

UNIFORM POWER OF ATTORNEY ACT

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UPOAA in Michigan

UPOAA became law November 7, 2023- [Public Act 187 of 2023](#)

Effective July 1, 2024

Creates a new act – Uniform Power of Attorney Act

[MCL 556.201-556.505](#)

Repeals MCL 700.5501 to 700.5505 of EPIC

Effect on Existing Powers of Attorney

[MCL 556.503](#)

Michigan UPOAA applies to:

- POA created before, on, or after the effective date of this act
- Judicial proceeding concerning a POA commenced on or after the effective date of this act

For a judicial proceeding concerning a POA commenced before the effective date of this act, unless the court finds that application of a provision of this act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party, in which case that provision does not apply and the superseded law applies.

An act done before the effective date of this act is not affected by this act

Execution Requirements (to be Effective)

To be effective, a power must be signed by either the:

- principal, or
- an individual directed by the principal to sign the principal's name in the principal's presence

Note: A power signed in this manner is not durable

Execution Requirements (to be Durable)

To be durable, a power must either:

- ❑ Be acknowledged by the principal before a notary public or other individual authorized to take acknowledgments, or
- ❑ Be signed in the presence of 2 witnesses

Note: An agent nominated in the power cannot act as a witness, but a witness can serve as a notary on the power

Note: For a power that is signed by an individual at the direction of principal to be durable, it must be signed in the presence of 2 witnesses

Coagents

The principal can appoint two or more persons to act as coagents

Unless the power provides otherwise, coagents may act independently

- ❑ This gives the agents the flexibility to act unilaterally on behalf of the principal
- ❑ It also may cause conflict unless the agents coordinate their efforts and act consistently on matters for the principal

Coagent Liability

Unless the power provides that coagents are liable for one another's misconduct, an agent who does not participate in or conceal a breach of fiduciary duty is not liable for the breach committed by the other agent.

If an agent has knowledge of a breach or an imminent breach of fiduciary duty by another agent, the agent is required to notify the principal and, if the principal is incapacitated, take any action reasonably appropriate to safeguard the principal's best interest.

If an agent fails to notify the principal or take action, the agent is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken action.

Specific Authority

An agent may do the following only if the power expressly grants the agent the authority to:

- ❑ Create, amend, revoke, or terminate an inter vivos trust
- ❑ Make a gift
- ❑ Create or change rights of survivorship
- ❑ Create or change a beneficiary designation
- ❑ Delegate authority granted under the power

Specific Authority

Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan

Exercise fiduciary powers that the principal has authority to delegate

Exercise authority over any electronic communications

Exercise authority over any bank account, securities, or other financial account in a foreign country

General Authority

The general authority granted under the Act may be incorporated by (i) citing the section, or (ii) referring to the descriptive term. An agent has general authority over:

- ▣ Real property
- ▣ Tangible personal property
- ▣ Stocks and Bonds
- ▣ Commodities and options

General Authority

- ▣ Banks and financial institutions
- ▣ Operation of entity or business
- ▣ Insurance and annuities
- ▣ Estates, trusts, and other beneficial interests
- ▣ Claims and obligations

General Authority

- ▣ Personal and family maintenance
- ▣ Benefits from governmental programs or civil or military service
- ▣ Retirement
- ▣ Taxes
- ▣ Gifts

Statutory Form: WARNING

MCL 556.401

Caution to potential users regarding use of the form:

- ❑ Agents have authority to make decisions regarding principal's property (including their money).
- ❑ The DPOA is an important legal document, encourages consulting a lawyer.
- ❑ The form does not authorize the agent to make medical decisions.
- ❑ If the form is durable, the agent generally will have the authority to act until the death of the principal unless the DPOA is revoked.

Statutory Form: DESIGNATION OF AGENT

- ❑ DPOA form allows the designation of an agent, and the designation of up to 2 successor agents.
- ❑ Successor agents will serve one at a time, unless coagents are designated in the Special Instructions section.
- ❑ Agent authority is immediately effective unless otherwise stated in the Special Instructions.
- ❑ This DPOA form does not revoke any other DPOAs unless otherwise stated in the Special Instructions.

