

KENTUCKY LAW UPDATE



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ADVANCING THE PROFESSION THROUGH EDUCATION

**Are Your Legal Services
Hurting Your Client? POA
Problems Hurting Elderly
Clients**

1 CLE Credit

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ARE YOUR LEGAL SERVICES HURTING YOUR CLIENT? POA PROBLEMS HURTING ELDERLY CLIENTS

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I. INTRODUCTION

Both solid, seasoned attorneys using powers of attorney (POAs) crafted from many years of practice and new practitioners using online templates can create legal quagmires for their elderly clients.

Key language that goes beyond a stock template is necessary for the elderly client to avoid guardianship court, continue navigating the banking industry regulations, and to overcome long-term care obstacles.

As licensed attorneys, it is our duty to the public to keep and maintain exemplary legal products within our practices (even the lowly POA), learn the issues relevant to the products, and avoid pitfalls in our planning.

We consider a power of attorney the single most important legal document that an individual may possess. Our general assumption is that when a client hires us to construct a POA, they are doing so with the intention of it serving as an estate planning tool.

Whether our practice is a dedicated estate planning firm, or a general practice firm (or something in between) our aim should be to create a POA that is as comprehensive as possible, covering all anticipated eventualities, or as narrow as possible when drafted for a specific purpose – as in a limited POA.

Many practitioners think of a POA as a simple document that requires little thought, and even less skill, to prepare. With the development of online legal solutions, some practitioners collect minimal information from a client, add the data to a fillable form, and press *print* to prepare a POA. The danger is that the end product may neglect a client's goals, circumstances, and concerns.

In our practice, we encounter many insufficient POAs. The most frequently encountered issues are our focus here: gifting limitations, self-dealing, real estate limitations, control over beneficiary designations, authorization to establish and fund trusts, and multi-jurisdictional issues. When an individual has executed a POA but has since lost capacity such that an updated or improved POA is no longer a possibility, guardianship proceedings may be necessary. This is an unfortunate reality for many clients who thought their POA was sufficient.

If you discover that you have fallen victim to a pitfall during this presentation, fret not! Many of the issues mentioned above can be easily addressed with awareness and some targeted drafting.

II. GIFTING

A. History

1. Prior to 2018, the power of an agent to give gifts was only authorized if expressly stated in the power of attorney document, but the law provided little guidance beyond that requirement.
2. In 2018, when Kentucky adopted parts of the Uniform Power of Attorney Act (UPOAA), the legislature codified the requirement that gifting authority must be explicitly stated. See [KRS 457.400 et seq.](#)
3. Further, in 2020, amendments to the Kentucky UPOAA required gifting authorization to be explicitly stated and specifically limited an agent's gifting authority to the federal annual gift tax exclusion amount, unless the POA is drafted to explicitly allow otherwise. UPOAA §§201(d) and 217(b)(1). [KRS 457.245](#), [KRS 457.400](#).

B. Concerns

1. Exploitation and abuse.

Some practitioners are concerned about exploitation and abuse by an agent of a POA, but [KRS 457.140](#) requires the agent to act in good faith and in the principal's best interest.

2. Eligibility for long-term care benefits.

Benefit programs under the VA and Medicaid for long-term care require reallocation of assets, which falls directly within the duty of an agent to act in the best interest of the principal. To act in the principal's best interest, an agent may need to help the principal qualify for government benefits to which they are entitled. This could involve transferring or reallocating the principal's assets, which would require the agent to have specific authority to make gifts on the principal's behalf.

C. Drafting Pointers

1. For sample provisions, see Section 2.4 of the attached template.
2. Draft your POAs to include virtually unlimited gifting authority. The provisions should:
 - a. Allow gifts to be made to the agent/attorney-in-fact from the principal's real or personal property.
 - b. Allow gifts made to exceed the annual gift tax exclusion amounts under [IRC §2503\(b\)](#).

- c. Include guidance to the agent regarding what information the agent should reference in making gifts under the granted authority:
 - i. Medicaid/VA benefit eligibility standards;
 - ii. Patterns of prior giving; and
 - iii. Other estate planning documents of the principal, etc.

III. SELF-DEALING

A. Context

When we refer to “self-dealing”, we mean transfers made from a principal’s assets by an agent, to the agent themselves.

