

POLK COUNTY BAR ASSOCIATION – 2015 CLE

ELDER REPRESENTATION: NEW AND IMPROVED IOWA UNIFORM POWER OF ATTORNEY ACT¹

²INTRODUCTION

In April of 2014, the General Assembly passed and the Governor signed into law the Iowa Uniform Power of Attorney Act (Act) pertaining to powers of attorney (POAs) authorizing a principal to delegate decision-making over his or her property and financial affairs to an agent. The Act became effective on July 1, 2014 and will be codified in Chapter 633B of the Iowa Code.

The Act repealed the prior provisions of the Code with respect to POAs. In contrast to these provisions, which were limited in nature, the Act constitutes a comprehensive legal framework for the creation and use of POAs and furnishes specific guidance to and protections for principals, agents and third parties.

A major purpose of the Act is to enhance the effectiveness of the POA as a vehicle that an individual can use to plan for potential incapacity and to avoid a court appointed conservatorship in the event of actual incapacity. This is particularly important because Iowa's aging population is large and growing rapidly, and older Iowans are disproportionately vulnerable to incapacitating illnesses and conditions such as Alzheimer's disease and other dementias.

Another major purpose of the Act is to prevent, identify and redress POA abuse – the misuse of a POA by an agent. POA abuse increasingly has been recognized as a serious problem affecting many Iowans, especially the elderly, and all too often resulting in their financial exploitation. The Act is aimed at striking a balance between preserving “the durable power of attorney as a flexible, low cost, and private form of surrogate decision making” and “detering use of the power of attorney as a tool for financial abuse of incapacitated individuals.”³

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² The author would like to thank and acknowledge Josephine Gittler from the University of Iowa and Margaret Van Houten with Davis Brown Law Firm for permission to use and incorporate the materials for this handout.

³ Uniform Law Commission, *Power of Attorney Summary* 1(2004) available at <http://www.uniformlaws.org/ActSummary.aspx?title=Power%20of%20Attorney>.

The Act is based on the Uniform Power of Attorney (UPOAA) issued by the Uniform Law Commission.⁴ After extensive review, The Iowa State Bar Association recommended the adoption of the UPOAA with some modifications and supported the Act's enactment.

The Act contains some mandatory provisions and a number of default provisions. Default provisions apply to a POA unless they are overridden by express language in the POA and are usually signaled by the phrase "unless the power of attorney otherwise provides." The Act's default provisions present the attorney who is drafting a POA for a client with a variety of drafting options that allow it to be individually tailored to a client's interests and preferences.

This document is intended to provide attorneys with a summary of the major provisions of the Acts. It has the following components:

Part One:	Definitions and Terminology
Part Two:	Applicability and Relationship to Other Laws
Part Three:	POA's Execution, Validity and Meaning and Effect
Part Four:	Durability and Immediate vs. Springing POA
Part Five:	Agents, Coagents and Successor Agents: Designation, Exercise of Authority and Reimbursement and Compensation
Part Six:	Agent's Duties and Liability
Part Seven:	Agent's Authority
Part Eight:	Third Party Acceptance and Refusal of Acknowledged POA and Third Party Liability
Part Nine:	Optional Statutory POA Form and Optional Agent's Certification Statutory Form
Part Ten:	Effect of Act on Existing and Future POAs

PART ONE: DEFINITIONS AND TERMINOLOGY (§ 633b.102)

Section 633B.102 contains definitions of terms used throughout the Act. The following terms are defined: agent, conservator or conservatorship, durable, electronic, good faith, guardian or guardianship, incapacity, person, power of attorney, presently exercisable general power of attorney, principal, property, record, sign, state and stock and bonds.

One noteworthy change in terminology is the use of the term agent rather than the term attorney in fact. This change was made to avoid confusion among non-lawyers about the difference between an attorney in fact and an attorney at law.

⁴ Uniform Law Commission, *Uniform Power of Attorney Act* (2006) available at http://www.uniformlaws.org/shared/docs/power%20of%20attorney/upoaa_final_may08.pdf.

Another is the use of the term incapacity rather than the term disability. This change reflects the fact that a person with a disability does not necessarily lack the capacity to manage his or her financial affairs and property.

