assistance in completing and executing a written advance directive, including successful demonstration of competence in assisting a person in completing and executing a valid advance directive and successful passage of a written examination.

"Terminal condition" means a condition caused by injury, disease or illness from which, to a reasonable degree of medical probability a patient cannot recover and (i) the patient's death is imminent or (ii) the patient is in a persistent vegetative state.

"Witness" means any person over the age of 18, including a spouse or blood relative of the declarant. Employees of health care facilities and physician's offices, who act in good faith, shall be permitted to serve as witnesses for purposes of this article.

1983, c. 532, § 54-325.8:2; 1984, c. 79; 1988, c. 765; 1991, c. 583; 1992, cc. 412, 748, 772; 1994, c. 956; 1997, c. 609; 1998, cc. 630, 803, 854; 1999, c. 814; 2000, c. 1034; 2005, c. 186; 2007, cc. 92, 907; 2009, cc. 211, 268; 2010, c. 792; 2012, cc. 476, 507; 2017, cc. 747, 752; 2021, Sp. Sess. I, c. 465.

§ 54.1-2983. Procedure for making advance directive; notice to physician.

Any adult capable of making an informed decision may, at any time, make a written advance directive to address any or all forms of health care in the event the declarant is later determined to be incapable of making an informed decision. A written advance directive shall be signed by the declarant in the presence of two subscribing witnesses and may (i) specify the health care the declarant does or does not authorize; (ii) appoint an agent to make health care decisions for the declarant; and (iii) specify an anatomical gift, after the declarant's death, of all of the declarant's body or an organ, tissue or eye donation pursuant to Article 2 (§ 32.1-291.1 et seq.) of Chapter 8 of Title 32.1. A written advance directive may be submitted to the Advance Health Care Directive Registry, pursuant to Article 9 (§ 54.1-2994 et seq.).

Further, any adult capable of making an informed decision who has been diagnosed by his attending physician as being in a terminal condition may make an oral advance

directive (i) directing the specific health care the declarant does or does not authorize in the event the declarant is incapable of making an informed decision, and (ii) appointing an agent to make health care decisions for the declarant under the circumstances stated in the advance directive if the declarant should be determined to be incapable of making an informed decision. An oral advance directive shall be made in the presence of the attending physician and two witnesses.

An advance directive may authorize an agent to take any lawful actions necessary to carry out the declarant's decisions, including, but not limited to, granting releases of liability to medical providers, releasing medical records, and making decisions regarding who may visit the patient.

It shall be the responsibility of the declarant to provide for notification to his attending physician that an advance directive has been made. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.), it shall be the responsibility of the declarant to provide his attending physician, legal representative, or other person with the information necessary to access the advance directive. In the event the declarant is comatose, incapacitated or otherwise mentally or physically incapable of communication, any other person may notify the physician of the existence of an advance directive and, if applicable, the fact that it has been submitted to the Advance Health Care Directive Registry. An attending physician who is so notified shall promptly make the advance directive or a copy of the advance directive, if written, or the fact of the advance directive, if oral, a part of the declarant's medical records.

In the event that any portion of an advance directive is invalid or illegal, such invalidity or illegality shall not affect the remaining provisions of the advance directive.

1983, c. 532, § 54-325.8:3; 1988, c. 765; 1992, cc. 748, 772; 1997, c. 801; 2008, cc. 301, 696; 2009, cc. 211, 268; 2010, c. 16; 2021, Sp. Sess. I, c. 465.

§ 54.1-2983.1. Participation in health care research.

An advance directive may authorize an agent to approve participation by the declarant in any health care study approved by an institutional review board pursuant to applicable federal regulations, or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 that offers the prospect of direct therapeutic benefit to the declarant. An advance directive may also authorize an agent to approve participation by the declarant in any health care study approved by an institutional review board pursuant to applicable federal regulations, or by a research review committee pursuant to Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 that aims to increase scientific understanding of any condition that the declarant may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to the patient.

2009, cc. [211](#), [268](#).

§ 54.1-2983.2. Capacity; required determinations.

A. Every adult shall be presumed to be capable of making an informed decision unless he is determined to be incapable of making an informed decision in accordance with this article. A determination that a patient is incapable of making an informed decision may apply to a particular health care decision, to a specified set of health care decisions, or to all health care decisions. No person shall be deemed incapable of making an informed decision based solely on a particular clinical diagnosis.

B. Except as provided in subsection C, prior to providing, continuing, withholding, or withdrawing health care pursuant to an authorization that has been obtained or will be sought pursuant to this article and prior to, or as soon as reasonably practicable after initiating health care for which authorization has been obtained or will be sought pursuant to this article, and no less frequently than every 180 days while the need for health care continues, the attending physician shall certify in writing upon personal examination of the patient that the patient is incapable of making an informed decision regarding health care and shall obtain written certification from a capacity reviewer that, based upon a personal examination of the patient, the patient is incapable of making an informed decision. However, certification by a capacity reviewer shall not be required if the patient is unconscious or experiencing a profound impairment of consciousness due to trauma, stroke, or other acute physiological condition. The capacity reviewer providing written certification that a patient is incapable of making an informed decision, if required, shall not be otherwise currently involved in the treatment of the person assessed, unless an independent capacity reviewer is not reasonably available. The cost of the assessment shall be considered for all purposes a cost of the patient's health care.