B. Concerns

1. Many attorneys may be concerned about allowing self-dealing by an agent in a power of attorney due to a **fear of exploitation or misuse of funds** belonging to a principal. This is a reasonable concern; many instances of elder financial exploitation involve a trusted loved one, many of whom act under authority of a POA.¹
2. Practitioners may be hesitant to allow self-dealing within a POA because of a past experience. Maybe they have seen exploitation of an elderly client by a loved one, or someone from his/her personal life has been victim to financial exploitation at the hands of a caregiver.
3. There will always be a possibility that an elderly person could be a victim of financial abuse or exploitation as they grow more vulnerable. Candid conversations with clients, tailored drafting, and knowing the signs of financial mismanagement can stave off these issues.

C. Why It Is Necessary

Authorization for self-dealing transactions can be an essential tool for elder law attorneys working in Medicaid or VA Benefits. [KRS 457.140\(4\)](#) provides for this specific consideration.

¹ Katherine Skiba, “Elder Financial Abuse by People in Power of Trust Is Costly, Report Says,” AARP (Feb. 4, 2019), <https://www.aarp.org/money/scams-fraud/cfpb-report-2019-financial-elder-abuse/>.

D. Drafting Pointers

1. Refer to self-dealing in granting other powers.

While a dedicated paragraph on self-dealing may be unnecessary, it could be more effective to incorporate specific clauses within the POA that explicitly grant the agent authority for self-dealing under certain circumstances.

- a. Example: In the paragraph on gifting, allow the agent to make gifts and transfers to themselves.
- b. Example: In the paragraph on real estate transfers, allow the agent to purchase and/or transfer real property to themselves if necessary.

2. Specific power(s) on self-dealing.

You may also specifically authorize an agent to engage in self-dealing with a separate paragraph/section. Consider the following, which can be expanded or narrowed in scope:

- a. “Pursuant to the authority granted under the Kentucky Uniform Power of Attorney Act, specifically [KRS 457.400](#) and [KRS 457.420](#), I expressly authorize my Agent to engage in transactions that may involve self-dealing, **only when doing so is fair to me and would allow my Agent to act in my best interest**, including but not limited to:
 - i. **Making gifts or transfers** of my property to my Agent, including outright gifts or changes to beneficiary designations, regardless of any fiduciary conflict that may arise;
 - ii. **Purchasing or selling property** to or from himself/herself or his/her immediate family members;
 - iii. **Borrowing funds** from or lending funds to me on such terms as my Agent deems appropriate;
 - iv. **Managing jointly held accounts** or designating himself/herself as a payable-on-death beneficiary; and
 - v. **Modifying survivorship rights or transfer-on-death (TOD) designations** in favor of my Agent.”
- b. Another option:

“My agent may engage in acts of self-dealing, even if state law restricts acts of self-dealing. Unless expressly prohibited by another provision of this Durable Power of Attorney, my Agent may enter into

transactions on my behalf in which my Agent is personally interested, so long as the terms of such transactions are fair to me and in my best interest. For example, my Agent may purchase property from me at its fair market value without court approval.”

IV. REAL ESTATE LIMITATIONS

A. Context

Many insufficient POAs we encounter allow an agent to gift the principal’s assets to some extent but limit the agent’s authority to transfer real estate. This presents a real problem when an agent needs to transfer real property to ensure the principal’s assets are protected in planning for VA benefits/Medicaid for long-term care. If an agent cannot transfer the principal’s realty, this leaves the property subject to Medicaid estate recovery and probate proceedings.

B. Drafting Pointers

1. A better method is to limit an agent’s authority to transfer the principal’s real estate, except when the transfer is to preserve the property in various estate planning/preservation contexts.

2. Consider the following provision:

“My agent shall have the full power and authority to sell, convey, lease, mortgage, or otherwise transfer any interest I may have in real property, pursuant to [KRS 457.270](#), **but only when such action is reasonably necessary, in my agent’s judgment, for one or all of the following purposes:**

(a) To protect the real property from foreclosure, attachment, tax sale, estate recovery, or other legal or financial encumbrance or loss;

(b) To secure benefits related to my long-term care, including but not limited to qualifying for Medicaid or other governmental assistance, or to fund such care;

(c) To act in furtherance of my other estate planning instruments.

This authority specifically includes the power to execute any and all deeds, transfer documents, and other instruments necessary to effectuate such a transfer. My agent shall act in my best interest and any transfers made pursuant to this provision shall be fair to me.”

