

Uniform Power of Attorney Act | Fact Sheet

Overview

A *power of attorney* (POA) is a legal document used by an individual (the *principal*) to name someone else (the *agent*) to make financial decisions and act on the principal's behalf. A power of attorney can be used to plan for the possibility of future incapacity and to avoid the court appointment of a guardian or conservator. In most states, a POA that remains effective after incapacity is called a *durable power of attorney*.

To be useful as an incapacity planning tool, a POA must give broad authority to the agent. A POA—whether general or durable—is private; there is no oversight by a court as there is supposed to be for a guardian or conservator.

The Problem

State laws often are unclear about the duty owed by the agent to the principal. This combination of broad authority, lack of oversight, and unclear duties makes it possible for agents to misuse their authority. Often called *power of attorney abuse*, this misuse of authority is a form of financial exploitation. POA abuse takes many forms, including:

- Forging the principal's signature on a POA or making a fraudulent document;
- Spending the principal's money for the benefit of the agent;
- Making gifts when the POA does not provide authority to do that; and
- Undermining the principal's estate plan by giving assets to unintended recipients.

A POA will not be useful if third parties, such as financial institutions, refuse to honor an agent's directions. Third parties that refuse to honor a POA because they believe the agent is misusing authority may help prevent exploitation of the principal. Sometimes, however, third parties refuse to honor the POA for less legitimate reasons, such as because it is old or from another state.

Why Wyoming Should Adopt the UPOAA

Wyoming's current POA law is sparse (three sections) and fails to provide necessary guidance or clarity. The *Uniform Power of Attorney Act* (UPOAA), is a comprehensive law aimed to promote autonomy and to prevent, detect, and redress POA abuse. The UPOAA would strengthen Wyoming POA law to better protect its residents and to benefit its businesses and courts.

The UPOAA contains 21 provisions that protect against abuse and promote choice. Wyoming should adopt because:

- **It preserves the advantages of current power of attorney statutes.** A power of attorney is a low-cost, flexible means of granting decision-making authority to another person. Each principal can alter the default terms to create a document that fits specific needs. UPOAA preserves those important benefits while clarifying and modernizing the law.
- **It strikes a balance between protection and convenience.** Unless the principal states otherwise in the power of attorney document, an agent who has general authority to act for the principal may perform most types of common transactions under UPOAA. However, an agent may not perform certain transactions that pose a high risk to the principal's assets, such as changing the principal's will or delegating the agent's authority to another person, unless the principal expressly grants that authority. UPOAA strikes the right balance by granting agents the broadest authority feasible while still protecting the principal from fraud.
- **It helps prevent elder exploitation and abuse.** Under many power of attorney statutes, an agent who commits fraud with a power of attorney may be prosecuted criminally, but is not required to reimburse the principal for any loss. UPOAA imposes clear fiduciary duties on an agent to always act in the principal's best interest. If the agent violates the rules, UPOAA requires the agent to reimburse the principal or the principal's successors in addition to any criminal sanctions imposed by other law.
- **It protects people who deal with the agent under a power of attorney.** Any third party who in good faith accepts a signed, notarized, power of attorney may rely on a legal presumption that the signature is genuine. If the agent commits fraud, only the agent is liable – not the party that relied on the agent's apparent authority. A third party who is asked to accept a power of attorney also has the right to request an affidavit of any relevant factual matter, an English translation, or an opinion of counsel. If an employee accepts a power of attorney without actual knowledge that the power of attorney is invalid, neither the employee nor the employer may be held liable.

The **Uniform Power of Attorney Act** will enhance the usefulness of POA in Wyoming, while at the same time protecting the principal, the agent, and those who deal with the agent.