



Why States Should Adopt the...

Uniform Power of Attorney Act (2006)

The Uniform Law Commission first incorporated the concept of a "power of attorney" in the 1969 Uniform Probate Code, revising it again in 1987. Originally viewed as an inexpensive method of surrogate decision making for people of modest means, the durable power of attorney is now widely used by Americans for incapacity planning as well as convenience. The Uniform Power of Attorney Act (2006) (UPOAA), if widely enacted, will clarify and modernize this now largely divergent law. Every state should adopt UPOAA because it:

- Preserves the effectiveness of durable powers as a low-cost, flexible, and private form of surrogate decision-making.
- Provides mandatory provisions that provide safeguards for the protection of the principal, the agent, and persons who are asked to rely on the agent's authority.
- Modernizes the various areas of authority that can be granted to an agent and requires express language authorization by the principal where certain authority could dissipate the principal's property or alter the principal's estate plan.
- Provides step by step prompts are given for designation of agent, successor agents, and the grant of authority through an optional statutory form.
- Offers clearer guidelines for the Agent, who is often a trusted family members such as:
 - Recognizes that an agent who acts with care, competence and diligence for the best interest of the principal is not liable solely because he or she also benefits from the act or has conflicting interests
 - Permits a Principal to include in the power of attorney an exoneration provision for the benefit of the agent.
 - Provides ways for the Agent to give notice of resignation if the Principal is incapacitated.
- Encourages acceptance of a power of attorney by third parties by:
 - Provides broad protections for the good faith acceptance or refusal of an acknowledged power of attorney.
 - Recognizes portability of powers of attorney validly created in other states.
 - Offers an additional protective measure for the Principal by providing that third persons may refuse the power if they have the belief that "the principal may be subject to physical or financial abuse, neglect, exploitation or abandonment by the Agent or person acting for or with the agent, make a report to the appropriate adult protective service agency."

The Uniform Power of Attorney Act (2006) will enhance the usefulness of durable powers while at the same time protecting the principal, the agent, and those who deal with the agent. It should be enacted in every jurisdiction as quickly as possible.

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