C. If a person has executed an advance directive granting an agent the authority to consent to the person's admission to a facility as defined in § [37.2-100](#) for mental health treatment and if the advance directive so authorizes, the person's agent may exercise such authority after a determination that the person is incapable of making an informed decision regarding such admission has been made by (i) the attending physician, (ii) a psychiatrist or licensed clinical psychologist, (iii) a licensed advanced practice registered nurse, (iv) a licensed physician assistant, (v) a licensed clinical social worker, or (vi) a designee of the local community services board as defined in § [37.2-809](#). Such determination shall be made in writing following an in-person examination of the person and certified by the physician, psychiatrist, licensed clinical psychologist, licensed advanced practice registered nurse, licensed physician assistant, licensed clinical social worker, or designee of the local community services board who performed the examination prior to admission or as soon as reasonably practicable thereafter. Admission of a person to a facility as defined in § [37.2-100](#) for mental health

treatment upon the authorization of the person's agent shall be subject to the requirements of § 37.2-805.1. When a person has been admitted to a facility for mental health treatment upon the authorization of an agent following such a determination, such agent may authorize specific health care for the person, consistent with the provisions of the person's advance directive, only upon a determination that the person is incapable of making an informed decision regarding such health care in accordance with subsection B.

D. If, at any time, a patient is determined to be incapable of making an informed decision, the patient shall be notified, as soon as practical and to the extent he is capable of receiving such notice, that such determination has been made before providing, continuing, withholding, or withdrawing health care as authorized by this article. Such notice shall also be provided, as soon as practical, to the patient's agent or person authorized by § 54.1-2986 to make health care decisions on his behalf.

E. A single physician may, at any time, upon personal evaluation, determine that a patient who has previously been determined to be incapable of making an informed decision is now capable of making an informed decision, provided such determination is set forth in writing.

2009, cc. 211, 268; 2010, c. 792; 2017, cc. 456, 474; 2020, cc. 40, 231; 2023, c. 183.

§ 54.1-2983.3. Exclusions and limitations of advance directives.

A. The absence of an advance directive by an adult patient shall not give rise to any presumption as to his intent to consent to or refuse any particular health care.

B. The provisions of this article shall not apply to authorization of nontherapeutic sterilization, abortion, or psychosurgery.

C. If any provision of a patient's advance directive conflicts with the authority conferred by any emergency custody, temporary detention, involuntary admission, and mandatory outpatient treatment order set forth in Chapter 8 (§ 37.2-800 et seq.) of Title 37.2 or by any other provision of law, the provisions of the patient's advance directive that create the conflict shall have no effect. However, a patient's advance directive shall otherwise be given full effect.

D. The provisions of this article, if otherwise applicable, may be used to authorize admission of a patient to a facility, as defined in § 37.2-100, only if the admission is otherwise authorized under Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.

2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2984. Suggested form of written advance directives.

An advance directive executed pursuant to this article may, but need not, be in the following form:

ADVANCE MEDICAL DIRECTIVE

I, _____, willingly and voluntarily make known my wishes in the event that I am incapable of making an informed decision, as follows:

I understand that my advance directive may include the selection of an agent as well as set forth my choices regarding health care. The term "health care" means the furnishing of services to any individual for the purpose of preventing, alleviating, curing, or healing human illness, injury or physical disability, including but not limited to, medications; surgery; blood transfusions; chemotherapy; radiation therapy; admission to a hospital, nursing home, assisted living facility, or other health care facility; psychiatric or other mental health treatment; and life-prolonging procedures and palliative care.

The phrase "incapable of making an informed decision" means unable to understand the nature, extent and probable consequences of a proposed health care decision or unable to make a rational evaluation of the risks and benefits of a proposed health care decision as compared with the risks and benefits of alternatives to that decision, or unable to communicate such understanding in any way.

The determination that I am incapable of making an informed decision shall be made by my attending physician and a capacity reviewer, if certification by a capacity reviewer is required by law, after a personal examination of me and shall be certified in writing. Such certification shall be required before health care is provided, continued, withheld or withdrawn, before any named agent shall be granted authority to make health care decisions on my behalf, and before, or as soon as reasonably practicable after, health care is provided, continued, withheld or withdrawn and every 180 days thereafter while the need for health care continues.

If, at any time, I am determined to be incapable of making an informed decision, I shall be notified, to the extent I am capable of receiving such notice, that such determination has been made before health care is provided, continued, withheld, or withdrawn. Such notice shall also be provided, as soon as practical, to my named agent or person authorized by § 54.1-2986 to make health care decisions on my behalf. If I am later determined to be capable of making an informed decision by a physician, in writing, upon personal examination, any further health care decisions will require my informed consent.

(SELECT ANY OR ALL OF THE OPTIONS BELOW.)

OPTION I: APPOINTMENT OF AGENT (CROSS THROUGH OPTIONS I AND II BELOW IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE HEALTH CARE DECISIONS FOR YOU.)

I hereby appoint _____ (primary agent), of _____ (address and telephone number), as my agent to make health care decisions on my behalf as authorized in this

document. If _____ (primary agent) is not reasonably available or is unable or unwilling to act as my agent, then I appoint _____ (successor agent), of _____ (address and telephone number), to serve in that capacity.

I hereby grant to my agent, named above, full power and authority to make health care decisions on my behalf as described below whenever I have been determined to be incapable of making an informed decision. My agent's authority hereunder is effective as long as I am incapable of making an informed decision.

