



## **II. SCOPE OF AGENT'S AUTHORITY**

In accordance with the terms of Alabama's Uniform Power of Attorney Act, the authority of my legal agent or attorney-in-fact are specifically delineated below. If I have granted broad general authority below in every area addressed by the Alabama Code, it is my intention that my legal agent or attorney-in-fact shall have every right and authority that may be delegated to a legal agent under Alabama law.

### **A. General Authority**

I hereby grant to my legal agent or attorney-in-fact the authority to act as my legal representative with regard to all of the matters specifically authorized by this instrument. This appointment should not be considered to be a general appointment unless so indicated below, and the interpretation of this instrument shall be governed by the Alabama Uniform Power of Attorney Act, Alabama Code §26-1A-101, et. Seq. (1975) as well as Alabama case law interpreting the rights and duties of legal agents under a power of attorney instrument.

With regard to each of those subjects over which I have granted specific authority below to my legal agent, I authorize 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;
- (10) do any lawful act with respect to the subject and all property related to the subject; and
- (11) access and remove contents of any safe deposit box I have at any institution.

In addition, I hereby grant to my legal agent the following specific special authority to:

- (1) create a revocable or irrevocable trust and to transfer/fund assets into a trust for any reason including to protect my assets even if doing so benefits my agent;
- (2) create and fund an irrevocable Qualified Income Trust (a.k.a. "Miller Trust"), on my behalf and establish any account at any financial institution for the purpose of holding funds for the purpose of allowing me to qualify for Medicaid benefits and to execute any documents necessary to create a first-party special needs trust with a pooled trust company including the Alabama Family Trust, pursuant to 42 U.S.C. §1396p(d)(4)(C).
- (3) create or change a beneficiary designation;
- (4) delegate authority granted under this power of attorney;
- (5) waive my right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- (6) exercise fiduciary powers that I have the authority to delegate;
- (7) create or change rights of survivorship;
- (8) to make transfers or gifts to any trust (including an asset protection trust pursuant to item "1" in this section) established for me notwithstanding any other restrictions on gifting in section "O" herein and below; and
- (9) to make gifts to individuals (including my agent), notwithstanding any other restrictions on gifting in section "O" herein and below, but only if it is pursuant to a strategy to allow me to qualify for Medicaid or other government benefits more quickly, if I need long term care and Medicaid or other government benefits will pay for that long term care.

B. Real Property Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with respect to real property that I myself may take, including but not limited to any and all authority outlined in Alabama Code §26-1A-204 (1975).



C. Personal Property Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with respect to my personal property that I myself may take, including but not limited to any and all authority outlined in Alabama Code §26-1A-205 (1975).

D. Stocks and Bonds Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with respect to my stocks and bonds that I myself may take, including but not limited to any and all authority outlined in Alabama Code §26-1A-206 (1975).

E. Commodities Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with respect to my commodities that I myself may take, including but not limited to any and all authority outlined in Alabama Code §26-1A-207 (1975).

F. Banks and Financial Institutions Authority

I hereby grant to my legal agent or attorney-in-fact any and all authority to communicate, transact business, and in every way act on my behalf with regard to banks and financial institutions. In that regard, I grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with regard to my accounts and holdings that I may undertake myself, including but not limited to any and all authority outlined in Alabama Code §26-1A-208 (1975).

G. Business Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts that I myself may take with respect to any business that I may own or operate, including but not limited to any and all authority outlined in Alabama Code §26-1A-209 (1975).

H. Insurance and Annuities Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with respect to any insurance or annuities that I may own or in which I have an interest, including but not limited to any and all authority outlined in Alabama Code §26-1A-210 (1975).

I. Estates and Trusts Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts to enforce my rights with respect to estates, trusts and other beneficial interests (which may include a trust, probate estate, guardianship, conservatorship, escrow, or custodianship or a fund from which I may become or claim to become entitled to a share or payment) that I may undertake myself, and including but not limited to any and all authority outlined in Alabama Code §26-1A-211 (1975). This power shall include the power to modify or terminate a trust pursuant to Section 19-3B-411(a). I also grant authority to my legal agent or attorney-in-fact to enforce

my rights I may have as an heir or beneficiary of a trust or estate, including but not limited to engagement of attorneys-in-fact and/or appearances in court proceedings, and to exercise or decline any rights I may have, right of election, denial or consent I may have as a beneficiary of any trust or heir to any estate, including, but not limited to, my rights I may have as surviving spouse to a decedent.