PART TWO – APPLICABILITY OF THE ACT AND RELATIONSHIP TO OTHER LAWS (§ 633B.103, 633B.121 – 633B.123, 633B.402)

A. Applicability of the Act

Section 633B.103 states that the Act applies to powers of attorneys that delegate decision-making authority over a principal’s property and financial affairs to an agent. But it excludes from the Act’s application four types of such delegations.

The first exclusion is a power coupled with an interest in the subject of the power. A UPOAAP comment explains that this exclusion “addresses situations where due to the agent’s interest in the subject matter of the power, the agent is not intended to act as the principal’s fiduciary” and that “[c]ommon examples “include powers granted to a creditor to perfect or protect title in, or to sell, pledged collateral.”⁵

The second exclusion is a health care power of attorney. The reason for this exclusion is that Chapter 144B of the Iowa Code governs health care powers of attorney.

The third exclusion is a proxy or other delegation of voting rights or management rights with respect to an entity. According to a UPOAA comment:

“The rules with respect to those rights are controlled by entity specific statutes within a jurisdiction. Notwithstanding the exclusion of such delegations from the operation of this Act ... [Section 633B.209] contemplates that a power granted to an agent with respect to operation of an entity or business includes the authority to “exercise in person or by proxy ... a right, power, privilege, or option the principal has or claims to have as the holder of stocks and bonds.” Thus, while a person that holds only a proxy pursuant to an entity voting statute will not be subject to the provisions of this Act, an agent that is granted [Section 633B.209] authority is subject to the Act because the principal has given the agent authority that is greater than that of a mere voting proxy. In fact, typical entity statutes contemplate that a principal’s agent ... may appoint a proxy on behalf of the agent.” (Citations omitted).⁶

⁵ Id. At § 103 cmt.

⁶ Id.

The fourth and final exclusion is any power created on a governmental form for a government purpose. According to a UPOAA comment:

[T]he authority for a power created on a governmental form emanates from other law and is generally for a limited purpose. Notwithstanding this exclusion, the Act specifically provides in ... [Section 633B.209] that a grant of authority to an agent includes, with respect to the subject matter, authority to “prepare, execute, and file a record, report, or other document to safeguard or promote the principal’s interest under a statute or governmental regulation.” ... [Section 633B.209] further clarifies that the agent has authority to “communicate with any representative or employee of a government or governmental subdivision, agent or instrumentality, on behalf of the principal.” The intent of these provisions is to minimize the need for a special power on a governmental form with respect to subject matter over which an agent is granted authority under the Act.⁷

B. Relationship of the Act to Other Laws

The Act includes several provisions dealing with the relationship between the Act and other laws. Section 633B.121 provides that the principles of law and equity supplement the Act, including the law of agency, unless displaced by the Act’s provisions. Section 633B.122 provides that the Act does not supersede other laws applicable to financial institutions or other entities that are inconsistent with provisions of the Act. Section 633B.123 provides that remedies under the Act are not exclusive and do not abrogate remedies under other laws.

Section 633B.402 provides that the Act modifies, limits and supersedes the provisions of the federal Electronic Signatures in Global and national Commerce Act (ESGNCA) with the exception of Sections 101(c) and 103 (b). These sections of the ESGNCA require that information relating to transactions affecting interstate or foreign commerce be provided or made available to a consumer in writing and may be in electronic form only if certain requirements are met.

PART THREE – POA’S EXECUTION, VALIDITY AND MEANING AND EFFECT (§§ 633B.105 – 633B.107)

A. Execution of POA

Section 633B.105 sets forth execution requirements for POAs. A power of attorney must be signed by the principal or another person in the principal’s presence and at the principal’s

⁷ Id.

direction. The POA also must be acknowledged before a notary public or other individual authorized to take acknowledgements. In order to avoid conflicts of interest, a prospective agent is prohibited from signing on behalf of the principal and from notarizing the principal's signature.

B. Validity of POA

Section 633B.106 provides that the Act does not affect the validity of the following: (1) POAs executed in Iowa under prior Iowa law before the Act's effective date, (2) POAs created under the law of another jurisdiction, or (3) military POAs.

Except as otherwise provided by another Iowa law, photocopies and electronically transmitted copies have the same force and effect as the original.