In exercising the power to make health care decisions on my behalf, my agent shall follow my desires and preferences as stated in this document or as otherwise known to my agent. My agent shall be guided by my medical diagnosis and prognosis and any information provided by my physicians as to the intrusiveness, pain, risks, and side effects associated with treatment or nontreatment. My agent shall not make any decision regarding my health care which he knows, or upon reasonable inquiry ought to know, is contrary to my religious beliefs or my basic values, whether expressed orally or in writing. If my agent cannot determine what health care choice I would have made on my own behalf, then my agent shall make a choice for me based upon what he believes to be in my best interests.

OPTION II: POWERS OF MY AGENT (CROSS THROUGH ANY LANGUAGE YOU DO NOT WANT AND ADD ANY LANGUAGE YOU DO WANT.)

The powers of my agent shall include the following:

- A. To consent to or refuse or withdraw consent to any type of health care, treatment, surgical procedure, diagnostic procedure, medication and the use of mechanical or other procedures that affect any bodily function, including, but not limited to, artificial respiration, artificially administered nutrition and hydration, and cardiopulmonary resuscitation. This authorization specifically includes the power to consent to the administration of dosages of pain-relieving medication in excess of recommended dosages in an amount sufficient to relieve pain, even if such medication carries the risk of addiction or of inadvertently hastening my death;
- B. To request, receive, and review any information, verbal or written, regarding my physical or mental health, including but not limited to, medical and hospital records, and to consent to the disclosure of this information;
- C. To employ and discharge my health care providers;
- D. To authorize my admission to or discharge (including transfer to another facility) from any hospital, hospice, nursing home, assisted living facility or other medical care

facility. If I have authorized admission to a health care facility for treatment of mental illness, that authority is stated elsewhere in this advance directive;

E. To authorize my admission to a health care facility for the treatment of mental illness for no more than 10 calendar days provided I do not protest the admission and a physician on the staff of or designated by the proposed admitting facility examines me and states in writing that I have a mental illness and I am incapable of making an informed decision about my admission, and that I need treatment in the facility; and to authorize my discharge (including transfer to another facility) from the facility;

F. To authorize my admission to a health care facility for the treatment of mental illness for no more than 10 calendar days, even over my protest, if a physician on the staff of or designated by the proposed admitting facility examines me and states in writing that I have a mental illness and I am incapable of making an informed decision about my admission, and that I need treatment in the facility; and to authorize my discharge (including transfer to another facility) from the facility. [My physician or licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I understand the consequences of this provision of my advance directive: _____];

G. To authorize the specific types of health care identified in this advance directive [specify cross-reference to other sections of directive] even over my protest. [My physician or licensed clinical psychologist hereby attests that I am capable of making an informed decision and that I understand the consequences of this provision of my advance directive: _____];

H. To continue to serve as my agent even in the event that I protest the agent's authority after I have been determined to be incapable of making an informed decision;

I. To authorize my participation in any health care study approved by an institutional review board or research review committee according to applicable federal or state law that offers the prospect of direct therapeutic benefit to me;

J. To authorize my participation in any health care study approved by an institutional review board or research review committee pursuant to applicable federal or state law that aims to increase scientific understanding of any condition that I may have or otherwise to promote human well-being, even though it offers no prospect of direct benefit to me;

K. To make decisions regarding visitation during any time that I am admitted to any health care facility, consistent with the following directions: _____; and

L. To take any lawful actions that may be necessary to carry out these decisions, including the granting of releases of liability to medical providers. Further, my agent shall not be liable for the costs of health care pursuant to his authorization, based solely on that authorization.

OPTION III: HEALTH CARE INSTRUCTIONS

(CROSS THROUGH PARAGRAPHS A AND/OR B IF YOU DO NOT WANT TO GIVE ADDITIONAL SPECIFIC INSTRUCTIONS ABOUT YOUR HEALTH CARE.)

A. I specifically direct that I receive the following health care if it is medically appropriate under the circumstances as determined by my attending physician:

_____.

B. I specifically direct that the following health care not be provided to me under the following circumstances (you may specify that certain health care not be provided under any circumstances): _____.

OPTION IV: END OF LIFE INSTRUCTIONS

(CROSS THROUGH THIS OPTION IF YOU DO NOT WANT TO GIVE INSTRUCTIONS ABOUT YOUR HEALTH CARE IF YOU HAVE A TERMINAL CONDITION.)

If at any time my attending physician should determine that I have a terminal condition where the application of life-prolonging procedures — including artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially administered hydration — would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain.

OPTION: LIFE-PROLONGING PROCEDURES DURING PREGNANCY. (If you wish to provide additional instructions or modifications to instructions you have already given regarding life-prolonging procedures that will apply if you are pregnant at the time your attending physician determines that you have a terminal condition, you may do so here.)

If I am pregnant when my attending physician determines that I have a terminal condition, my decision concerning life-prolonging procedures shall be modified as follows:

_____:

OPTION: OTHER DIRECTIONS ABOUT LIFE-PROLONGING PROCEDURES. (If you wish to provide your own directions, or if you wish to add to the directions you have given above, you may do so here. If you wish to give specific instructions regarding certain life-prolonging procedures, such as artificial respiration, cardiopulmonary resuscitation, artificially administered nutrition, and artificially administered hydration, this is where you should write them.) I direct that:

_____;

OPTION: My other instructions regarding my care if I have a terminal condition are as follows:

_____;

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this advance directive shall be honored by my family and physician as the final expression of my legal right to refuse health care and acceptance of the consequences of such refusal.

