

TITLE 13. COMMERCIAL TRANSACTIONS -- OHIO UNIFORM COMMERCIAL CODE
CHAPTER 1337. POWER OF ATTORNEY
STATUTORY FORM FOR CREATION OF POWER OF ATTORNEY

ORC 1337.20 (2006)

§ 1337.20. Construction of powers of attorney in fact

Except as modified by the principal, a power of attorney created by use of the form set forth in section 1337.18 of the Revised Code or any other power of attorney that incorporates by reference any of the powers set forth below shall be construed as follows:

(A) Language in a power of attorney that grants power with respect to transactions concerning real property authorizes the attorney in fact to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, lease, receive, or otherwise acquire an interest in real property, a right incident to real property, or real property held in an undisclosed trust;

(2) Sell, exchange, convey with or without covenants, quitclaim, release, surrender, mortgage, encumber, partition, consent to partitioning, subdivide, apply for zoning, rezoning, or other governmental permits, plat or consent to platting, develop, grant options concerning, lease, sublease, or otherwise dispose of an interest in real property or a right incident to real property;

(3) Release, assign, satisfy, and enforce by litigation or otherwise a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is asserted;

(4) Do any act of management or of conservation with respect to an interest in real property, or a right incident to real property, owned or claimed to be owned by the principal, including, but not limited to, all of the following:

(a) Insure against a casualty, liability, or loss;

(b) Obtain or regain possession or protect, by litigation or otherwise;

(c) Pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with taxes or assessments;

(d) Purchase supplies, hire assistance or labor, and make repairs or alterations;

(5) 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;

(6) Participate in a reorganization with respect to real property or a legal entity that owns an interest in or right incident to real property and receive and hold, directly or indirectly, shares of stock or obligations received in a plan of reorganization, and act with respect to them, including, but not limited to, all of the following:

(a) Sell or otherwise dispose of the shares or obligations;

(b) Exercise or sell an option, conversion, or similar right with respect to the shares or obligations;

(c) Vote shares in person or by proxy;

(7) If specifically authorized in the power of attorney, change the form of title of an interest in or right incident to real property;

(8) Dedicate to public use, with or without consideration, easements or other real property in which the principal has, or claims to have, an interest.

(B) Language in a power of attorney granting power with respect to transactions concerning tangible personal property authorizes the attorney in fact to do all of the following:

(1) Accept as a gift or as security for a loan, reject, demand, buy, receive, or otherwise acquire ownership or possession of tangible personal property or an interest in tangible personal property;

(2) Sell, exchange, convey with or without covenants, release, surrender, create a security interest in, grant options concerning, lease, sublease to others, or otherwise dispose of tangible personal property or an interest in tangible personal property;

(3) Release, assign, satisfy, or enforce, by litigation or otherwise, a security interest, lien, or other claim with respect to tangible personal property or an interest in tangible personal property;

(4) Do an act of management or conservation with respect to tangible personal property or an interest in tangible personal property, including, but not limited to, all of the following:

(a) Insure against casualty, liability, or loss;

(b) Obtain or regain possession, or protect, by litigation or otherwise;

(c) Pay, compromise, or contest taxes or assessments or apply for and receive refunds in connection with taxes or assessments;

(d) Move from place to place;

(e) Store for hire or on a gratuitous bailment;

(f) Use, alter, and make repairs or alterations;

(5) If specifically authorized in the power of attorney, change the form of title of an interest in or right incident to tangible personal property.

(C) Language in a power of attorney granting power with respect to transactions concerning stocks and bonds authorizes the attorney in fact to do all of the following:

(1) Buy, sell, and exchange stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly or indirectly, except commodity futures contracts and call and put options on stocks and stock indexes;

(2) Receive certificates and other evidences of ownership with respect to securities;

- (3) Exercise voting rights with respect to securities in person, in writing, or by proxy;
- (4) Enter into voting trusts;
- (5) Consent to limitations on the right to vote.