C. Meaning and Effect of POA

Under Section 633B.107, the meaning and effect of a POA is governed by the law of the jurisdiction indicated in the POA. In the absence of such an indication, the governing law is that of the jurisdiction where the POA was created.

This provision addresses situations where the Act's default rules with respect to the agent's authority differ from that of the law of jurisdiction where the POA was created. According to a UPOAA comment, the intent of the provision is to assure that "the principal's intended grant of authority will be neither enlarged nor narrowed by virtue of the agent using the power in a different jurisdiction."⁸

PART FOUR – DURABILITY OF POA (§ 633B.104) AND IMMEDIATE VS. SPRINGING POA (§633B.109)

Section 633B.104 establishes a default rule that a POA is durable. The rationale for this default rule is that a principal who becomes incapacitated generally would prefer to have the agent designated in the POA rather than a court appointed conservator make financial decisions for him or her.

In addition Section 633B.109 establishes a related but distinct default rule that a POA becomes effective immediately. Since, however, this is a default rule, the principal may override this default rule through express language in the POA that creates a "springing" POA, contingent on a future date or an event such as the principal's incapacity. As the UPOAA comment states, the default rule "reflects a 'best practices' philosophy that any

⁸ Id. At § 107 cmt.

agent who can be trusted to act for the principal under a springing power of attorney should be trustworthy enough to hold an immediate power.”⁹ But the comment goes on to state that “a significant number of principals still prefer springing powers, most likely to maintain privacy in the hope that they will never need a surrogate decision maker.”¹⁰

Recognizing that some principals may choose to override these default rules and opt for a springing POA, Section 633B.109 includes several provisions applicable only to springing POAs. If the principal chooses to create a springing POA triggered by the occurrence of a contingency, the POA may designate one or more individuals to verify the occurrence of the contingency that is the trigger for the springing POA. If the POA specifies that it becomes effective upon the principal’s incapacity but does not specify an individual to make the incapacity determination, a licensed physician, a licensed psychologist, a judge or an appropriate government official may make the determination. When an individual is designated to make an incapacity determination, such individual may act as the principal’s personal representative under the Health Insurance Portability and Accountability for the purpose of obtaining needed information from the principal’s health care providers and medical records.

**PART FIVE – AGENTS, COAGENTS AND SUCCESSOR AGENTS:
DESIGNATION OF, EXERCISE OF AUTHORITY AND REIMBURSEMENT
AND COMPENSATION (§§ 633B.108, 633B.110 - 633B.113, 633B.118)**

A. Agent’s Acceptance of Appointment

Section 633B.113 establishes a default rule that an individual’s acceptance of appointment as an agent takes place when he or she begins exercising authority, performing duties as an agent, or evidencing indicia of acceptance. Under this default rule, delivery of the POA is not a prerequisite for the agent’s acceptance and for the agent to begin to act on behalf of the principal.

B. Coagents

Section 633B.111 provides that a principal may designate a coagent or coagents in the POA. It establishes a default rule that powers held by coagents shall be exercised by majority rule and that in case of impasse an agent may petition the court to resolve the resulting conflict or a majority of agents may consent to alternative dispute resolution. This rule differs from the UPOAA default rule that coagents may exercise their authority independently.

⁹ Id. At § 109 cmt.

¹⁰ Id.

While section 633B.111 permits coagents, this should not be interpreted as an endorsement of the practice of naming coagents. Because of potential problems associated with coagents such as difficulties in communication and conflicts between agents, the UPOAA comment suggests that “a more prudent practice is generally to name one original agent and one or more successor agents” and that “[i]f desirable, a principal may give the original agent authority to delegate the agent’s authority during periods when the agent is temporarily unavailable to serve.”¹¹

C. Successor Agents

Section 633B.111 provides that a principal may designate a successor agent or agents to act in the event that an agent declines to serve, resigns, dies, becomes incapacitated or is not qualified to serve.

