

Uniform Power of Attorney Act

Melissa Bridges, Esq

Bodman, PLC

mbridges@bodmanlaw.com

What is the UPOAA?

The Uniform Power of Attorney Act (“UPOAA”) is a uniform act published by the National Conference of Commissioners on Uniform State Laws in 2006. It was signed into law into Michigan on November 7, 2023 and has an effective date of July 1, 2024.

The bill amends Michigan’s Estates and Protected Individuals Code (“EPIC”) (previously at MCL 700.5101-700.5520) by making powers of attorney more accessible to residents, thereby reducing the number of guardianships and conservatorships appointed statewide.

What is a Power of Attorney?

A Power of Attorney (“POA”) is a legally binding agreement that assigns decision making ability to another individual.

The two parties: the principal and the agent.

When is a POA Binding?

All POAs are binding once they are properly signed (effectuated) by the principal. To be enforceable, a POA must be signed by either the principal or by another individual in the principal's presence directed by the principal to sign. It must also be notarized (acknowledged) **or** be signed in the presence of two witnesses (one may be a notary). Witnesses may not be the agent. If the POA is signed at the direction of the principal, it must also be signed by two witnesses, regardless of whether it is acknowledged.

Acceptance of a POA

Under the UPOAA, it is difficult to reject a POA. You must accept an acknowledged POA or request an agent's acknowledgment no later than seven business days after being presented the power for acceptance.

If you request an acknowledgment, you have to accept the POA no later than five days after receipt of the acknowledgment.

What About Questions on the POA?

You have the ability to ask for a certification under penalty of perjury, including, as may be appropriate for the intended purpose, an affidavit in recordable form, by an agent or an attorney at law who represents the principal or agent regarding any factual matter concerning the principal, agent, or the POA.

You can ask for an English translation.

You can ask for an opinion of counsel, so long as you explain the reason for the request. MCL 556.219.

What About Two Agents?

A principal may designate two or more persons to act as co-agents. Unless provided otherwise, you may assume that they have the authority to act independently.

Authority of an Agent under POA

Unless limited under the POA, references to the UPOAA will grant broad authority, including:

- Create, amend, revoke or terminate an inter vivos trust;
- Make a gift;
- Create or change the rights of survivorship;
- Create or change a beneficiary designation;
- Delegate authority granted under the power of attorney;
- Waive the principal's right to be a beneficiary of a joint and survivor annuity;
- Exercise fiduciary powers that the principal has the authority to delegate;
- Exercise authority over the content of electronic communications sent or received by principal; and
- Exercise authority over any bank, securities, or other financial account in a foreign country.

Authority of Agent Under POA Cont...

For banking powers, the relevant section is MCL 556.308. Powers include:

- ▶ Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
- ▶ Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
- ▶ Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
- ▶ Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
- ▶ Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;
- ▶ Enter a safe deposit box or vault and withdraw or add to the contents;

Authority of Agent Under POA Cont...

- ▶ Borrow money and pledge as security personal property of the principal necessary to borrow money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- ▶ Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
- ▶ Receive for the principal and act on a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
- ▶ Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
- ▶ Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

What About Gifting?

Under the UPOAA, unless there is limiting language in the POA regarding gifting, the agent has general authority to make outright gifts to a person or persons that the agent determines is consistent with the principal's objectives or in the principal's best interests. MCL 556.317 specifically lists that some of these purposes could be to dispose of assets for nursing care, history of making gifts, etc. This section does not limit gifts to persons other than the agent.

Can the Agent Act on Trust Accounts?

Under MCL 556.311, the agent does not have such an authority based on a general grant of powers under this section. The POA would have to be clear regarding the action by the agent on a trust account.

Liability for Rejection

Under MCL 556.220, if you reject a valid POA or request a different POA, you could be responsible for attorney fees and costs associated with a court order directing you to mandate acceptance.

Liability for Reliance

Any person who in good faith accepts an acknowledged POA without actual knowledge that the signature is not genuine, gets a presumption that the signature is valid.

Any person who relies on a POA without actual knowledge that it is void, invalid, or terminated, or that the agent's authority is void, invalid, or terminated, or that the agent has exceeded their authority, is exempt from liability. MCL 556.219.

Are There Instances You Can Reject?

Yes, if you have reported the principal for possible financial exploitation as a vulnerable adult, you are not required pending the results of the investigation.

Termination of a POA

A power of attorney may terminate if any of the following occur:

- ▶ Death of the principal;
- ▶ Principal becomes incapacitated and the power of attorney is not durable;
- ▶ The principal revokes the power of attorney;
- ▶ An event occurs that terminates the power, according to the terms of the power of attorney;
- ▶ The agent dies, becomes incapacitated, or resigns;
- ▶ There is a legal separation of the agent and principal, unless the power of attorney states otherwise; or
- ▶ The power of attorney terminates according to the legal contract.

Termination of Agent

Separately, an agent's authority terminates if any of the following occur:

- ▶ The principal revokes the authority;
- ▶ The agent dies, becomes incapacitated, or resigns;
- ▶ An action is filed for the dissolution or annulment of the agent's marriage to the principal or for the legal separation of the agent and the principal (unless otherwise provided);
- ▶ The power of attorney terminates.

What About Bad Acts of the Agent?

Unless you have actual knowledge, you have no duty to ensure that the agent is meeting the requirements of an agent under the UPOAA.

Existing POAs

Referred to as “vintage” in the UPOAA, these are still effective and are subject to the same rules of EPIC that applied prior to the UPOAA.

Questions?