(D) Language in a power of attorney granting power with respect to transactions concerning commodities and options authorizes the attorney in fact to do all of the following:

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

(E) Language granting power with respect to transactions concerning banks and other financial institutions authorizes the attorney in fact to do all of the following:

- (1) Continue, modify, and terminate an account or other banking arrangement made by or for 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 attorney in fact;
- (3) Contract to procure other services available from a financial institution as the attorney in fact considers desirable;
- (4) Withdraw by check, order, or otherwise money or property of the principal deposited with or left in the custody of a financial institution;
- (5) Receive bank statements, vouchers, notices, and similar documents from a financial institution and act with respect to them;
- (6) Borrow money at an interest rate agreeable to the attorney in fact and pledge as security personal property of the principal necessary in order to borrow, pay, renew, or extend the time of payment of a debt of the principal;
- (7) 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, make funds transfers, receive the cash or other proceeds of those transactions, and accept and pay when due a draft drawn by a person upon the principal;
- (8) Receive and act upon a sight draft, warehouse receipt, or other negotiable or nonnegotiable instrument;
- (9) Apply for and receive letters of credit, credit and debit cards, and traveler's checks from a financial institution, and give an indemnity or other agreement in connection with letters of credit;
- (10) Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

(F) Language in a power of attorney granting power with respect to operating a business authorizes the attorney in fact to do all of the following:

- (1) Operate, buy, sell, enlarge, reduce, or terminate a business interest;
- (2) Subject to the terms of a partnership agreement or operating agreement, do all of the following:
 - (a) Perform a duty or discharge a liability and exercise a right, power, privilege, or option that the principal has, may have, or claims to have, under the partnership agreement or operating agreement;
 - (b) Enforce the terms of the partnership agreement or operating agreement by litigation or otherwise;
 - (c) Defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of membership in a partnership or limited liability company;
- (3) 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 a bond, share, or other instrument of similar character and defend, submit to arbitration, settle, or compromise litigation to which the principal is a party because of a bond, share, or similar instrument;
- (4) With respect to a business controlled by the principal, do all of the following:
 - (a) Continue, modify, renegotiate, extend, and terminate a contract made with an individual or a legal entity by or for the principal with respect to the business before execution of the power of attorney;
 - (b) Determine all of the following:
 - (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;
 - (v) The mode of engaging, compensating, and dealing with its accountants, attorneys, and other attorneys in fact and employees;
 - (c) Change the name or form of organization under which the business is operated and enter into a partnership agreement or operating agreement with other persons or organize a corporation or other business entity to take over all or part of the operation of the business;
 - (d) Demand and receive money due or claimed by the principal or on the principal's behalf in the operation of the business, and control and disburse the money in the operation of the business;
- (5) Put additional capital into a business in which the principal has an interest;
- (6) Join in a plan of reorganization, consolidation, or merger of the business;

(7) Sell or liquidate a business or part of it at the time and upon the terms the attorney in fact considers desirable;

(8) Establish the value of a business under a buy-out agreement to which the principal is a party;

(9) Prepare, sign, file, and deliver reports, compilations of information, returns, or other papers with respect to a business that are required by a governmental agency or instrumentality or that the attorney in fact considers desirable and make related payments;

(10) Pay, compromise, or contest taxes or assessments and do any other act that the attorney in fact considers desirable to protect the principal from illegal or unnecessary taxation, fines, penalties, or assessments with respect to a business, including attempts to recover, in any manner permitted by law, money paid before or after the execution of the power of attorney.

(G) Language in a power of attorney granting power with respect to proprietary interests and materials transactions authorizes the attorney in fact in connection with or with respect to any artistic, domestic, intellectual, literary, mechanical, scientific, or other proprietary interest or material to do all of the following:

(1) Abandon, apply for, extend, maintain, modify, receive, renew, secure, or terminate any protection by copyright, patent, registration, or other mechanism for any composition, design, device, discovery, formula, invention, mark, name, process, program, recipe, service mark, trademark, trade name, or other protectable intangible or tangible endeavor or work;

(2) Appeal from, compromise, conduct, defend, intervene in, participate in, prosecute, settle, or terminate any proceeding before any administrative, judicial, or other agency, board, body, commission, court, examiner, judge, magistrate, officer, or other official or tribunal with jurisdiction of any proprietary interest or material;

(3) Arrange or contract for payment or receipt of any charges, fees, royalties, or other payments for assignment, license, sale, transfer, use, or other exploitation of any proprietary interest or material;

(4) Deal in and with any business data, business or trade secret, business method, client or customer list, dealership, franchise, license, manufacturing process, or other proprietary interest or material.