Section 633B.111 establishes a default rule that a successor agent has the same authority as the original agent had. Nevertheless this may not be appropriate in some circumstances, and the principal may choose to override the default rule through express language in the POA. A UPOAA comment gives as an example a principal who wishes to authorize a spouse-agent but not an adult child successor agent to create, amend, or revoke an inter vivos trust, or to create or change survivorship and beneficiary designations.¹²

D. Nomination of Conservators and Guardians

Section 633B.108 provides that a principal may nominate a conservator or guardian in the event that guardianship or conservatorship proceedings are instituted after a POA is executed, and the court must appoint the most recent nominee unless good cause is shown or the nominee is disqualified. Nominating the individual, who is the agent, as conservator or guardian has the advantage of assuring continuity in the management of the principal’s property and finances. As a UPOAA comment explains, it also discourages conservatorship and guardianship petitions “for the sole purpose of thwarting the agent’s authority to gain control over a vulnerable principal.”¹³

It should be noted that section 633B.108 does not prohibit an individual from executing a petition for appointment of a guardian or a conservator on a standby basis pursuant to sections 633.560 and 633.591 of the Iowa Code.

¹¹ Id. At § 111 cmt.

¹² Id.

¹³ Id.at § 108 cmt.

Section 633B.108 establishes another default rule, different from the UPOAA default rule, that once the court establishes a conservatorship, a pre-existing POA is suspended unless the POA provides for its continuance or the court directs its continuance. If the POA continues, the agent is accountable to the conservator as well as the fiduciary. The UPOAA default rule is that the conservatorship does not suspend or terminate the POA unless there is a specific court order.

E. Termination of POA and Termination of an Agent's Authority

Section 633B.110 lists the events that will terminate a POA or an agent's authority under a POA. The listed termination events, however, are not effective as to an agent or other individual who does not have actual knowledge that the POA or agent's authority under a POA has been terminated and who acts in good faith under the POA.

1. Principal's Revocation

Section 633B.110 specifically lists as a termination event the principal's revocation of a POA or an agent's authority under a POA. The execution of a new general or plenary POA automatically revokes prior general or plenary POA, which was executed in Iowa. But the execution of a new general or plenary POA does not revoke a prior POA limited to a specific action or transaction still capable of performance but not yet fully accomplished. The Iowa Act is different that the UPOAA with respect to revocation by executing a new POA. The UPOAA default rule is that prior POA's are not revoked by the execution of a subsequent POA.

2. Agent's Resignation

Section 633B.110 also specifically lists the agent's resignation as a termination event. This section should be read in conjunction with Section 633B.118 which establishes a default rule that an agent must give notice of resignation to the principal. When the principal is incapacitated, the requisite notice is to a court appointed conservator, or guardian, a coagent or successor agent, and if none, notice may be given to the principal's caregiver, another person, who the agent reasonably believes to have sufficient interest in the principal's welfare, or adult protective services of the Department of Human Services.

3. Other Termination Events

Among the other notable termination events listed in Section 633B.110 are the principal's filing of an action for dissolution of marriage with a spouse-agent and the principal's filing of an action for annulment or legal separation. This is a default rule that may be overridden through express language in the POA.

F. Agent Reimbursement and Compensation

Section 633B.112 establishes a default rule that an agent is entitled to reimbursement of expenses “reasonably incurred” on behalf of principal. As a UPOAA comment points out: “While it is unlikely that a principal would choose to alter the default rule as to expenses, a principal’s circumstances may warrant including limitations in the power of attorney as to the categories of expenses the agent may incur.”¹⁴

Section 633B.112 also establishes a default rule that an individual acting as a POA is not entitled to compensation. If an individual wishes to authorize an individual agent to be compensated, it should be specified in the POA. The default rule for a bank or trust company acting as agent is that reasonable compensation is allowed. The Act provides that compensation, when paid, must be “reasonable under the circumstances.”

PART SIX – AGENT’S DUTIES AND LIABILITY (§§ 633B.114 – 633B.117)

A. Agent’s Duties

Under prior law an agent was treated as a fiduciary, but the scope of an agent’s fiduciary duties was not spelled out. As it has been pointed out, a major aim of the Act is to address power of attorney abuse. One of the primary ways the Act does so is by furnishing clearer guidelines than prior law as to the nature and extent of the agent’s duties.

Section 633B.114 spells out fiduciary duties of an agent that are mandatory and hence are not waivable by the principal. These duties are to act:

- in accordance with the principal’s reasonable expectations to the extent known and otherwise in the principal’s best interest,
- in good faith, and
- within the scope of authority granted in the POA.