OPTION V: APPOINTMENT OF AN AGENT TO MAKE AN ANATOMICAL GIFT OR ORGAN, TISSUE OR EYE DONATION (CROSS THROUGH IF YOU DO NOT WANT TO APPOINT AN AGENT TO MAKE AN ANATOMICAL GIFT OR ANY ORGAN, TISSUE OR EYE DONATION FOR YOU.)

Upon my death, I direct that an anatomical gift of all of my body or certain organ, tissue or eye donations may be made pursuant to Article 2 (§ 32.1-291.1 et seq.) of Chapter 8 of Title 32.1 and in accordance with my directions, if any. I hereby appoint _____ as my agent, of _____ (address and telephone number), to make any such anatomical gift or organ, tissue or eye donation following my death. I further direct that: _____ (declarant's directions concerning anatomical gift or organ, tissue or eye donation).

This advance directive shall not terminate in the event of my disability.

AFFIRMATION AND RIGHT TO REVOKE: By signing below, I indicate that I am emotionally and mentally capable of making this advance directive and that I understand the purpose and effect of this document. I understand I may revoke all or any part of this document at any time (i) with a signed, dated writing; (ii) by physical cancellation or destruction of this advance directive by myself or by directing someone else to destroy it in my presence; or (iii) by my oral expression of intent to revoke.

(Date) (Signature of Declarant)

The declarant signed the foregoing advance directive in my presence.

(Witness) _____

(Witness) _____

1983, c. 532, § 54-325.8:4; 1988, c. 765; 1989, c. 592; 1991, c. 583; 1992, cc. 748, 772; 1997, c. 609; 1999, c. 814; 2000, c. 810; 2005, c. 186; 2007, cc. 92, 907; 2009, cc. 211, 268; 2010, c. 792; 2015, c. 109.

§ 54.1-2985. Revocation of an advance directive.

A. An advance directive may be revoked at any time by the declarant who is capable of understanding the nature and consequences of his actions (i) by a signed, dated writing; (ii) by physical cancellation or destruction of the advance directive by the declarant or another in his presence and at his direction; or (iii) by oral expression of intent to revoke. A declarant may make a partial revocation of his advance directive, in which case any remaining and nonconflicting provisions of the advance directive shall remain in effect. In the event of the revocation of the designation of an agent, subsequent decisions about health care shall be made consistent with the provisions of this article. Any such revocation shall be effective when communicated to the attending physician. No civil or criminal liability shall be imposed upon any person for a failure to act upon a revocation unless that person has actual knowledge of such revocation.

B. If an advance directive has been submitted to the Advance Health Care Directive Registry pursuant to Article 9 (§ 54.1-2994 et seq.) of this chapter, any revocation of such directive shall also be notarized before being submitted to the Department of Health for removal from the registry. However, failure to notify the Department of Health of the revocation of a document filed with the registry shall not affect the validity of the revocation, as long as it meets the requirements of subsection A.

1983, c. 532, § 54-325.8:5; 1988, c. 765; 1992, cc. 748, 772; 2008, cc. [301](#), [696](#); 2009, cc. [211](#), [268](#).

§ 54.1-2985.1. Injunction; court-ordered health care.

A. On petition of any person to the circuit court of the county or city in which any patient resides or is located for whom health care will be or is currently being provided, continued, withheld, or withdrawn pursuant to this article, the court may enjoin such action upon finding by a preponderance of the evidence that the action is not lawfully authorized by this article or by other state or federal law.

B. Nothing in this article shall limit the ability of any person to petition and obtain a court order for health care, including mental health treatment authorized by Chapter 8 (§ [37.2-800](#) et seq.) of Title 37.2, of any patient pursuant to any other existing law in the Commonwealth.

2009, cc. [211](#), [268](#).

§ 54.1-2986. Procedure in absence of an advance directive; procedure for advance directive without agent; no presumption; persons who may authorize health care for patients incapable of informed decisions.

A. Whenever a patient is determined to be incapable of making an informed decision and (i) has not made an advance directive in accordance with this article or (ii) has made an advance directive in accordance with this article that does not indicate his wishes with respect to the health care at issue and does not appoint an agent, the attending physician may, upon compliance with the provisions of this section, provide, continue, withhold or withdraw health care upon the authorization of any of the following persons, in the specified order of priority, if the physician is not aware of any available, willing and capable person in a higher class:

1. A guardian for the patient. This subdivision shall not be construed to require such appointment in order that a health care decision can be made under this section; or
2. The patient's spouse except where a divorce action has been filed and the divorce is not final; or
3. An adult child of the patient; or
4. A parent of the patient; or
5. An adult brother or sister of the patient; or
6. Any other relative of the patient in the descending order of blood relationship; or
7. Except in cases in which the proposed treatment recommendation involves the withholding or withdrawing of a life-prolonging procedure, any adult, except any director, employee, or agent of a health care provider currently involved in the care of

the patient, who (i) has exhibited special care and concern for the patient and (ii) is familiar with the patient's religious beliefs and basic values and any preferences previously expressed by the patient regarding health care, to the extent that they are known. A quorum of a patient care consulting committee as defined in § 54.1-2982 of the facility where the patient is receiving health care or, if such patient care consulting committee does not exist or if a quorum of such patient care consulting committee is not reasonably available, two physicians who (a) are not currently involved in the care of the patient, (b) are not employed by the facility where the patient is receiving health care, and (c) do not practice medicine in the same professional business entity as the attending physician shall determine whether a person meets these criteria and shall document the information relied upon in making such determination.