(H) Language in a power of attorney granting power with respect to insurance and annuities authorizes the attorney in fact to do all of the following:

(1) Continue, pay the premium or assessment on, modify, rescind, release, or terminate a contract procured by or for 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, or additional contracts of insurance or annuities for the principal or the principal's spouse, children, or other dependents and select the amount, type of insurance or annuity, and mode of payment;

(3) Pay the premium or assessment on, modify, rescind, release, or terminate a contract of insurance or annuity procured by the attorney in fact;

(4) Apply for and receive a loan on the security of a contract of insurance or annuity;

(5) Surrender and receive the cash surrender value;

(6) Exercise an election that is not specifically prohibited;

(7) Change the manner of paying premiums;

(8) Change or convert the type of insurance or annuity, with respect to which the principal has or claims to have a power described in this section;

(9) If specifically authorized in the power of attorney, change the beneficiary of a contract of insurance or annuity designated by the principal;

(10) Apply for and procure government aid to guarantee or pay premiums of a contract of insurance on the life of the principal;

(11) Collect, sell, assign, hypothecate, borrow upon, or pledge the interest of the principal in a contract of insurance or annuity;

(12) 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.

(I) (1) Except for the restrictions set forth in division (I)(2) of this section, language in a power of attorney granting power with respect to retirement plan transactions authorizes the attorney in fact to do all of the following:

(a) Contribute to, withdraw from, and deposit funds in any type of retirement plan, including, but not limited to, any tax qualified or nonqualified pension, profit sharing, stock bonus, employee savings and other retirement plan, individual retirement account, deferred compensation plan, or other type of employee benefit plan;

(b) Select and change payment options for the principal under any retirement plan;

(c) Make rollover contributions from any retirement plan to other retirement plans or individual retirement accounts;

(d) Exercise all investment powers available under any type of self-directed retirement plan.

(2) Unless specifically authorized in a power of attorney, language in a power of attorney granting power with respect to retirement plan transactions does not authorize the attorney in fact to do any of the following:

(a) Elect or change a retirement allowance plan of payment on the principal's behalf under Chapter 145., 742., 3305., 3307., 3309., or 5505. of the Revised Code, other than a joint and survivor annuity leaving one-half to the spouse if the principal is married, a single life annuity if the principal is single, or any plan that includes a partial lump sum op-

tion; except that no express authority is necessary to elect a plan that meets the minimum requirements of a court order to elect a plan that will pay a lifetime benefit to a former spouse.

(b) If authorized under section 145.814 [145.81.4] of the Revised Code, change an election made under section 145.19 or 145.191 [145.19.1] of the Revised Code;

(c) Terminate the principal's membership in the public employees retirement system, state teachers retirement system, school employees retirement system, Ohio police and fire pension fund, or state highway patrol retirement system by withdrawing the principal's accumulated employee contributions.

(J) Language in a power of attorney granting power with respect to safe deposit transactions authorizes the attorney in fact to do all of the following:

- (1) Open, continue, and have access to all safe deposit boxes;
- (2) Sign, renew, release, or terminate any safe deposit contract;
- (3) Drill or surrender any safe deposit box.

(K) (1) Language in a power of attorney granting power with respect to estates, trusts, and other relationships in which the principal is a beneficiary authorizes the attorney in fact to act for the principal in all matters that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund from which the principal is, may become, or claims to be entitled as a beneficiary to a share or payment, including all of the following:

(a) Accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of a share in or payment from the fund;

(b) Demand or obtain by litigation or otherwise money or any other thing of value to which the principal is, may become, or claims to be entitled by reason of the fund;

(c) Initiate, participate in, and oppose 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;

(d) Initiate, participate in, and oppose litigation to remove, substitute, or surcharge a fiduciary;

(e) Conserve, invest, disburse, and use anything received for an authorized purpose;

(f) Transfer an interest of the principal in real property, stocks, bonds, accounts with financial institutions, insurance, and other property to the trustee of a revocable trust created by the principal as settlor;

(g) Transfer an interest of the principal in real property to any trustee or trustees of an undisclosed trust for the benefit of the principal;

(h) If specifically authorized in the power of attorney, designate or change the designation of a beneficiary to receive any property, benefit, or contractual right on the principal's death.

(2) Unless expressly authorized in the power of attorney, language granting power with respect to estates, trusts, and other relationships in which the principal is a beneficiary does not include authority to create, modify, or revoke a trust or authority to fund with the principal's property a trust not created by the principal or a person authorized to create a trust for the principal.

(L) Language in a power of attorney granting power with respect to borrowing transactions authorizes the attorney in fact to do all of the following:

- (1) Borrow money;
- (2) Mortgage or pledge any real estate, tangible personal property, or intangible personal property as security for any borrowing transactions;
- (3) Sign, renew, extend, pay, and satisfy any notes or other forms of obligations.