Section 633B.114 then spells out default fiduciary duties of an agent that can be overridden by express language in a POA. These duties include:

- acting loyally for the principal’s benefit,
- avoiding conflicts of interests that impair the agent’s ability to act impartially in the principal’s best interest,

¹⁴ Id. at § 112 cmt.

- acting with the care, competence and diligence ordinarily exercised by agents in similar circumstances, and
- attempting to preserve the principal's estate plan to the extent known and consistent with the principal's best interest.

Section 633B.114 sets forth several provisions which further clarify the foregoing duties and which affect an agent's liability for violation of his or her duties. Contrary to the traditional common law duty of loyalty requiring an agent to act solely for the principal's benefit, an agent who "acts with care, competence and diligence for the best interest of the principal is not liable solely because the agent also benefits from the act." The UPOAA comment explains that this "comports with the practical reality most agents under powers of attorney are family members who have inherent conflicts of interest with the principal arising from joint property ownership or inheritance expectations."¹⁵

In addition an agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan; an agent is not liable if the value of the principal's property declines absent a breach of duty; and if a principal selects an agent because she or he has, or represents himself as having, special skills or expertise, then such special skills or expertise must be considered in evaluating whether the agent has acted with care, competence and diligence unless the POA expressly provides otherwise.

Specified default duties also include:

- cooperating with the principal's health care agent,
- keeping records, and
- making an accounting if requested by the principal, a fiduciary appointed for the principal, a governmental agency having authority to protect the principal's welfare, or the personal representative or successor in interest of the principal's estate, or if ordered by the court.

B. Judicial Review and Agent Liability

Several provisions of the Act relate to judicial review of an agent's conduct and an agent's liability for violations of the Act. These provisions are directed at identifying and redressing power of attorney abuse by agents.

Section 633B.116 lists individuals who may petition a court to construe a POA, or to review an agent's conduct. The listed individuals are the principal, the agent, the principal's guardian

¹⁵ Id. at § 114.cmt

or conservator, a beneficiary of the principal's estate or of a trust created for or by the principal, an individual authorized to make health care decisions for the principal, the principal's relatives (spouse, parents, descendant or presumptive heir), a governmental agency with authority to protect the principal's welfare (Department of Human Services), the principal's caregiver, an individual asked to accept the POA or designated in the POA, and anyone who can demonstrate sufficient interest in the principal's welfare.

Section 633B.117 provides that an agent, who violates the Act, is civilly liable to the principal and the principal's successors in interest. An agent found to be liable must restore the value of the property to what it would have been without the violation and reimburse for attorney fees and costs paid on behalf of the agent.

Section 633B.115 permits a principal to include an exoneration provision in a POA relieving an agent of liability for breach of fiduciary duties. But it prohibits such a provision from relieving an agent of liability for a breach committed "in bad faith, with an improper motive or with reckless indifference to the purposes of the power of attorney or the principal's best interest." It likewise states that such a provision is not binding if it results from an abuse of a fiduciary or confidential relationship with the principal.

Given the seriousness of the problem of power of attorney abuse, an exoneration provision should not be routinely included in a POA. Nevertheless a UPOAA comment points out: "[I]ts inclusion may be useful in meeting particular objectives of the principal. For example, if the principal is concerned that contentious family members will attack the agent's conduct in order to gain control of the principal's assets, an exoneration provision may deter such action or minimize the likelihood of success on the merits."¹⁶

PART SEVEN: AGENT'S AUTHORITY (SECTIONS 633B.201 - 633B.217)

Sections 633B.201 - 633B.217 deal with a principal's grant of authority to an agent. Section 633.201 distinguishes between general grants of authority and grants of specific authority that require express language in the power of attorney. It delineates the categories of powers that must be specifically granted to an agent in a power of attorney in order for them to be exercised by the agent. These are the so called "hot powers" the exercise of which poses a risk to the principal's property and estate plan and are most susceptible to power of attorney abuse.

The powers for which an express specific grant of authority is required include the following:

¹⁶ Id. At § 115 cmt.