#### J. Claims and Litigation Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts that I may undertake myself with regard to any present or potential claim, litigation, or negotiated settlement, including but not limited to any and all authority outlined in Alabama Code §26-1A-212 (1975).

#### K. Personal and Family Maintenance Authority

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts with respect to maintaining the day-to-day affairs of me and my family, including but not limited to any and all authority outlined in Alabama Code §26-1A-213 (1975).

#### L. Government Benefits Authority

Government benefits are defined under Alabama Code §26-1A-214 (1975) as “any benefit, program, or assistance provided under a statute or regulation including, but not limited to, Social Security, Medicare, and Medicaid. This section shall also include any VA benefits to which I may be entitled.

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all act that I may undertake myself with regard to the provision of government benefits, as defined above, including but not limited to any and all authority outlined in Alabama Code §26-1A-214 (1975).

#### M. Retirement Plan Authority

Retirement plans are defined under Alabama Code §26-1A-215 (1975) as “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 Section 408, 26 U.S.C. Section 408, as amended;
- (2) A Roth individual retirement account under Internal Revenue Code Section 408A, 26 U.S.C. Section 408A, as amended;
- (3) A deemed individual retirement account under Internal Revenue Code Section 408(q), 26 U.S.C. Section 408(q), as amended;
- (4) An annuity or mutual fund custodial account under Internal Revenue Code Section 403(b), 26 U.S.C. Section 403(b), as amended;

- (5) A pension, profit-sharing, stock bonus, or other retirement plan qualified under Internal Revenue Code Section 401(a), 26 U.S.C. Section 401(a), as amended;
- (6) A plan under Internal Revenue Code Section 457(b), 26 U.S.C. Section 457(b), as amended; and
- (7) A non-qualified deferred compensation plan under Internal Revenue Code Section 409A, 26 U.S.C. Section 409A, as amended.

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all act that I may undertake myself with regard to any retirement plan as defined above in which I may have an interest, including but not limited to any and all authority outlined in Alabama Code §26-1A-215 (1975).

#### N. Authority with Regard to Taxes

I hereby grant to my legal agent or attorney-in-fact the authority to undertake any and all acts that I may undertake myself with regard to any state or federal taxes for which I am liable, including but not limited to any and all authority outlined in Alabama Code §26-1A-216 (1975).

#### O. Gifting Authority

Gifts for the benefit of a person are defined under Alabama Code §26-1A-217 (1975) as “a gift to a trust, an account under the Uniform Transfers to Minors Act, and a tuition savings account or prepaid tuition plan as defined under Internal Revenue Code Section 529, 26 U.S.C. Section 529, as amended.”

With regard to the giving of gifts for the benefit of an individual, my legal agent or attorney-in-fact shall have only the following authority (choose one):

\_\_\_\_\_ general gift giving authority, as limited by Alabama Code §26-1A-217(b) (1975).

\_\_\_\_\_ express authority to make gifts for the benefit of individuals that exceed the limitations of Alabama Code §26-1A-217(b) (1975).

\_\_\_\_\_ express authority to make gifts for the benefit of individuals that exceed the limitations of Alabama Code §26-1A-217(b) (1975) but which are limited to no more than \$\_\_\_\_\_ per person per year and no more than \$\_\_\_\_\_ in total gifts made to individuals per year.

In making such gifts, my legal agent or attorney-in-fact shall at all times comply with Alabama law. In that regard, my agent shall make no gift unless my agent determines that such a gift is consistent with my objectives, if known to the agent. If the agent does not know or understand my gift giving objectives, the agent may only make such gifts as are consistent with my best interests based upon all relevant factors, including the following, as required by Alabama Code §26-1A-217I (1975):

- (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.

EAP I grant no authority to my legal agent or attorney-in-fact to make gifts other than those addressed in Section "A" of this document.

P. Additional Authority

In addition to the specific authority granted above, my legal agent or attorney-in-fact shall also have the following specific authority:

- (1) To serve as my Guardian or Conservator in the event appointment of the same is deemed necessary pursuant to legal process under Alabama Code §26-1A-108 (1975).
- (2) If I have not designated a specific legal agent for health care decision-making, to arrange for my care at home or by admitting me to an appropriate facility, and, effective immediately, to serve as my personal representative as that term is used in 45 C.F.R. §164.502 (commonly known as "HIPAA privacy regulations"). To that end, my legal agent shall have the same access to my personal health information as I have myself, including, but not limited to, viewing and obtaining copies of any and all of my personally identifiable medical records of any kind whatsoever, and consulting with medical providers. Furthermore, I authorize covered medical entities to provide such access and to cooperate with my agent under this instrument.
- (3) To enter into a transaction which secures caregivers or health care services or advocacy services on my behalf, even if this transaction is with my attorney-in-fact.
- (4) To sign all contracts, obligations and admissions papers for life care facilities, assisted living facilities, hospitals, medical care, residential care and if necessary, nursing home care but without the authority to enter into any arbitration agreement which would waive the principal's right to a trial by jury.
- (5) To change bank and/or credit union account titles and/or create new bank accounts so as to place my income from Social Security and/or pensions or other income in one or more automatic deposit accounts in a Qualified Income Trust and to deal in said accounts as Trustee pursuant to said Trust Agreement.