C. Copy vs. Original

1. [KRS 457.060\(4\)](#) provides that a photocopy of a POA is as valid as an original, **but** [KRS 382.370](#) requires a POA being used to transfer real estate to be

“recorded in the proper office, in the manner prescribed for recording conveyances.”

Look to [KRS 382.110](#), which allows for an original or certified photocopy to be recorded in certain circumstances.

- a. Electronic recording of deeds is allowed, but why do clerks reject photocopies of POAs?
 - b. **Most county clerks will not allow a photocopy of a POA to be recorded**, notwithstanding the statutes cited above.
2. Until the legislature clarifies the statutes on point, there is a double standard.
 3. Thus, an original POA must be recorded to be used to transfer real estate.

V. HEALTH CARE POWERS

A. Health Care Power of Attorney, Medical Power of Attorney, Health Care Surrogate

1. All the terms above are similar in that they authorize a fiduciary to make medical and health care decisions for a principal in whatever scope designated.
2. In Kentucky, the power of attorney does not include healthcare powers unless specifically delineated under [KRS 457.030\(2\)](#).
 - a. Often, a living will directive (LWD) is separated from a POA document. Some practitioners prefer to combine medical and financial powers under one POA document and have a client sign a separate LWD. Other attorneys prepare 1) a LWD; 2) a health care POA (HCPOA); and 3) a financial POA (FPOA).
 - b. The value of preparing separate documents for your clients is that each document is tailored to specific needs/desires of the client, and it demonstrates your awareness and expertise in the area.
 - c. Some jurisdictions are much more particular regarding the LWD and HCPOA, and some may use the terms synonymously.

B. Drafting Pointers

1. If separate FPOA and HCPOA are used, it is very important to ensure that several areas of agreement exist.
 - a. The HCPOA should **authorize the agent to access long-term care** for the principal.

However, this care must be paid for, and if the documents do not detail how the care will be funded or coordinated between the various agents (if different from FPOA to HCPOA), this is an area ripe for conflict.

- b. Consider a system for deciding between facilities for long-term care.

The financial power of attorney may have a very different view of what is a reasonable fee in contrast to the view of the health care power of attorney.

- 2. The HCPOA needs to contain the **power and intention for the agent to assert the intention to return home on the principal's behalf.**

This is a valuable power in protecting the residential home if Medicaid benefits are needed to pay for long-term care.

- 3. The **authority to seek governmental benefits** on behalf of the principal is an essential power to include. Consider whether the HCPOA will include advanced directives or will this be included in a stand-alone document.

- 4. A POA should authorize the agent to **access protected health information and authorize the disclosure of that information** on behalf of the principal under the HIPAA Privacy Rule.²

- a. These powers are commonly referred to as “HIPAA authority” or “HIPAA powers.”

- b. Medical providers will often require a POA to explicitly refer to HIPAA in authorizing an agent with the above powers.

C. Information vs. Decision Making

HIPAA powers cannot be extrapolated from health care decision making authority of an agent, *e.g.*, an agent cannot, arguably *should not*, have one without the other.

- 1. Power without knowledge.

How would an agent be able to make sound medical/health care decisions for a principal without knowledge of any of the principal's health information?

- 2. In the know.

² U.S. Dep't of Health & Human Servs., “Summary of the HIPAA Privacy Rule,” <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html> (last visited May 27, 2025).

How would an agent serve a principal's best interest if they were authorized to receive health information, but they were prohibited from making any health care decisions for the principal?

VI. CHANGING BENEFICIARY DESIGNATIONS

A. History

Historically, the authority of an agent to change beneficiary designations in Kentucky depended heavily on the specific language of the POA. With the adoption of the Uniform Power of Attorney Act in 2018, **Kentucky law explicitly requires the POA to grant specific authority to the agent to create or change beneficiary designations.** Without this express grant, the agent likely does not have this power.

B. Drafting Pointers

Include specific provisions that allow an agent to change beneficiary designations on life insurance policies, individual retirement accounts (IRAs), annuities, bank accounts, and pension plans.

VII. ESTABLISHING TRUSTS

A. Context

Every elder law attorney has faced the rejection of a POA from a bank when attempting to open an account for a trust for lack of specific authorization of trust creation and funding. Many attorneys draft their POA to grant authority to the agent to withdraw from or add to a trust; they fail to authorize the creation of new trust and the power to fund it from existing assets. However, in asset protection planning, Medicaid, and VA benefits planning, this is imperative. The creation of a trust (namely a qualified income trust) may be necessary to obtain long-term care Medicaid benefits for many clients.

