

Michigan Adopts the Uniform Power of Attorney Act

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If you have executed a Power of Attorney (**POA**) to give a trusted individual the ability to access your financial accounts or sign documents on your behalf, whether in case of emergency or simply for convenience, or if you are thinking about doing so, a new law in Michigan impacts the way surrogate authority is granted.

By executing a POA, you grant someone else important powers to act on your behalf. The person you appoint is called your “**Agent**.” A POA can be “**Durable**” or “**Non-Durable**.” A Durable POA can be particularly useful because, unlike a Non-Durable POA, your Agent’s authority to act on your behalf will not be terminated even if you are incapacitated. A new law in Michigan is designed to provide for increased accessibility, effectiveness, and standardization for POAs.

The Uniform Power of Attorney Act (**UPOAA**) was signed into law by Governor Gretchen Whitmer on November 7, 2023, and will take effect on July 1, 2024. Given the increased mobility of the population and modernization of technology, the UPOAA codifies state legislative trends across the United States and creates a cohesive set of best practices for drafting and utilizing POAs. To date, a version of the UPOAA has been enacted in 31 states.

The UPOAA accomplishes several important objectives:

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- **It promotes uniform acceptance of notarized POAs.** No longer will third parties be permitted to refuse to accept a validly executed POA simply because the document didn't clear the entity's legal department. The UPOAA provides sanctions for persons or entities who refuse to accept an acknowledged POA. "Acknowledged" means verified before a notary public (or other individual authorized to take acknowledgements).
 - **It provides protection for third parties who rely on notarized POAs.** The UPOAA is designed to protect third parties who accept a notarized POA in good faith, and also provides clear circumstances where acceptance of a POA can and should be denied. If there is any doubt, the third party can request a certification or opinion of counsel as to the validity of the POA within a seven-day window of the presentment of the document.
 - **It provides a series of default rules for POAs.** If the POA is executed in compliance with certain requirements, the POA will automatically be durable under the UPOAA. This is a change from current Michigan law which mandates that there be an affirmative statement as to durability in the POA. There are other helpful default rules in the UPOAA including provisions regarding the determination of incapacity, and the coordination of co-agents' authority, successor agents, and court-appointed guardians and conservators.
 - **It promotes accessibility and frees up judicial resources.** Michigan has had a statutory form Will and statutory form Designation of Patient Advocate for some time. Now, there will be a statutory form Power of Attorney. The purpose of the form is to give the public easy access to creating POAs, which will decrease the necessity of guardianships and conservatorships. However, as clearly stated on the form, because of the important authority granted in POAs, individuals should use caution in preparing these important forms without the assistance of counsel.

Given these sweeping changes promulgated by the UPOAA, it's a good time to revisit your POA. The UPOAA applies to all POAs, even those executed prior to July 1, 2024. As long as your POA was validly executed at the time it was signed, your POA will remain valid – but you may want to confirm that your POA is notarized. Many individuals executed legal documents during the pandemic when it may have been difficult to obtain a

notary. If your POA is not notarized, you may want to re-execute the document before a notary to garner the additional protections that the UPOAA provides to acknowledged POAs.

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