If two or more of the persons listed in the same class in subdivisions A 3 through A 7 with equal decision-making priority inform the attending physician that they disagree as to a particular health care decision, the attending physician may rely on the authorization of a majority of the reasonably available members of that class.

B. Regardless of the absence of an advance directive, if the patient has expressed his intent to be an organ donor in any written document, no person noted in this section shall revoke, or in any way hinder, such organ donation.

1983, c. 532, § 54-325.8:6; 1988, c. 765; 1992, cc. 748, 772; 1999, c. 814; 2000, c. 810; 2005, c. 716; 2009, cc. 211, 268; 2010, c. 792.

§ 54.1-2986.1. Duties and authority of agent or person identified in § 54.1-2986.

A. If the declarant appoints an agent in an advance directive, that agent shall have (i) the authority to make health care decisions for the declarant as specified in the advance directive if the declarant is determined to be incapable of making an informed decision and (ii) decision-making priority over any person identified in § 54.1-2986. In no case shall the agent refuse or fail to honor the declarant's wishes in relation to anatomical gifts or organ, tissue or eye donation. Decisions to restrict visitation of the patient may be made by an agent only if the declarant has expressly included provisions for visitation in his advance directive; such visitation decisions shall be subject to physician orders and policies of the institution to which the declarant is admitted. No person authorized to make decisions for a patient under § 54.1-2986 shall have authority to restrict visitation of the patient, unless such visitation was restricted by a guardian pursuant to the procedures prescribed by § 64.2-2019.1.

B. Any agent or person authorized to make health care decisions pursuant to this article shall (i) undertake a good faith effort to ascertain the risks and benefits of, and alternatives to any proposed health care, (ii) make a good faith effort to ascertain the religious values, basic values, and previously expressed preferences of the patient, and (iii) to the extent possible, base his decisions on the beliefs, values, and preferences of the patient, or if they are unknown, on the patient's best interests.

2009, cc. [211](#), [268](#); 2023, c. [460](#).

§ 54.1-2986.2. Health care decisions in the event of patient protest.

A. Except as provided in subsection B or C, the provisions of this article shall not authorize providing, continuing, withholding or withdrawing health care if the patient's attending physician knows that such action is protested by the patient.

B. A patient's agent may make a health care decision over the protest of a patient who is incapable of making an informed decision if:

1. The patient's advance directive explicitly authorizes the patient's agent to make the health care decision at issue, even over the patient's later protest, and an attending licensed physician, a licensed clinical psychologist, a licensed physician assistant, a licensed advanced practice registered nurse, a licensed professional counselor, or a licensed clinical social worker who is familiar with the patient attested in writing at the time the advance directive was made that the patient was capable of making an informed decision and understood the consequences of the provision;

2. The decision does not involve withholding or withdrawing life-prolonging procedures; and

3. The health care that is to be provided, continued, withheld or withdrawn is determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law.

C. In cases in which a patient has not explicitly authorized his agent to make the health care decision at issue over the patient's later protest, a patient's agent or person authorized to make decisions pursuant to § [54.1-2986](#) may make a decision over the protest of a patient who is incapable of making an informed decision if:

1. The decision does not involve withholding or withdrawing life-prolonging procedures;

2. The decision does not involve (i) admission to a facility as defined in § [37.2-100](#) or (ii) treatment or care that is subject to regulations adopted pursuant to § [37.2-400](#);

3. The health care decision is based, to the extent known, on the patient's religious beliefs and basic values and on any preferences previously expressed by the patient in an advance directive or otherwise regarding such health care or, if they are unknown, is in the patient's best interests;

4. The health care that is to be provided, continued, withheld, or withdrawn has been determined and documented by the patient's attending physician to be medically appropriate and is otherwise permitted by law; and

5. The health care that is to be provided, continued, withheld, or withdrawn has been affirmed and documented as being ethically acceptable by the health care facility's patient care consulting committee, if one exists, or otherwise by two physicians not currently involved in the patient's care or in the determination of the patient's capacity to make health care decisions.

D. A patient's protest shall not revoke the patient's advance directive unless it meets the requirements of § 54.1-2985.

E. If a patient protests the authority of a named agent or any person authorized to make health care decisions by § 54.1-2986, except for the patient's guardian, the protested individual shall have no authority under this article to make health care decisions on his behalf unless the patient's advance directive explicitly confers continuing authority on his agent, even over his later protest. If the protested individual is denied authority under this subsection, authority to make health care decisions shall be determined by any other provisions of the patient's advance directive, or in accordance with § 54.1-2986 or in accordance with any other provision of law.

2009, cc. 211, 268; 2010, c. 792; 2017, cc. 456, 474; 2023, c. 183.

§ 54.1-2987. Transfer of patient by physician who refuses to comply with advance directive or health care decision.

An attending physician who refuses to comply with (i) a patient's advance directive or (ii) the health care decision of a patient's agent or (iii) the health care decision of an authorized person pursuant to § 54.1-2986 shall make a reasonable effort to transfer the patient to another physician and shall comply with § 54.1-2990.

This section shall apply even if the attending physician determines the health care requested to be medically or ethically inappropriate.

1983, c. 532, § 54-325.8:7; 1988, c. 765; 1992, cc. 748, 772; 2000, cc. 590, 598; 2009, cc. 211, 268.

§ 54.1-2987.1. Durable Do Not Resuscitate Orders.

A. As used in this section:

"Health care provider" includes, but is not limited to, qualified emergency medical services personnel.

