

Virginia Uniform Power of Attorney Act

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Jonathan Kinney

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Jonathan Kinney

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Effective July 1, 2010, Virginia adopted the Uniform Power of Attorney Act, joining a handful of other states that have adopted the Uniform Act in some form or fashion.

Some of the highlights of the act are:

- Any power of attorney executed in Virginia after July 1, 2010 is deemed durable unless it expressly states otherwise.
- A power of attorney is not required to be acknowledged before a notary public but the party's signature is deemed to be genuine if acknowledged before a notary public.
- Any power of attorney that is presented for recording with the Circuit Court must be acknowledged before a notary public or deputy clerk.
- Virginia will recognize powers of attorneys created outside of Virginia provided the power of attorney was valid in the state of creation.
- Photocopies and electronically transmitted copies will have the same force and effect as the original.

The Default Rules

- The power of attorney is effective immediately. A principal can create a "springing" power of attorney (i.e. a power of attorney which becomes effective upon the occurrence of a specific event, by the inclusion of clear language defining the triggering event).
- A co-agent may exercise their authority independently of the other co-agent.
- An agent is entitled to reasonable compensation and to reimbursement of expenses reasonably incurred.
- Cooperation with an agent under an advance medical directive or durable medical power of attorney is implied.
- Preservation of the principal's estate plan unless preserving the estate is not consistent with the principal's best interest based on all relevant factors.
- The power of attorney should specifically state the principal's wishes as to lifetime gifts.
- The act establishes certain duties to be followed by agents unless modified in the power of attorney. These duties include:
 - Loyalty to principal;
 - Avoidance of conflicts of interest;
 - Competence, care and diligence in acting; and

- Maintenance of records.

The act protects third parties who act in good faith in accepting an acknowledged power of attorney without actual knowledge that the power of attorney is forged, void, invalid or terminated.

Generally, a third party (such as a financial institution) must either accept an acknowledged power of attorney or request a certification, translation or opinion of counsel within seven business days of presentment of the power of attorney. Upon receipt of the certification, translation or opinion of counsel, the third party must accept the power of attorney within five business days after receipt of the requested document. However, if a written contract exists between the principal and the third party (such as a financial institution), the third party can refuse to accept a power of attorney if contractual language clearly sets out the right of the third party not to accept a power of attorney or if it establishes different requirements for acceptance of a power of attorney.