Statutory Form: GRANT OF GENERAL AUTHORITY

By initialing, the agent has authority over the following subjects:

- Real Property
- Tangible Personal Property
- Stocks and Bonds
- Commodities and Options
- Banks and Other Financial Institutions
- Operation of Entity or Business
- Insurance and Annuities

Statutory Form: GRANT OF GENERAL AUTHORITY (continued)

- Estates, Trusts, and Other Beneficial Interests
- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects (regardless of whether any of the preceding subjects are initialed)

Specific Authority: WARNINGS

Granting any of the specific authorities will give the agent authority that may...

- ❑ Significantly reduce the principal's property.
- ❑ Change how the principal's property is distributed at death.
- ❑ Subject the agent to burdensome tax reporting requirements.

Specific Authority

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift as limited by section 217 of the uniform power of attorney act, MCL 556.317, and any special instructions in this power of attorney
- Create or change rights of survivorship, form example, creating a joint account
- Create or change a beneficiary designation

Specific Authority (continued)

- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Access the content of electronic communications
- Exercise authority over any "bank, securities, or other financial account in a foreign county" within the meaning of 31 CFR 1010.350

Gifting Limitation

[MCL 556.301\(2\)](#)

An agent who is not an ancestor, spouse, or descendant **MAY NOT** use the principal's property to benefit the agent or a person to whom the agent owes an obligation of support unless that authority is included in the Special Instructions.

Special Instructions

MCL 556.401

Statutory form provides a series of blank lines on which the principal can provide “special instructions” to the agent.

WARNINGS: The use of the special instructions may cause ambiguities that may impair the effectiveness of the form.

The form encourages seeking legal advice before utilizing the special instructions section.

Guardian and Conservator

MCL 556.208

The statutory form gives the principal the ability to nominate a guardian and conservator if it should ever become necessary for a court to appoint a guardian or conservator.

Statutory Form: AGENT ACKNOWLEDGEMENT

MCL 556.401

- ❑ **Agent's Duties** – list of legal statutory duties imposed on agent.
- ❑ **Termination of Authority** – Agent must stop acting on behalf of principal upon (i) death of principal, (ii) principal's revocation, (iii) occurrence of a termination date state in the power. (iv) if limited power, the purpose is fully accomplished, and (v) if agent is spouse, unless otherwise in the Special Instructions upon divorce or separation.
- ❑ **Durable** – Notice to agent that power is durable, unless otherwise state in the Special Instructions.
- ❑ **Agent Liability** – If agent violates the terms of the power, may be liable for damages.

Statutory Form: AGENT'S ACCEPTANCE

MCL 556.213

- ❑ UPOAA establishes a default rule for the acceptance of appointment by an agent under a durable power of attorney.
- ❑ Unless otherwise stated in the power of attorney, an agent accepts the appointment upon exercise of authority, performance of duties, or any other assertion or conduct indicating acceptance.

Statutory Form: AGENT'S ACKNOWLEDGEMENT

- ❑ Prior to exercising any authority under a durable power of attorney, an agent shall execute an acknowledgement of the agent's duties, referred to as an "Agent Acknowledgment".
- ❑ Failure to execute an Agent Acknowledgment does not affect the agent's authority to act for the principal, nor does it alter the agent's duties, and it does not mitigate the agent's potential liability for breach of duties.

Affirmative Duties

MCL 556.214

Duties that cannot be waived by the principal:

- ❑ Duty to act in accordance with reasonable expectations of the principal that are actually known to the agent, and to the extent the expectations are not actually known, act in the principal's best interest.
- ❑ Act in good faith.
- ❑ Act only within the scope of authority granted by the principal.
- ❑ Keep reasonable records of receipts, disbursements, and transactions made by the agent on behalf of the principal.

Default Rules

Duties that can be explicitly waived by the principal in the power:

- ❑ Act loyally for the principal's benefit.
- ❑ Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.
- ❑ Act with the care, competence, and diligence that a prudent person would in dealing with the property of another.

Default Rules (continued)

- ❑ Cooperate with a person that has authority to make health care decisions for the principal to carry out reasonable expectations of the principal concerning health care that are actually known to the agent and, to the extent the expectations are not actually known, to act in the principal's best interest.
- ❑ Attempt to preserve the principal's estate plan to the extent that the plan is actually known to the agent and preserving the plan is consistent with the principal's best interest based on relevant factors including all of the following: (i) the value of the principal's property, (ii) the principal's need for maintenance, (iii) minimization of taxes, and (iv) eligibility for public benefits. Note that an agent is not liable for failure to preserve the estate plan if the agent acted in good faith.