B. Drafting Pointers

Consider using the following language (at a minimum):

1. My agent may carry out any financial transaction, including establishing and funding trusts on my behalf, to include Qualifying Income, Irrevocable, Revocable, Special Needs, and Pooled Trusts.

2. However, a more specific designation may be:

“My Agent may create and fund *inter vivos* trusts of any type, whether revocable or irrevocable, and whether or not I am a beneficiary. With respect to any trust created by me or on my behalf, my Agent may amend, modify, revoke, or terminate the trust. Further, my Agent may add property to an existing or subsequently created trust and accept transfers or distributions

from any trustee of any trust, including any trust over which I have a right of receipt or withdrawal, whether as grantor, beneficiary, or otherwise. Also, and without limiting the authority granted to my Agent in this Section, my Agent may: (i) create and fund a sole-benefit trust ([42 U.S.C. §1396p\(c\)\(2\)\(B\)](#)), a self-settled special needs trust ([42 U.S.C. §1396p\(d\)\(4\)\(A\)](#)); (ii) create and fund a special needs trust or Qualifying Income Trust in accordance with United States Code, [Title 42, §1396p\(d\)\(4\)\(A\) or \(B\)](#), or sign any documents allowing me to join any trust qualifying under [42 U.S.C. §1396\(d\)\(4\)\(C\)](#) and transfer assets into such a trust.”

VIII. MULTI-JURISDICTIONAL CONCERNS

A. Cautionary Tale

1. Whether your clients are snowbirds bound for Florida or just going to visit family out of state, we all want to make sure our clients are as protected as they can be – regardless of where they want to travel.
2. Many states require additional elements that Kentucky POAs do not and can cause both small hiccups and serious headaches for our clients.
3. We have had a client that had a healthcare emergency while traveling to visit a family member in Florida. On the trip home, while coming through Atlanta, they had to go to the hospital. They had a poorly drafted POA and could not be released by their agent to come home and had to spend 30+ days in a Georgia hospital instead of coming home to be near family.
4. Currently, 25 percent of all states require a notary and two witnesses. Further, 10 percent of all states have requirements for specific language that if not included will invalidate the POA. One jurisdiction requires a statutory form, and one state requires 12-point font. Yet, another state requires that the notary certificate begin the document. Most states requiring special language are concerned that the document explicitly warns both the principal and agent of the gravity of such delegation and receipt of authority.
5. With such a spectrum of requirements across the various jurisdictions, one can see that execution is chief among the concerns for a robust POA. Not every consideration can be accommodated; however, most can and explanation of the basis for Kentucky drafting requirements may solve a number of other issues.

B. Drafting Pointers

A few things to consider adding/modifying in your POA that may make your document more portable and useful to your clients:

1. Be sure to include notice at the top of the document to warn the signatory of the weightiness of the authority that is being granted

2. It is best to also include an acknowledgement from the receipt of authority.
3. Reminder – Kentucky does not allow electronic signatures on POAs. Therefore, all signatures should be wet-ink signatures.
4. It would be best to always use two witnesses and a notary in your POA executions.
 - a. If your POA is part of your estate planning package, you may already have your witnesses present.
 - b. We understand this may be difficult, particularly for small firms; however, it can be very important for your client in the long run.
5. You will want to date the POA itself (not just the notary block).
6. Twelve-point font is nearly standard – make sure you use it.

IX. A NOTE ABOUT THE LAST WILL AND TESTAMENT

- A. Whenever we review clients' previous documents as part of their estate planning, aside from their power of attorney, we always review any previous last will and testaments (LWTs) they may have executed.
- B. There are a few things that we commonly see missing that may negatively impact elderly clients that we would be remiss if we did not briefly touch on here:

1. Special needs provisions.

We regularly see LWTs that do not include any language regarding special needs (or supplemental needs) trusts. This language is imperative in protecting your client's beneficiaries (including their spouse) should one be on a means-based governmental benefits program.

2. Transfers to spouse via trust.

Similar to the above section, language that allows the spouses' disbursement to be directed to trust can provide additional protection for the estate planning and asset protection goals of the surviving spouse.