"Person authorized to consent on the patient's behalf" means any person authorized by law to consent on behalf of the patient incapable of making an informed decision or, in the case of a minor child, the parent or parents having custody of the child or the child's legal guardian or as otherwise provided by law.

B. A Durable Do Not Resuscitate Order may be issued by a physician for his patient with whom he has a bona fide physician/patient relationship as defined in the guidelines of

the Board of Medicine, and only with the consent of the patient or, if the patient is a minor or is otherwise incapable of making an informed decision regarding consent for such an order, upon the request of and with the consent of the person authorized to consent on the patient's behalf.

C. A Durable Do Not Resuscitate Order or other order regarding life-prolonging procedures executed in accordance with the laws of another state in which such order was executed shall be deemed to be valid for purposes of this article and shall be given effect as provided in this article.

D. If a patient is able to, and does, express to a health care provider or practitioner the desire to be resuscitated in the event of cardiac or respiratory arrest, such expression shall revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order. In no case shall any person other than the patient have authority to revoke a Durable Do Not Resuscitate Order executed upon the request of and with the consent of the patient himself.

If the patient is a minor or is otherwise incapable of making an informed decision and the Durable Do Not Resuscitate Order was issued upon the request of and with the consent of the person authorized to consent on the patient's behalf, then the expression by said authorized person to a health care provider or practitioner of the desire that the patient be resuscitated shall so revoke the provider's or practitioner's authority to follow a Durable Do Not Resuscitate Order.

When a Durable Do Not Resuscitate Order has been revoked as provided in this section, a new Order may be issued upon consent of the patient or the person authorized to consent on the patient's behalf.

E. Durable Do Not Resuscitate Orders issued in accordance with this section or deemed valid in accordance with subsection C shall remain valid and in effect until revoked as provided in subsection D or until rescinded, in accordance with accepted medical practice, by the provider who issued the Durable Do Not Resuscitate Order. In accordance with this section and regulations promulgated by the Board of Health, (i) qualified emergency medical services personnel as defined in § [32.1-111.1](#); (ii) licensed health care practitioners in any facility, program or organization operated or licensed by the Board of Health, the Department of Social Services, or the Department of Behavioral Health and Developmental Services or operated, licensed or owned by another state agency; and (iii) licensed health care practitioners at any continuing care retirement community registered with the State Corporation Commission pursuant to Chapter 49 (§ [38.2-4900](#) et seq.) of Title 38.2 are authorized to follow Durable Do Not Resuscitate Orders that are available to them in a form approved by the Board of Health or deemed valid in accordance with subsection C.

F. The provisions of this section shall not authorize any qualified emergency medical services personnel or licensed health care provider or practitioner who is attending the patient at the time of cardiac or respiratory arrest to provide, continue, withhold or withdraw health care if such provider or practitioner knows that taking such action is protested by the patient incapable of making an informed decision. No person shall authorize providing, continuing, withholding or withdrawing health care pursuant to this section that such person knows, or upon reasonable inquiry ought to know, is contrary to the religious beliefs or basic values of a patient incapable of making an informed decision or the wishes of such patient fairly expressed when the patient was capable of making an informed decision. Further, this section shall not authorize the withholding of other medical interventions, such as intravenous fluids, oxygen or other therapies deemed necessary to provide comfort care or to alleviate pain.

G. This section shall not prevent, prohibit or limit a physician from issuing a written order, other than a Durable Do Not Resuscitate Order, not to resuscitate a patient in the event of cardiac or respiratory arrest in accordance with accepted medical practice.

H. Valid Do Not Resuscitate Orders or Emergency Medical Services Do Not Resuscitate Orders issued before July 1, 1999, pursuant to the then-current law, shall remain valid and shall be given effect as provided in this article.

1992, c. 412; 1994, c. 956; 1998, cc. 564, 628, 630, 803, 854; 1999, c. 814; 2009, cc. 211, 268, 549, 813, 840; 2010, c. 792; 2017, c. 179.

§ 54.1-2988. Immunity from liability; burden of proof; presumption.

A health care facility, physician or other person acting under the direction of a physician shall not be subject to criminal prosecution or civil liability or be deemed to have engaged in unprofessional conduct as a result of issuing a Durable Do Not Resuscitate Order or the providing, continuing, withholding or the withdrawal of health care under authorization or consent obtained in accordance with this article or as the result of the provision, withholding or withdrawal of ongoing health care in accordance with § 54.1-2990. No person or facility providing, continuing, withholding or withdrawing health care or physician issuing a Durable Do Not Resuscitate Order under authorization or consent obtained pursuant to this article or otherwise in accordance with § 54.1-2990 shall incur liability arising out of a claim to the extent the claim is based on lack of authorization or consent for such action.

Any agent or person identified in § 54.1-2986 who authorizes or consents to the providing, continuing, withholding or withdrawal of health care in accordance with this article shall not be subject, solely on the basis of that authorization or consent, to (i) criminal prosecution or civil liability for such action or (ii) liability for the cost of health care.

No individual serving on a facility's patient care consulting committee as defined in this article and no physician rendering a determination or affirmation in cases in which no patient care consulting committee exists shall be subject to criminal prosecution or civil liability for any act or omission done or made in good faith in the performance of such functions.

The provisions of this section shall apply unless it is shown by a preponderance of the evidence that the person authorizing or effectuating the providing, continuing, withholding or withdrawal of health care, or issuing, consenting to, making or following a Durable Do Not Resuscitate Order in accordance with § 54.1-2987.1 did not, in good faith, comply with the provisions of this article.