- creating, amending, revoking or terminating an inter vivos trust,
- making a gift,
- creating or changing rights of survivorship,
- creating or changing a beneficiary designation,
- delegating authority granted under the power of attorney,
- waiving the principal's right to be a beneficiary of a joint and survivor annuity, including but not limited to a survivor benefit under a retirement plan,
- exercising fiduciary powers that the principal has authority to delegate, and
- disclaiming property, including but not limited to a power of appointment.

Section 633B.201(2) provides that *even if the POA* provides a grant for one of the above listed powers, an agent who is not a spouse, ancestor or descendant of the principal may not exercise authority to create in the agent (or in an individual the agent is legally obligated to support) an interest in the principal's property. The UPOAA comment to this section explains: "a non-relative agent with gift making authority could not make a gift to the agent or a dependent of the agent without the principal's express authority in the power of attorney. In contrast, a spouse-agent with express gift-making authority could implement the principal's expectation that annual family gifts be continued without additional authority in the power of attorney."¹⁷

Sections 633B.204-217 provide default definitions, or descriptions, of the subject areas with respect to which a principal may make a grant of authority to an agent in a power of attorney. These sections set forth default definitions for the following subject areas:

- real property (§ 633B.204),
- tangible personal property (§ 633B.205),
- stocks and bonds (§ 633B.206),
- commodities and options (§ 633B.207),
- banks and other financial institutions (§ 633B.208),
- operation of entity or business (§ 633B.209),
- insurance and annuities (§ 633B.210),
- estates, trusts, and other beneficial interests (§ 633B.211),
- claims and litigation (§ 633B.212),
- personal and family maintenance (§633B.213),
- benefits from governmental programs or civil or military service (§ 633B.214),
- retirement plans (§ 633B.215),

¹⁷ Uniform Power of Attorney Act, supra n. 4, at § 201 cmt.

- taxes (§ 633B.216), and
- gifts (§ 633B.217).

Section 633B.202 provides that these default definitions of subject areas may be incorporated by reference in a power of attorney. Since they are default definitions they can be modified i.e., expanded or limited, in the power of attorney.

Section 633B.201 provides that a grant of authority to an agent “to do all of the acts that a principal could do” gives the agent general authority with respect to all of the defined subject areas with one exception. The exception is gift-making authority which requires a specific express grant.

Section 633B.203 is a general construction provision. It authorizes incidental actions that are often necessary for the exercise or implementation of grants of authority.

PART EIGHT – THIRD PARTY ACCEPTANCE AND REFULAS OF ACKNOWLEDGED POA AND THIRD PARTY LIABILITY (§§ 633B.119 – 633B.120)

As it has been pointed out, a major aim of the Act is to promote the use of POAs for the purpose of planning for potential incapacity and avoiding a court appointed conservator in the event of actual incapacity. But a POA cannot effectively serve this function if third parties refuse to accept a valid POA presented by an agent for a principal who has become incapacitated. In order to promote acceptance of POAs by third parties, the Act creates a broad mandate for acceptance of an acknowledged POA by third parties subject to certain (safe harbor) exceptions and gives them in return broad protections from liability for compliance with this mandate.

Section 633B.119 specifically protects third parties from liability who in good faith accept an “acknowledged” POA without actual knowledge that it is forged, void, invalid, or terminated, that the purported agent’s authority is void, invalid or terminated, or that the agent “is exceeding or improperly exercising ... [his or her] authority.” An “acknowledged” POA means a POA that has been “*purportedly* verified before a notary public or other individual authorized by law to take acknowledgments” (emphasis added).

Under Section 633B.119, an organizational entity is deemed to be without actual knowledge of a fact related to a POA if the employee conducting a transaction involving a POA is without actual knowledge.

Section 633B.119 does not require a third party to independently investigate and verify the validity of a POA or an agent's exercise of authority. It, however, does allow a third party to request the agent's certification under oath as to any factual matter regarding the POA and an opinion of counsel as to any matter of law regarding the POA if the person making the request furnishes the reason for the request in writing.

Section 633B.120 further protects third parties from liability by enunciating safe harbors for third party refusal of POAs. They are:

- The person is not otherwise required to engage in a transaction with the principal in the same circumstances;
- The transaction would be inconsistent with federal law;
- The person has actual knowledge of the termination of the agent's authority or the POA;
- A request for a certification, translation or opinion of counsel has been refused;
- The person "in good faith believes that the power of attorney is not valid or that the agent does not have the authority to perform the act requested, or that the power of attorney does not comply with federal or state law or regulations, whether or not a certification, a translation, or an opinion of counsel under section 633B.119, subsection 4, has been requested or provided."¹⁸

A third party may not require an additional or different POA form for authority granted an agent in the POA presented unless one of the safe harbor exceptions applies.