X. CONCLUSION

As you can see, even the most basic of estate planning documents requires a keen eye for potential pitfalls and creative thinking to discover what will help your client achieve their goals – no matter the situation that is to come. We have included a template for a power of attorney as well to help with a starting point for anyone who may need it.

DURABLE POWER OF ATTORNEY

I, **CLIENT**, the undersigned, of _____ (city), _____ County, Kentucky, am creating this Durable Power of Attorney intended to comply with Kentucky law. This Power of Attorney shall be effective immediately and shall not be affected by my subsequent disability or lapse of time. I hereby revoke all Powers of Attorney previously granted by me.

Section 1

APPOINTMENT OF ATTORNEY-IN-FACT

1.1 Attorney-in-Fact: I hereby appoint **RECIPIENT** to serve as my agent[s] and attorney[s]-in-fact, to act in my name in any and all business, financial, legal, healthcare, and other matters. **If two agents, each with (or without) independent authority to act.**

1.2 Successor Attorney-in-Fact: If the above-named agent[s] resigns, declines, becomes incapacitated, is not qualified to serve or is otherwise unable to serve, I appoint **SUCCESSOR** to serve as my successor Attorney[s]-in-Fact. **If two successor agents, each with (or without) independent authority to act.**

1.3 Reimbursement and Compensation: Pursuant to [KRS 457.120](#), my above-named Attorney[s]-in-Fact **is/are** entitled to reimbursement of expenses reasonably incurred on my behalf and to compensation that is reasonable under the circumstances, this would include reimbursement for travel, attending to my care, and management of finances.

Section 2

GENERAL POWERS

I grant full authority to my Attorney-in-Fact to make, acknowledge, and deliver for me and in my name all legal documents which my Attorney-in-Fact may deem proper in connection with any matter in which I may be interested; and generally, to act for me and in my name in all matters affecting my business or property with the same effect as though I were personally present and acting for myself.

This Power of Attorney shall be constructed in accordance with the laws of the State of Kentucky, specifically [Kentucky Revised Statutes Section §457.010-260](#). Without limiting the powers above, I hereby grant to my Attorney-in-Fact full power and authority to act for me with respect to all of the following matters:

2.1 Personal Maintenance

- i. Do anything reasonably necessary to maintain my customary standard of living;
- ii. to make any arrangements, contractual or otherwise, for my care at any hospital, hospice, nursing home, or similar establishment, or in my own residence should I desire it, and assure that all of my essential needs are met wherever I may be;
- iii. it is my intention to return home if I should be in a hospital, rehabilitation center, or nursing home, and my Attorney-in-Fact shall take all steps, including, but not limited to, executing any document, affidavit, or Declaration of Intent to Return Home on my behalf, to effectuate the same.

2.2 Tangible Personal Property

- i. To sell, dispose of, manage, recover, take possession, or exchange any tangible personal property I now own or may acquire.

2.3 Real Property

- i. To sell, exchange, and convey any interest I own in any kind of real property, including homestead property under Kentucky law, or the laws of any other state, and determine the terms of sale and grant options with regard to sales and to dispose of the sale proceeds;
- ii. to lease and manage any real property, I now own or may acquire, including my personal residence, including entering into agreements with tenants, hiring laborers to maintain, protect, repair, or improve the property.

2.4 Gifting

- i. My Attorney-in-Fact may make gifts of any interest I have in real or personal property ("my property") to any person or entity, in any amount, including my Attorney-in-Fact. It is my intention to not bind my Attorney-in-Fact to the restrictions found in [KRS 457](#), specifically [KRS 457.400](#). The value of any gift made pursuant to this Section may exceed the annual dollar limits of the federal gift tax exclusion under [Section 2503\(b\)](#) of the Internal Revenue Code. Further, any gift made pursuant to this Section must be made in accordance with, and to the extent my Attorney-in-Fact has actual knowledge of, the following:
 - a. my pattern of prior giving;
 - b. appropriate spenddowns in order to obtain Medicaid or other benefits;
 - c. the provisions contained in my estate planning or any other documents for beneficiaries to receive assets upon my death (for example, a trust, will, annuity or life insurance contract, or deed naming beneficiaries); or
 - d. the accomplishment of any prudent estate planning strategy deemed to be needed by my Attorney-in-Fact.