(M) (1) Language in a power of attorney granting power with respect to fiduciary transactions authorizes the attorney in fact to do all of the following:

- (a) Represent and act for the principal in all ways and in all matters affecting any fund with respect to which the principal is a fiduciary;
- (b) Initiate, participate in, and oppose any judicial or other proceeding for the removal, substitution, or surcharge of a fiduciary, conserve, invest, or disburse anything received for the purposes of the fund for which it is received, and reimburse the attorney in fact for any expenditures properly made by the attorney in fact in the execution of the powers conferred on the attorney in fact by the power of attorney;
- (c) Agree and contract in any manner, with any person, and on any terms that the attorney in fact selects for the accomplishment of the purposes set forth in division (M) of this section and perform, rescind, reform, release, or modify the agreement or contract or any other similar agreement or contract made by or for the principal;
- (d) Execute, acknowledge, verify, seal, file, and deliver any consent, designation, pleading, notice, demand, election, conveyance, release, assignment, check, pledge, waiver, admission of service, notice of appearance, or other instrument that the attorney in fact determines is useful for the accomplishment of any of the purposes set forth in division (M) of this section;
- (e) Hire, discharge, and compensate any attorney, accountant, expert witness, or other assistants when the attorney in fact determines that action to be desirable for the proper execution by the attorney in fact of any of the powers described in division (M) of this section and for the keeping of needed records;
- (f) Perform any other acts with respect to a fund of which the principal is a fiduciary.

(2) Division (M) of this section does not authorize a fiduciary to delegate any power of a fiduciary unless the power is one the fiduciary is authorized to delegate under the terms of the trust agreement or other instrument governing the exercise of the power or under the law of the jurisdiction that governs that trust agreement or other instrument.

(3) As used in division (M) of this section, "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal has, or claims to have, an interest as a fiduciary.

(4) All powers described in division (M) of this section may be exercised equally with respect to any fund of which the principal is a fiduciary as of the date of the power of attorney or becomes a fiduciary after that date, and regardless of whether the fund is located in the state of Ohio or elsewhere.

(N) Language in a power of attorney granting power with respect to personal and family maintenance authorizes the attorney in fact to do all of the following:

(1) Do the acts necessary to maintain the customary standard of living of the principal, the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, including providing living quarters by purchase, lease, or other contract or paying the operating costs, including interest, amortization payments, repairs, and taxes, on premises owned by the principal and occupied by those individuals;

(2) For the individuals described in division (N)(1) of this section, provide normal domestic help, usual vacations and travel expenses, and funds for shelter, clothing, food, appropriate education, and other current living costs;

(3) For the individuals described in division (N)(1) of this section, pay expenses for necessary medical, dental, and surgical care, hospitalization, and custodial care;

(4) For the individuals described in division (N)(1) of this section, continue any provision made by the principal for automobiles or other means of transportation, including registering, licensing, insuring, and replacing them;

(5) Maintain or open charge accounts for the convenience of the individuals described in division (N)(1) of this section and open new accounts the attorney in fact considers desirable to accomplish a lawful purpose;

(6) Continue payments incidental to the membership or affiliation of the principal in a church, club, society, order, or other organization or continue contributions to those organizations.

(O) Language in a power of attorney granting power with respect to benefits from social security, medicare, medicaid, other governmental programs, or civil or military service authorizes the attorney in fact to do all of the following:

(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 political subdivision of a state to the principal, including allowances and reimbursements for transportation of the principal's spouse, children, and other individuals customarily or legally entitled to be supported by the principal, and for shipment of their household effects;

(2) Take possession and order the removal and shipment of property of the principal from a governmental or private post, warehouse, depot, dock, or other place of storage or safekeeping and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose;

(3) Prepare, file, and prosecute a claim of the principal to a benefit or assistance, financial or otherwise, to which the principal claims to be entitled under a statute or governmental regulation;

(4) Prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any benefits the principal may be entitled to receive;

(5) Receive the financial proceeds of a claim of the type described in division (O) of this section and conserve, invest, disburse, or use anything so received for a lawful purpose.