If a refusal of a POA does not fall within one of the safe harbors, the third part is subject to court-ordered acceptance of the POA and is liable for attorney's fees and costs.¹⁹ The suit must be brought within one year of the initial request for acceptance of the POA.

PART NINE – OPTIONAL POA STATUTORY FORM (§ 633B.301) AND OPTIONAL AGENT'S CERTIFICATION STATUTORY FORM (§ 633B.301 – 633B.302)

A. Optional POA Statutory Form

¹⁸ Section 633B.120(2)

¹⁹ The language of Section 633B.120(3) regarding damages should be subject to a technical correction. The language as passed states there is "Liability for damages sustained by the principal for reasonable attorney fees and costs..." It was intended that this language read: "Liability for damages sustained by the principal and for reasonable attorney fees and costs."

Section 633B.301 contains a statutory form for creating a POA in accordance with the Act. It furnishes attorneys a basis for drafting a POA, and it is designed to be understandable to and used by laypersons.

The form begins with an explanation of how a POA operates and instructions about how to use the form for principals and agents. The form then calls for designation of an agent and an optional designation of a successor agent or agents.

The form next deals with the authority of the agent. It is divided into two sections – the first being the **“GRANT OF GENERAL AUTHORITY”** and the second being the **“GRANT OF SPECIFIC AUTHORITY.”**

The general authority section lists subject areas for which the principal can grant general authority to the agent. If the principal wishes to grant general authority for all of these areas to the agent, he or she can initial the line marked “All Preceding Subjects.”

If the principal wishes to grant general authority only over some of these areas, the principal can initial only the lines corresponding to those subjects.

The specific authority section lists subject areas that require a specific grant of authority by the principal to the agent. The principal must initial the lines corresponding to each area over which he or she wishes to grant specific authority. It includes a warning to the principal that granting specific authority for any of these areas “could significantly reduce your property or change how your property is distributed at your death.”

An important aspect of the form is the optional **“SPECIAL INSTRUCTIONS”** section. It enables the principal to modify the provisions in the form.

The form concludes with the **“IMPORTANT INFORMATION FOR THE AGENT”** section. It describes the agent’s duties under a POA, events that will terminate the POA or the agent’s authority and the agent’s liability. It includes a warning to the agent to seek legal advice “if there is anything about this document or your duties that you do not understand.”

B. Optional Agent’s Certification Statutory Form

Section 633B.301 contains an optional form for the agent to certify the validity of the POA and his or her authority. It lists a series of factual matters about which third parties typically request certification, and it has a designated space for certification of additional factual matters.

PART TEN – EFFECT OF ACT ON EXISTING AND FUTURE POAS (§§ 633B.107, 633B.403)

Section 633B.403 specifies that the Act applies to a POA created on or after its effective date of July 1, 2014.

Section 633B.403 likewise specifies that the Act applies to a POA created before July 1, 2014 “except as otherwise provided” in the Act. Consequently this section must be read in conjunction with Section 633B.107 that providing that the meaning and effect of a POA created in Iowa or in another jurisdiction is governed by the law under which it was created. Thus, a POA created in Iowa before July 1 is to be interpreted under Iowa law with respect to an agent’s authority and duties that was in effect at the time the POA was created.

Under Section 633B.403, however, the provisions of the Act dealing with matters other than the meaning and effect of a POA are applicable to a POA created in Iowa before July 1. Examples include, but are not limited, to the provisions of Section 633B.119 that protect third parties from liability who in good faith accept a purportedly acknowledged POA and the provisions of Section 633B.120 that set forth safe harbors for third party refusal of a POA.

Section 633B.403 also specifies that the Act applies to a judicial proceeding concerning a POA created on or after July 1 and that it applies to such a proceeding commenced after July 1 unless the court finds that the application of a provision of the Act would substantially interfere with the effective conduct of the judicial proceeding or prejudice the rights of a party.