2.5 Banks and financial institutions

- i. Establish bank accounts of any type;
- ii. modify, terminate, make deposits to write checks on, make withdrawals from, and grant security interests in any account in my name which exists now or is hereafter established, including loans;
- iii. to enter any safe-deposit box or other place of safekeeping standing in my name alone or jointly with another and to remove the contents and to make additions;
- iv. exercise all authority afforded to my agent by [KRS 457.310\(1\)-\(11\)](#).

2.6 Stocks, Bonds, Commodities, Securities, Annuities, Retirement Plans, Options

- i. To invest, reinvest all or any part of my property in any other property of whatever type, real or personal, tangible or intangible, wherever it is located;

- ii. establish, terminate, or modify any investment account, brokerage account, retirement plan or otherwise, made by me or on my behalf, including changing beneficiary designation or ownership;
- iii. buy, sell, exchange, and manage all types of securities and financial instruments, including stocks, bonds, and mutual funds;
- iv. employ or terminate financial and investment advisors;
- v. waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- vi. withdraw from, transfer ownership, surrender, or purchase any commercial annuity, private annuity, or grantor retained annuity.

2.7 Digital Assets, Digital Devices, and Online Accounts

- i. To have access to deal with all Online Accounts, Digital Assets, and Digital Devices of all kinds, wherever located for appropriate management of my affairs. This includes the power to acquire, create, establish, access, control, modify, cancel, delete, transfer, and take possession of such accounts, assets, and devices;
- ii. however, if I have left directions to the custodian of such online account to not disclose certain information, and if the online tool allows for the modification or deletion of that direction, then such direction overrides the authority granted in this Section.

2.8 Operation of an Entity or Business and Fiduciary Positions

- i. To operate and manage any business in which I now or later own an interest in any manner my Attorney-in-Fact considers appropriate;
- ii. to act as director, general or limited partner, or associate or officer of the business;
- iii. to vote for business officers, to execute agreements necessary for the operation of the business, including the power to hire and fire employees, pay all business-related expenses including salaries and employee benefits, to make any decision needed in the operation of the business;
- iv. to resign, renounce any fiduciary position I hold now or in the future including personal representative, trustee, guardian, attorney-in-fact, and officer or director or a corporation;
- v. to exercise fiduciary powers that I have the authority to delegate, and to delegate any authority granted within this document to another agent.

2.9 Trusts

- i. Create and fund *inter vivos* trusts of any type, whether revocable or irrevocable, and whether or not I am a beneficiary. With respect to any trust created by me or on my behalf, my Attorney-in-Fact may amend, modify, revoke, or terminate the trust. Further, my Attorney-in-Fact may add property, my income and/or assets to an existing or subsequently created trust, and accept transfers or distributions from any trustee of any trust, including any trust over which I have a right of receipt or withdrawal, whether as grantor, beneficiary, or otherwise;
- ii. also, and without limiting the authority granted to my Attorney-in-Fact in this Section, my Attorney-in-Fact may:

- a. create and fund a sole-benefit trust in accordance with United States Code, [Title 42, Section 1396p\(c\)\(2\)\(B\)](#);
- b. create and fund a self-settled special needs trust in accordance with United States Code, [Title 42, Section 1396p\(d\)\(4\)\(A\)](#);
- c. create and fund a qualified income trust in accordance with United States Code, [Title 42, Section 1396p\(d\)\(4\)\(B\)](#) if such a trust should be deemed necessary to qualify me for Medicaid benefits, and make arrangements for the diversion of my income to such a trust as necessary to comply with applicable Medicaid rules and regulations; and
- d. sign all necessary documents to allow me to join any trust qualifying under United States Code, [Title 42, Section 1396p\(d\)\(4\)\(C\)](#) and transfer any portion of my assets to such trust.

2.10 Estates, Trusts, and Other Beneficial Interests

- i. Engage in estate transactions, including Receipt, Release, and Refunding Agreements and Waivers and Consents.

2.11 Taxes

- i. Deal with any tax authorities, including Federal, state, and local on my behalf;
- ii. represent me or sign any tax form on my behalf;
- iii. receive from or inspect confidential information in any of the Internal Revenue Service, state, local, or foreign tax authority;
- iv. receive and deposit checks in payment of any refund of Federal, state, local or foreign taxes, penalties, and interest.

2.12 Bankruptcy

- i. Act for me with respect to bankruptcy or insolvency, whether voluntary or involuntary, concerning me 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 I have in any property or other thing of value;

2.13 Insurance

- i. Engage in insurance transactions, including applying for, maintaining, canceling, paying premiums on, increasing or decreasing coverage, collecting borrowing from, transferring ownership, surrendering and/or purchasing insurance policies.

