



WHY YOUR STATE SHOULD ADOPT THE UNIFORM POWER OF ATTORNEY ACT

A power of attorney is a simple document that permits one person to appoint another person to act as his or her agent. The appointer, or “principal” can give the agent as much or as little authority as is appropriate. Powers of attorney are very common and are already legal throughout the United States. However, the law governing the creation and use of powers of attorney varies widely from state to state. This causes problems not only for principals and agents, but for anyone who is asked to accept a power of attorney and must determine its validity before dealing with the agent.

The Uniform Power of Attorney Act (UPOAA) standardizes the law and improves upon older power of attorney statutes by offering greater protections to principals, agents, and third parties that are asked to accept a power of attorney. States should enact UPOAA because:

- ***UPOAA 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.
- ***UPOAA 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.
- ***UPOAA helps prevent elder 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.
- ***UPOAA 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 from the agent 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 UPOAA is a modern, comprehensive act that encourages the use and acceptance of powers of attorney while protecting principals, agents, and those who deal with agents. It should be enacted in every state as soon as possible.

For further information about the Uniform Power of Attorney Act, please contact ULC Chief Counsel Benjamin Orzeske at (312) 450-6621 or borzeske@uniformlaws.org.

The ULC is a nonprofit formed in 1892 to create nonpartisan state legislation. Over 350 volunteer commissioners—lawyers, judges, law professors, legislative staff, and others—work together to draft laws ranging from the Uniform Commercial Code to acts on property, trusts and estates, family law, criminal law and other areas where uniformity of state law is desirable.