- (6) Transfer any and all assets of mine, including, but not limited to, bank accounts, settlement proceeds, securities and real estate, to all trusts I may have created or which may have been created for me or for my benefit, including but not limited to special needs trust.
- (7) Digital Assets. My agent has (i) the power to access, use, and control my digital device, including, but not limited to, desktops, laptops, peripherals, storage devices, mobile telephones, smart phones, and any similar device which currently exists or exists in the future as technology develops for the purpose of accessing, modifying, deleting, controlling or transferring my digital assets, and (ii) the power to access, modify, delete, control, and transfer my digital assets, including, but not limited to, any emails, email accounts, digital music, digital photographs, digital videos, software licenses, social network accounts, file sharing accounts, financial accounts, domain registrations, web hosting accounts, tax preparation service accounts, on-line stores, affiliate programs, other online programs, including frequent flyer and other bonus programs, and similar digital items which currently exist or exist in the future as technology develops.

### **III. AGENT'S DUTIES AND LIABILITIES**

#### **A. Agent's Duties and Standard of Care (Pursuant to Alabama Code §26-1A-114 (1975))**

- (1) My legal agent under this instrument shall:
  - (a) Act in accordance with my expectations, if known, and, if unknown, act in my best interests.
  - (b) Act in good faith.
  - (c) Act within the scope of the authority I have granted.
- (2) Unless I have waived such performance below in the special provisions section, my legal agent shall:
  - (a) Act loyally in the performance of his duties.
  - (b) Avoid conflicts of interest that may impair performance.
  - (c) Act with care, compassion and diligence typically exercised by agents under similar circumstances.
  - (d) Keep records of all transactions made on my behalf.



- (e) Cooperate with those appointed to make health care decisions on my behalf to carry out my expectations, if known, and, if unknown, to act in my best interests.
  - (f) Attempt to preserve my estate plan, so long as that plan remains in my best interests, considering all relevant factors.
- (3) Use any special skills or expertise possessed by the agent for my benefit.
- (4) Use reasonable care and diligence in the delegation of authority to others.

B. Agent's Liability

- (1) A legal agent or attorney-in-fact named in this instrument may be liable to the principal if:
  - (a) The agent has actual knowledge of an imminent breach of fiduciary duty by another agent and fails to warn the principal.
  - (b) The agent has actual knowledge of an imminent breach of fiduciary duty by another agent and fails to take action to protect the principal, if the principal is incapacitated.
  - (c) The agent has breached a fiduciary duty or duty of loyalty owed to the principal.
  - (d) The agent has breached the duties owed under Alabama Code §26-1A-114 (1975) or has breached a duty owed under common law principles applicable to the performance of agents.
- (2) A legal agent or attorney-in-fact shall not be liable:
  - (a) For acts taken in good faith and without knowledge of the revocation or termination of the durable power of attorney, and such acts shall be binding upon the principal.
  - (b) For acts taken in good faith that nonetheless reduce the principal's estate.
  - (c) For the decline in value of the principal's property, unless the agent has breached a fiduciary duty.
  - (d) For errors in judgment or acts of those to whom the agent delegated authority, so long as the agent exercised care, competence and diligence



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 Official Public Records  
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*Allen S. Bayl*

in the selection and monitoring of that individual.

**IV. OPERATIONAL PRINCIPLES**

1. Although I do not intend to pay a fee to my legal agent, my agent is entitled to reimbursement of reasonable expenses related to serving as my agent as well as other statutory fees that may be otherwise available.
2. An agent or attorney-in-fact named as an alternate may not act until the primary agent has resigned, died, become unable or has refused to serve.
3. An agent appointed under this instrument accepts authority by taking action or performing in a manner consistent with acceptance or by other conduct indicating acceptance.
4. Any action taken in good faith pursuant hereto without actual notice of my death shall be binding upon me and my successors in interest the same as if I had taken such action myself while alive.
5. Pursuant to Alabama Code §26-1A-106(d) (1975), a copy of this durable power of attorney shall have the same force and effect as the original.