2.14 Benefits from Governmental Programs or Civil or Military Service

- i. My Attorney-in-Fact shall have unrestricted power to deal with, apply, and obtain maximum entitlements and benefits relating to the Social Security Administration, Veterans Administration, Social Services Departments, Social Security Disability Insurance, Supplemental Security Income, Medicaid, Medicare, Workers' Compensation and all other government benefits or entitlement programs, including claims, planning for eligibility, and submission of applications and appeals for which

I may be entitled. In this regard, my Attorney-in-Fact is authorized to execute and deliver any power of attorney or authorization-to-act form requested or required by a governmental agency. This power shall impose no affirmative duty on my Attorney-in-Fact to provide information and/or documentation to any government agency.

2.15 Claims and Litigation

- i. To engage in litigation involving me, my property, or my legal interests, including any property, interest, or person for which or whom I have or may have any responsibility;
- ii. to institute, supervise, prosecute, defend, intervene in, abandon, compromise, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial, or administrative hearings, actions, suits, or proceedings involving me in any way.

2.16 Arbitration Agreements

- i. Notwithstanding any language to the contrary in this Power of Attorney, my Attorney-in-Fact is prohibited from entering any pre-dispute arbitration agreements on my behalf.

Section 3 SPECIFIC POWERS

Without limiting the powers above, I specifically authorize my Attorney-in-Fact to exercise the powers listed below in this Section.

- 3.1** Create or change rights of survivorship, including but not limited to the creation of joint tenants with rights of survivorship accounts and joint ownership of other assets;
- 3.2** Create or change beneficiary designations, including but not limited to the creation of transfer on death accounts, pay on death accounts, and changes to beneficiary designations on retirement accounts, insurance products, annuities, and any other asset on which a beneficiary can be designated;
- 3.3** Exercise any right I may have to disclaim under Internal Revenue Code [26 U.S.C. §2518](#), as they may be amended or re-codified, or any law of similar import, thus granting to my Attorney-in-Fact all authority to disclaim that I may have;
- 3.4 Health Care Decisions:** My Attorney-in-Fact may make all health care decisions on my behalf. If I have executed a health care advance directive (including but not limited to a Designation of Health Care Surrogate) designating a Surrogate, the terms of the directive shall control if the directive and this Durable Power of Attorney are in conflict.
- 3.5 HIPAA Authorization:** My Attorney-in-Fact, shall have the power and authority of a designated representative for all purposes under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), [42 U.S.C. Section 1320d](#) and [45 C.F.R. Parts 160-164](#). My Attorney-in-Fact is authorized to execute releases and other documents necessary to obtain disclosure of individually identifiable health information, medical records, and patient files, including psychotherapy notes. This information includes, but is not limited to,

any written opinion or assessment of my decision-making capacity. This authorization and release apply to all information protected by HIPAA and shall only expire if I revoke this power of attorney.

Section 4

DURABILITY PROVISION

- 4.1** The authority granted herein shall be effective immediately upon signing. The authority granted herein shall not be affected by my subsequent disability, incapacity, or lapse of time. This Durable POA shall expire at the earlier of: (i) my divorce if the appointed Attorney-in-Fact is my spouse; (ii) my death; or (iii) my revocation of this Durable POA.

Section 5

INCAPACITY AND APPOINTMENT OF GUARDIAN

- 5.1** I intend hereby to render unnecessary any future proceeding for a court-appointed Conservator or Guardian in the event I become temporarily or permanently incapacitated or incompetent. Accordingly, I request, in the strongest possible terms, that any court that may receive or act upon a petition for the appointment of a Conservator or Guardian should deny such petition so long as my Attorney-in-Fact is acting under this power of attorney, or if my Attorney-in-Fact is the Petitioner or consents to the Petition. If a Conservator or Guardian is ever appointed for me in spite of this request, I direct that the person serving, or named to serve, as my Attorney-in-Fact under this power of attorney be named as my Conservator and/or Guardian.

I/We sign this Power of Attorney on this _____ day of _____ 20____.

CLIENT, *Principal*

RECIPIENT, *Recipient of Authority*

WITNESSES

The foregoing instrument was signed by the principal and the recipient of authority, in our presence, and we, in the principal's presence and the presence of each other, sign as witnesses.