Liability Protection for Agent

- ❑ An agent is not liable solely because the agent also benefits from the act or has a conflict of interest if the agent acted with “care, competence, and diligence for the best interest of the principal.”
- ❑ If a principal selected an agent with special skills or expertise or in reliance on the agent’s representation that he or she has special skills or expertise, they are to be considered when evaluating the whether the agent has acted with care, competence, and diligence.

Liability Protection for Agent (continued)

To protect the agent, an agent:

- ❑ Is not liable for a breach of fiduciary duty based solely on a decline in the value of the principal’s property.
- ❑ Is not required to investigate the conduct of any coagent or predecessor agent if the agent did not have knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power, and
- ❑ Is not liable for an act, error of judgment, or a default by a person delegated a power if the agent exercised care, competence, and diligence in selecting and monitoring the person.

Agent Duty to Account

- ❑ An agent does not have an affirmative duty of account.
- ❑ Unless stated in the power, the agent is not required to “disclose receipts, disbursements, or transactions conducted unless ordered by a court or requested by the principal, a fiduciary acting for the principal, or a governmental agency with authority to protect the welfare of the principal.
- ❑ If the principal is deceased, the PR may request an agent to account.

Agent Liability

[MCL 556.217](#)

An agent that violates the UPOAA is liable for not only the amount to restore the value of the principal’s property to what it would have been had the violation not occurred, but also reimbursement of attorney fees and costs paid on the agent’s behalf in the defense of conduct constituting or contributing to the violation.

Amount of Damages

[MCL 556.217](#)

The UPOAA imposes heightened liability of 3x the value of the property when an agent embezzles or wrongfully converts the principal's property, or refuses, without colorable claim of right, to transfer possession of the principal's property to the principal or the principal's successor in interest on demand.

Exoneration of Agent

[MCL 556.215](#)

A principal has the ability to include a provision in the power to exonerate an agent from liability for breach of fiduciary duty unless it:

- ❑ Relieves the agent of liability for breach of duty committed in bad faith or with reckless indifference to the purposes of the power or the best interests of the principal, or
- ❑ Was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

Notice or knowledge of a fact involving a POA

[MCL 556.202a](#)
<http://legislature.mi.gov/doc.aspx?mcl-556-202a-new>

This is a new definition

A person has knowledge of a fact involving a power of attorney if one or more of the following are true:

- ❑ The person has actual knowledge of the fact
- ❑ The person has received a notice or notification of the fact
- ❑ From all the facts and circumstances known to the person at the time in question, the person has reason to know the fact

Notice or knowledge of a fact involving a POA

An entity has **notice or knowledge of a fact** relating to a POA only from the time **the information is received by an employee conducting the transaction** or from the time the **information would have been brought to the employee's attention if the entity had exercised reasonable diligence**

"Reasonable diligence" is a defined term

An entity has actual knowledge of a fact relating to a POA only if the employee conducting the transaction has actual knowledge of the fact

Acceptance of and reliance upon acknowledged POA

MCL 556.219

Important definitions regarding acceptance of a POA:

“Acknowledged” means purportedly verified before a notary public or other individual authorized to take acknowledgments

“Vintage durable power” means a POA that is:

- Valid under MCL 556.206
 - Properly executed under laws in existence at the time of execution
 - Addresses POA executed outside of Michigan
- Durable
- Executed after September 29, 2012 and before the effective date of this Act

Acceptance of and reliance upon acknowledged POA

(1) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under [MCL 556.205] that the signature is genuine.

(2) A person that in good faith accepts a power of attorney that is either an acknowledged power or a vintage durable power without actual knowledge that the power is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding the agent's authority may rely on the power as if the power were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. This subsection applies regardless of whether the purported agent under a durable power has executed an acknowledgment that complies with section 113(2) or any similar requirement under prior law.

