

MEMORANDUM

To: Chair Sears and Members of the Senate Judiciary Committee
From: Richard T. Cassidy, Esq. of Rich Cassidy Law, P.C.
Date: April 3, 2023
Re: H. 227, the Vermont Uniform Power of Attorney Act

Thank you taking up H. 227, the Vermont version of the Uniform Power of Attorney Act (UPOAA) that passed the House.

I would very much like to testify in person, but am having total replacement surgery on April 4, 2023, and expect to be recuperating for 3 to 6 weeks. This written testimony will have to stand in my place.

I have served as one of Vermont's five Commissioners since being appointed by Governor Howard Dean in 1994 and have been reappointed by each succeeding Vermont Governor. I was the President of the Uniform Law Commission in 2015 – 2017.

H.227 is a very faithful version of the uniform act produced by the Uniform Law Commission (ULC). The ULC is a non-profit organization formed in 1892 to draft non-partisan model legislation in the areas of state law for which uniformity among the states is advisable. The State of Vermont has a long and successful history of enacting ULC acts including the Uniform Commercial Code, the Uniform Trust Code, and more than one hundred others.

Uniform Acts are prepared through a rigorous process. A drafting committee of a dozen or more lawyers and assisted by a legal scholar who serves as the reporter, creates a draft, and reviews the draft at multiple day-long meetings over the course of a year. Outside observers can participate in the drafting committee process, and many often do so. The draft is then presented on the floor of the Annual Meeting of the Uniform Law Commission where it is literally read, line by line. Any of the hundreds of lawyers, judges and law professors appointed by their states to serve as Uniform Law Commissioners can comment or question the draft or propose amendments. The process is then repeated for a second year and then, after a second line by line reading, the draft is presented for a roll call vote by the states, the District of Columbia and the Territories of Puerto Rico and the U.S. Virgin Islands.

A power of attorney creates an agency relationship – a “principal” names another person in the POA document (the “agent”) to act on the principal's behalf. The power can be either durable or non-durable. Durable powers create a more permanent agency that continues even if the principal loses the capacity to act for himself or herself.

Durable powers of attorney have become increasingly common over the past thirty years and are now usually included as part of a standard estate plan. They are popular with estate planners and their clients as a simple, inexpensive alternative to guardianship that provides greater autonomy for the principal without the added expense of judicial oversight. However, powers of attorney can also be abused by unscrupulous agents and are sometimes used as a tool to commit elder financial abuse.

UPOAA is a comprehensive revision of previous uniform laws governing powers of attorney. This updated version was completed in 2006 and has been adopted so far in some 30 states. The UPOAA

includes the following improvements over older power of attorney statutes:

- Safeguards against elder abuse, including the ability for any interested party to challenge whether an agent is acting in the best interest of the principal by filing an action with the court;
- A default standard of fiduciary duties clearly spelled out for agents;
- Express remedies and sanctions for agent abuse;
- Statutory forms with instructions and warnings for both the principal and the agent;
- New provisions to encourage wider acceptance of powers of attorney;
- An enhanced liability shield for parties that accept a notarized power of attorney without knowledge of the agent's fraud;
- A portability provision to help encourage reciprocal acceptance of powers of attorney by adopting jurisdictions;
- Automatic revocation of a spouse-agent's authority upon divorce;
- Clearer provisions for an agent's resignation and termination of authority; and
- An innovative section requiring express authorization for certain types of high-risk powers.

The UPOAA has been endorsed by AARP and approved by the American Bar Association Commission on Law and Aging because of its provisions to combat elder financial abuse. It was drafted in close consultation with the American Bankers Association and includes certain provisions to encourage acceptance by financial institutions and protect them from unwarranted liability.

The fact that the UPOAA has already been widely adopted will help ensure that powers of attorney adopted in Vermont, by Vermonters will be widely and easily accepted in other states/

In sum, H. 227 represents a great improvement over the current power of attorney law in the Vermont. I ask for your support to enact this important legislation.