(Witness Signature)

(Witness Signature)

(Print Name)

(Print Name)

COMMONWEALTH OF KENTUCKY
COUNTY OF _____

I certify that the foregoing Power-of-Attorney was subscribed and sworn to before me by **CLIENT**, principal, and **RECIPIENT**, recipient of authority, who acknowledged that it is their free act and deed, and subscribed, sworn to, and acknowledged before me by _____ and _____, witnesses, on this _____ day of _____ 20____.

PREPARED BY:

NOTARY PUBLIC

FOR YOUR INFORMATION ...

The Kentucky Law Update: Continuing Legal Education for All Kentucky Lawyers

The Supreme Court of Kentucky established the Kentucky Law Update Program as an element of the minimum continuing legal education system adopted by Kentucky attorneys in 1984. The KLU program is now offered in a hybrid format. The 2025 Kentucky Law Update is presented as a one-day, in-person program at nine different locations across the state. The 2025 On-Demand Kentucky Law Update is available virtually on the Kentucky Bar Association website from September 1st until December 31st. These two programs combined offer every Kentucky attorney the opportunity to meet the 12 credit CLE requirement, including the 2 ethics credit requirement **close to home and at no cost!** Judges can also earn continuing judicial education credits through the Kentucky Law Update.

This program was designed as a service to all Kentucky attorneys regardless of experience level. It is supported by membership dues and is, therefore, every member's program. The program is a survey of current issues, court decisions, ethical opinions, legislative and rule changes, and other legal topics of general interest that Kentucky practitioners encounter daily. As such, the program serves both the general practitioner and those who limit their practice to specific areas of law. The Kentucky Law Update program is not intended to be an in-depth analysis of a particular topic. It is designed to alert the lawyers of Kentucky to changes in the law and rules of practice that impact the day-to-day practice of law.

About the Written Materials and Presentations

The KLU written materials are the result of the combined efforts of numerous dedicated professionals from around Kentucky and elsewhere. The KBA gratefully acknowledges the following individuals who graciously contributed to this publication:

| | | |
|--------------------|-------------------|-----------------------|
| Jared Burke | Tressa Hamilton | Jeffery L. Sallee |
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| AppalReD Legal Aid | Kentucky Court of Appeals |
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| FNF Family of Companies | Lawyers Mutual of Kentucky |
| KBA Criminal Law Section | Legislative Research Commission |
| KBA Elder Law Section | Legal Aid of the Bluegrass |
| KBA Law Practice Committee | Legal Aid Society |
| KBA Office of Bar Counsel | New Americans Initiative |
| Kentucky Access to Justice Commission | Supreme Court of Kentucky |

Presentations are also made on a voluntary basis. To those who volunteer in this capacity, special gratitude is owed. Individuals who contribute to this program support the professional development of all members of the Kentucky Bar Association. We wish to express our sincere appreciation in advance to these individuals.

A special acknowledgment to the organizations, authors, presenters, moderators, and other 2025 Kentucky Law Update program volunteers will appear in the January 2026 issue of the *Bench & Bar*.

CLE and Ethics Credit

The one-day, in-person 2025 Kentucky Law Update program is accredited for 6 CLE credits, including 2 ethics credits. The 2025 On-Demand Kentucky Law Update is accredited for 9.25 CLE credits, including 3 ethics credits. One credit is awarded for each 60 minutes of actual instruction, as noted on the agendas provided on the KBA website.

The Kentucky Bar Association's 2025 Kentucky Law Update programs are accredited CLE activities in numerous other jurisdictions. Credit categories and credit calculations vary from state to state. CLE reporting information for other states will be provided at the registration desk at the in-person programs. The out-of-state information for the on-demand sessions will be available on the program website.

Kentucky judges: don't forget you can claim CJE credit for attending this program.

REMEMBER: Reporting attendance credits is now done online. Visit the Kentucky Bar Association [website](#) for reporting information. The activity numbers for the in-person and on-demand programs are listed on the corresponding agendas and must be used to report credits through the Member CLE Portal.

Evaluations

The 2025 Kentucky Law Update is *your* program, and your input *is* valued and needed. Links to the program evaluations for the live, in-person programs will be provided to all registrants via email. A link for the on-demand evaluation will be located on the program webpage. Please take a few minutes to complete the evaluation. We appreciate your assistance in improving this program.

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