An advance directive or Durable Do Not Resuscitate Order made, consented to or issued in accordance with this article shall be presumed to have been made, consented to, or issued voluntarily and in good faith by an adult who is capable of making an informed decision, physician or person authorized to consent on the patient's behalf.

1983, c. 532, § 54-325.8:8; 1988, c. 765; 1992, cc. 412, 748, 772; 1998, cc. 803, 854; 1999, c. 814; 2000, cc. 590, 598; 2009, cc. 211, 268; 2010, c. 792; 2017, cc. 747, 752.

§ 54.1-2988.1. Assistance with completing and executing advance directives.

A. The distribution of written advance directives in a form meeting the requirements of § 54.1-2984 and the provision of technical advice, consultation, and assistance to persons with regard to the completion and execution of such forms by (i) health care providers, including their authorized agents or employees, or (ii) qualified advance directive facilitators shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.).

B. The provision of ministerial assistance to a person with regard to the completion or execution of a written advance directive in a form meeting the requirements of § 54.1-2984 shall not constitute the unauthorized practice of law pursuant to Chapter 39 (§ 54.1-3900 et seq.). For the purpose of this subsection, "ministerial assistance" includes reading the form of an advance directive meeting the requirements of § 54.1-2984 to a person, discussing the person's preferences with regard to items included in the form, recording the person's answers on the form, and helping the person sign the form and obtain any other necessary signatures on the form. "Ministerial assistance" does not include the expressing of an opinion regarding the legal effects of any item contained in the form of an advance directive meeting the requirements of § 54.1-2984 or the offering of legal advice to a person completing or executing such form. 2017, cc. 747, 752.

§ 54.1-2989. Willful destruction, concealment, etc., of declaration or revocation; penalties.

A. Any person who willfully (i) conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the

declarant's or patient's consent or the consent of the person authorized to consent for the patient; (ii) falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another; or (iii) falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another shall be guilty of a Class 1 misdemeanor. If such action causes life-prolonging procedures to be utilized in contravention of the previously expressed intent of the patient or a Durable Do Not Resuscitate Order, the person committing such action shall be guilty of a Class 6 felony.

B. Any person who willfully (i) conceals, cancels, defaces, obliterates, or damages the advance directive or Durable Do Not Resuscitate Order of another without the declarant's or patient's consent or the consent of the person authorized to consent for the patient, (ii) falsifies or forges the advance directive or Durable Do Not Resuscitate Order of another, (iii) falsifies or forges a revocation of the advance directive or Durable Do Not Resuscitate Order of another, or (iv) conceals or withholds personal knowledge of the revocation of an advance directive or Durable Do Not Resuscitate Order, with the intent to cause a withholding or withdrawal of life-prolonging procedures, contrary to the wishes of the declarant or a patient, and thereby, because of such act, directly causes life-prolonging procedures to be withheld or withdrawn and death to be hastened, shall be guilty of a Class 2 felony.

1983, c. 532, § 54-325.8:9; 1988, c. 765; 1992, cc. 412, 748, 772; 1998, cc. [803](#), [854](#); 1999, c. [814](#); 2009, cc. [211](#), [268](#).

§ 54.1-2989.1. Failure to deliver advance directive.

An agent in possession of an advance medical directive vesting any power or authority in him shall, when the instrument is otherwise valid, be deemed to possess the powers and authority granted by such instrument notwithstanding any failure by the declarant to deliver the instrument to him, and persons dealing with such agent shall have no obligation to inquire into the manner or circumstances by which such possession was acquired; provided, however, that nothing herein shall preclude the court from considering such manner or circumstances as relevant factors in a proceeding brought to remove the agent or revoke the directive.

2003, c. [269](#).

§ 54.1-2990. Medically unnecessary health care not required; procedure when physician refuses to comply with an advance directive or a designated person's health care decision; mercy killing or euthanasia prohibited.

A. As used in this section:

"Health care provider" has the same meaning as in § [8.01-581.1](#).

"Life-sustaining treatment" means any ongoing health care that utilizes mechanical or other artificial means to sustain, restore, or supplant a spontaneous vital function,

including hydration, nutrition, maintenance medication, and cardiopulmonary resuscitation.

B. Nothing in this article shall be construed to require a physician to prescribe or render health care to a patient that the physician determines to be medically or ethically inappropriate. A determination of the medical or ethical inappropriateness of proposed health care shall be based solely on the patient's medical condition and not on the patient's age or other demographic status, disability, or diagnosis of persistent vegetative state.

In cases in which a physician's determination that proposed health care, including life-sustaining treatment, is medically or ethically inappropriate is contrary to the request of the patient, the terms of a patient's advance directive, the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986, or a Durable Do Not Resuscitate Order, the physician or his designee shall document the physician's determination in the patient's medical record, make a reasonable effort to inform the patient or the patient's agent or person with decision-making authority pursuant to § 54.1-2986 of such determination and the reasons therefor in writing, and provide a copy of the hospital's written policies regarding review of decisions regarding the medical or ethical appropriateness of proposed health care established pursuant to subdivision B 21 of § 32.1-127.