Acceptance of and reliance upon acknowledged POA

(3) If a power of attorney that is durable is presented for acceptance without an agent's acknowledgment that complies with [MCL 556.213] and is signed by the agent who is to act on the principal's behalf in the transaction in question, **a person that is asked to accept the power may require that the agent provide the acknowledgment before accepting the power.**

Acceptance of and reliance upon acknowledged POA

(4) A person that is asked to accept an acknowledged power of attorney may request and may rely, without further investigation, upon any of the following:

- **A certification under penalty of perjury**, including, as may be appropriate for the intended purpose, an affidavit in recordable form, by an agent or an attorney at law who represents either the agent or the principal **of any factual matter concerning the principal, agent, or power of attorney** [See the Template found at MCL 556.403]

Acceptance of and reliance upon acknowledged POA

- **An English translation of the power of attorney** if the power contains, in whole or in part, language other than English and the translation's accuracy is the subject of either a certification or an opinion of counsel
- **An opinion of counsel as to any matter of law concerning the power of attorney** if the person requesting the opinion explains the reason for the request in a record

Acceptance of and reliance upon acknowledged POA

(5) Except as provided in subsection (6), **an English translation or an opinion of counsel** requested under this section **must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance**

(6) If a person that is asked to accept an acknowledged power of attorney requests an opinion of counsel under subsection (4), and **a court finds that the reason for the request as stated in the required record is frivolous, the person making the request is subject to liability for attorney fees and costs incurred** in providing the requested opinion. In deciding whether the stated reason for the request is frivolous, the court shall consider, in addition to other relevant factors, whether, in light of the language of the power, the provisions of this act, and the surrounding circumstances, there is arguable merit to the legal concern that the request addresses

Liability for refusal to accept acknowledged POA

MCL 556.220

A person shall either accept an acknowledged POA or request an agent's acknowledgment or a certification, translation, or opinion of counsel **not later than 7 business days after the power is presented for acceptance**

The person can't ask for:

An additional or different form of power of attorney, nor an additional or different form of agent's acknowledgment if the acknowledgment complies with the statutory requirements

Liability for refusal to accept acknowledged POA

Once presented with agent's acknowledgement or certification, translation, or opinion of counsel, **the person shall accept the POA not later than 5 business days** after receipt of the requested documents

MCL 556.220(3) lists the reasons a person does not have to accept a POA

A person refusing to accept an acknowledged POA is subject to a court order mandating acceptance of the power and liability for reasonable attorney fees and costs

A person may face additional liability for reasonable attorney fees and costs incurred in providing requested certification, translation, or opinion of counsel if the person improperly refuses to accept an acknowledged POA

Judicial relief; dismissal of petition

MCL 556.216

The people who may petition a court to construe a power of attorney or review the agent's conduct:

- ❑ The principal or the agent
- ❑ A guardian, conservator, or other fiduciary acting for the principal
- ❑ A person that, at the time of the petition, is exercising authority to make health care decisions for the principal
- ❑ An individual who, at the time of the petition, would be an heir of the principal if the principal were to die intestate at that time

Judicial relief; dismissal of petition

- ❑ A person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal the trustee of which has a financial interest in the principal's estate
- ❑ The personal representative of the principal's estate
- ❑ Adult protective services
- ❑ A caregiver or another person that demonstrates sufficient interest in the principal's welfare
- ❑ A person asked to accept the power of attorney

Judicial relief; dismissal of petition

Upon motion by the principal, the court shall **dismiss a petition** filed under subsection (1) **unless the court finds one of the following**:

- ❑ That the **principal lacks capacity** to revoke the agent's authority or the power of attorney
- ❑ That the **motion is the effect of undue influence, fraud, or duress**

Persons who may petition to review conduct when a power of attorney has been presented for acceptance:

- ❑ The principal or the agent
- ❑ A guardian, conservator, or other court-appointed fiduciary acting for the principal

Violation of act; agent's liability

MCL 556.217

Agent who violates UPOAA is liable for:

- ❑ **Amount required to restore the value of the principal's property to what it would have been had the violation not occurred, including reimbursement of attorney fees and costs paid on the agent's behalf in the defense of conduct constituting or contributing to the violation.**

Agent who **embezzles or wrongfully converts the principal's property**, or **refuses, without colorable claim of right, to transfer possession of the principal's property to the principal** or the principal's successors in interest **on demand**, is liable in an action brought by the principal or the principal's successors in interest **for treble the value of any property embezzled, converted, or wrongfully withheld** from the principal or the principal's successors in interest