(P) (1) Language in a power of attorney granting power with respect to records, reports, and statements authorizes the attorney in fact to do all of the following:

(a) Keep records of all cash received and disbursed for or on account of the principal, of all credits and debits to the account of the principal, and of all transactions affecting in any way the assets and liabilities of the principal;

(b) Prepare, execute, and file all tax, social security, unemployment insurance, and information returns required by the laws of the United States, of any state or political subdivision of any state, or of any foreign government and to prepare, execute, and file all other papers and instruments that the attorney in fact determines is desirable or necessary for the safeguarding of the principal against excess or illegal taxation or against penalties imposed for a claimed violation of any law or other governmental regulation;

(c) Prepare, execute, and file any record, report, or statement with respect to price, rent, wage, or rationing control or other governmental activity that the attorney in fact determines is desirable or necessary for the safeguarding or maintenance of the principal's interest;

(d) Hire, discharge, and compensate any attorney, accountant, or other assistant when the attorney in fact determines that action to be desirable for the proper execution by the attorney in fact of any of the powers described in this section;

(e) Do any other act, in connection with the preparation, execution, filing, storage, or other utilization of any records, reports, or statements of or concerning the principal's affairs that the principal can do through an attorney in fact.

(2) An attorney in fact may exercise all powers described in division (P)(1) of this section equally with respect to any records, reports, or statements of or concerning the affairs of the principal as they exist at the time the principal gives the power of attorney or after the principal gives the power of attorney, in the state of Ohio or elsewhere.

(Q) Language in a power of attorney granting power with respect to tax matters authorizes the attorney in fact to do all of the following:

(1) Prepare, sign, and file federal, state, local, and foreign income, gift, payroll, and other tax returns, claims for refunds, requests for extensions of time, petitions regarding tax matters, and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under section 2032A of the "Internal Revenue Code of 1986," Pub. L. No. 94-455, 26 U.S.C. 2032A, as amended), closing agreements, and any power of attorney required by any tax collection or enforcement agency with re-

spect to a tax year upon which the statute of limitations has not run and the following twenty-five tax years;

(2) Pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by any tax collection or enforcement agency;

(3) Exercise any election available to the principal under federal, state, local, or foreign tax law;

(4) Act for the principal in all tax matters for all periods before any tax collection or enforcement agency.

(R) Language in a power of attorney granting power with respect to licenses authorizes the attorney in fact to obtain, renew, or transfer all of the following:

(1) Automobile, truck, boat, and other vehicle licenses;

(2) Business licenses of any type.

(S) Language in a power of attorney granting power with respect to access to documents authorizes the attorney in fact to do all of the following:

(1) Have access to and possession of the principal's will, trusts, instruments, deeds, life insurance policies, contracts, employee benefit records, and other documents, including, but not limited to, documents protected under the "Financial Services Modernization Act of 1999," Pub. L. No. 106-102, 15 U.S.C. 6801, as amended, and the "Health Insurance Portability and Accountability Act of 1996," Pub. L. No. 104-191, 42 U.S.C. 300gg, as amended;

(2) Have access to mail and redirect mail.

(T) Language in a power of attorney granting power with respect to employment of agents authorizes the attorney in fact to do all of the following:

(1) Employ attorneys, accountants, investment advisors, expert witnesses, realtors, or other professionals when the attorney in fact believes the employment of the professional to be desirable;

(2) Pay any agents reasonable compensation.

(U) Language in a power of attorney with respect to delegation authorizes the attorney in fact to delegate any or all of the powers granted by the principal to any person or persons whom the attorney in fact selects.

(V) Language in a power of attorney granting power with respect to claims and litigation authorizes the attorney in fact to do all of the following:

(1) Assert and prosecute before a court or administrative agency a claim, claim for relief, cause of action, counterclaim, offset, or defense against an individual, organization, or government, including an action to recover property or any other thing of value, to recover damages sustained by the principal, to eliminate or modify tax liability, or to seek an injunction, specific performance, or other relief;

(2) Bring an action to determine adverse claims, intervene in litigation, and act as amicus curiae;

(3) In connection with litigation, procure an attachment, garnishment, libel, order of arrest, or other preliminary, provisional, or intermediate relief and use any available procedure to effect or satisfy a judgment, order, or decree;

(4) In connection with litigation, perform any lawful act, including acceptance of tender, offer of judgment, admission of facts, submission of a controversy on an agreed statement of facts, consent to examination before trial, and bind the principal in litigation;

(5) Submit to arbitration, settle, and propose or accept a compromise with respect to a claim or litigation;

(6) Waive the issuance and service of process upon the principal, accept service of process, appear for the principal, designate persons upon whom 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 and 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 a voluntary or involuntary bankruptcy or insolvency proceeding concerning the principal or another person, a reorganization proceeding, or a receivership or application for the appointment of a receiver or trustee that affects an interest of the principal in property or any other thing of value;

(8) Pay a judgment against the principal or a settlement made in connection with litigation and receive and conserve money or any other thing of value paid in settlement of or as proceeds of a claim or litigation.

HISTORY: 151 v H 246, § 1, eff. 3-29-06.