If the conflict remains unresolved, the physician shall make a reasonable effort to transfer the patient to another physician or facility that is willing to comply with the request of the patient, the terms of the advance directive, the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986, or a Durable Do Not Resuscitate Order and shall cooperate in transferring the patient to the physician or facility identified. The physician shall provide the patient or his agent or person with decision-making authority pursuant to § 54.1-2986 a reasonable time of not less than 14 days after the date on which the decision regarding the medical or ethical inappropriateness of the proposed treatment is documented in the patient's medical record in accordance with the hospital's written policy developed pursuant to subdivision B 21 of § 32.1-127 to effect such transfer. During this period, (i) the physician shall continue to provide any life-sustaining treatment to the patient that is reasonably available to such physician, as requested by the patient or his agent or person with decision-making authority pursuant to § 54.1-2986, and (ii) the hospital in which the patient is receiving life-sustaining treatment shall facilitate prompt access to the patient's medical record pursuant to § 32.1-127.1:03.

If, at the end of the 14-day period, the conflict remains unresolved despite compliance with the hospital's written policy established pursuant to subdivision B 21 of § 32.1-127 and the physician has been unable to identify another physician or facility willing to provide the care requested by the patient, the terms of the advance directive, or the

decision of the agent or person authorized to make decisions pursuant to § 54.1-2986 to which to transfer the patient despite reasonable efforts, the physician may cease to provide the treatment that the physician has determined to be medically or ethically inappropriate subject to the right of court review by any party. However, artificial nutrition and hydration may be withdrawn or withheld only if, on the basis of physician's reasonable medical judgment, providing such artificial nutrition and hydration would (a) hasten the patient's death, (b) be medically ineffective in prolonging life, or (c) be contrary to the clearly documented wishes of the patient, the terms of the patient's advance directive, or the decision of an agent or person authorized to make decisions pursuant to § 54.1-2986 regarding the withholding of artificial nutrition or hydration. In all cases, care directed toward the patient's pain and comfort shall be provided.

C. Nothing in this section shall require the provision of health care that the physician is physically or legally unable to provide or health care that the physician is physically or legally unable to provide without thereby denying the same health care to another patient.

D. Nothing in this article shall be construed to condone, authorize, or approve mercy killing or euthanasia or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying.

E. Compliance with the requirements of this section shall not be admissible to prove a violation of or compliance with the standard of care as set forth in § 8.01-581.20. 1983, c. 532, § 54-325.8:10; 1988, c. 765; 1992, cc. 748, 772; 1999, c. 814; 2000, cc. 590, 598; 2009, cc. 211, 268; 2018, cc. 368, 565.

§ 54.1-2991. Effect of declaration; suicide; insurance; declarations executed prior to effective date.

The withholding or withdrawal of life-prolonging procedures in accordance with the provisions of this article shall not, for any purpose, constitute a suicide. Nor shall the making of an advance directive pursuant to this article affect the sale, procurement or issuance of any policy of life insurance, nor shall the making of an advance directive or the issuance of a Durable Do Not Resuscitate Order pursuant to this article be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated by the withholding or withdrawal of life-prolonging procedures from an insured patient in accordance with this article, notwithstanding any term of the policy to the contrary. A person shall not be required to make an advance directive or consent to a Durable Do Not Resuscitate order as a condition for being insured for, or receiving, health care services.

The declaration of any patient made prior to July 1, 1983, an advance directive made prior to July 1, 1992, or the issuance, in accordance with the then current law, of a Do

Not Resuscitate Order or an Emergency Medical Services Do Not Resuscitate Order prior to July 1, 1999, shall be given effect as provided in this article.

1983, c. 532, § 54-325.8:11; 1988, c. 765; 1992, cc. 412, 748, 772; 1999, c. 814; 2009, cc. 211, 268.

§ 54.1-2992. Preservation of existing rights.

The provisions of this article are cumulative with existing law and shall not be construed to modify an individual's right to consent or refuse to consent to medical treatment if he is capable of making an informed decision, or to alter or limit the authority that otherwise exists under the common law, statutes or regulations of the Commonwealth (i) of a health care provider to provide health care; or (ii) of a person's agent, guardian or other legally authorized representative to make decisions on behalf of a person who is incapable of making an informed decision. The provisions of this article shall not impair any existing rights or responsibilities which a health care provider, a patient, including a minor or incapacitated patient, or a patient's family may have in regard to the providing, continuing, withholding or withdrawal of life-prolonging medical procedures under the common law or statutes of the Commonwealth; however, this section shall not be construed to authorize violations of § 54.1-2990.

1983, c. 532, § 54-325.8:12; 1988, c. 765; 1992, cc. 748, 772; 1997, c. 801; 2000, cc. 590, 598; 2009, cc. 211, 268.

§ 54.1-2993. Reciprocity.

An advance directive executed in another state shall be deemed to be validly executed for the purposes of this article if executed in compliance with the laws of the Commonwealth of Virginia or the laws of the state where executed. Such advance directives shall be construed in accordance with the laws of the Commonwealth of Virginia.

1992, cc. 748, 772.

§ 54.1-2993.1. Qualified advance directive facilitators; requirements for training programs.

The Department of Health shall approve a program for the training of qualified advance directive facilitators that includes (i) instruction on the meaning of provisions of a form meeting the requirements of § 54.1-2984, including designating a health care agent and giving instructions relating to one or more specific types of health care, and (ii) requirements for demonstrating competence in assisting persons with completing and executing advance directives, including a written examination on information provided during the training program.

In determining whether a training program meets the criteria set forth in this section, the Department of Health may consult with the Department for Aging and

Rehabilitative Services, the Department of Behavioral Health and Developmental Services, and the Virginia State Bar.

2017, cc. [747](#), [752](#).