IN WITNESS WHEREOF, I, as Principal, have signed this Durable Power of Attorney, consisting of 10 pages, this 24<sup>th</sup> day of July, 2024.

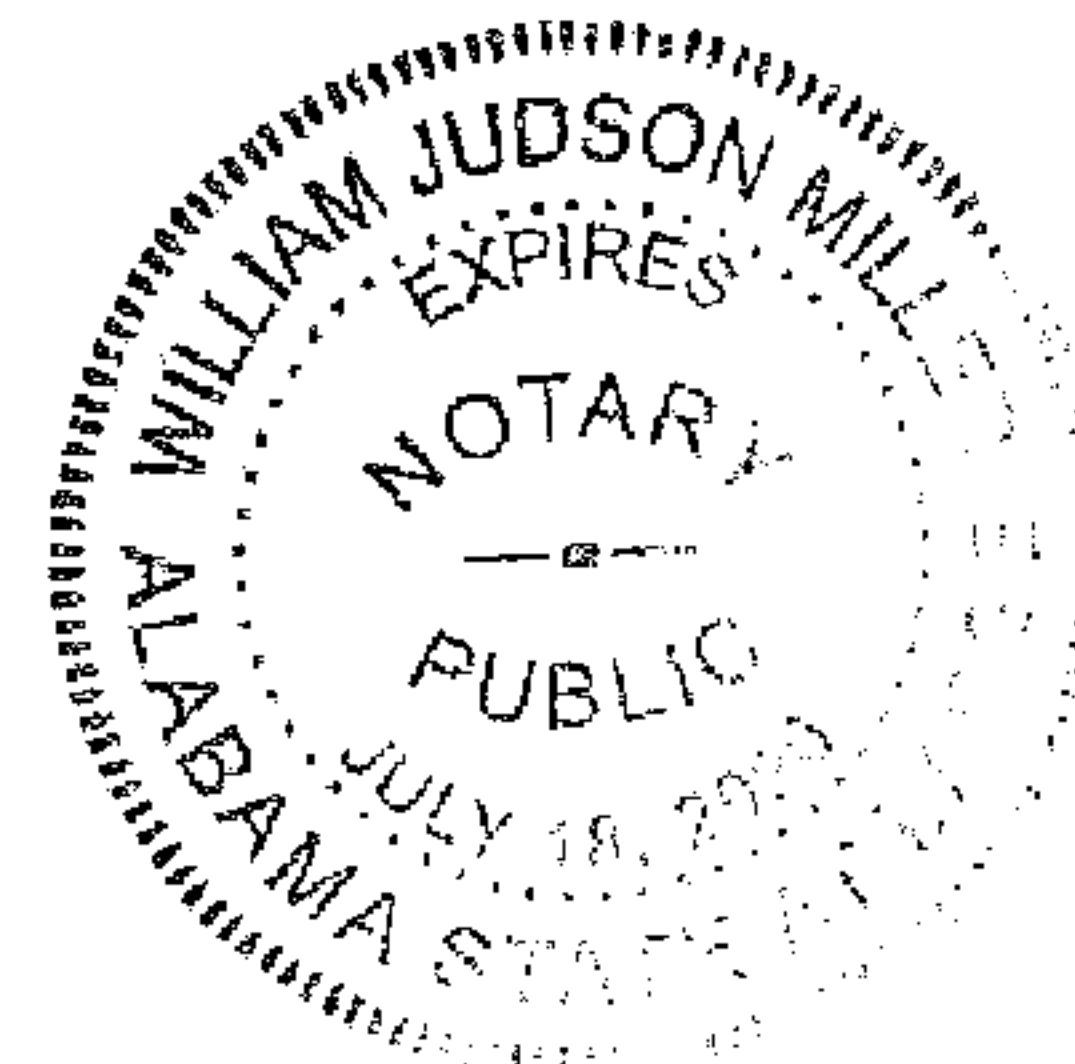
*James Berton Penney*  
 James Berton Penney

STATE OF ALABAMA                     )  
   )  
 COUNTY OF CALHOUN                )

I, the undersigned authority in and for said County in said State, hereby certify that **James Berton Penney**, whose name is signed to the foregoing Durable Power of Attorney, and who is known to me, acknowledged before me this day, that, being informed of the contents of said instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 24<sup>th</sup> day of July, 2024.

Notary Public *William Judson Mills*



Prepared by:  
 James Penney  
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 Estaboga, AL 36260