

Alabama Uniform Power of Attorney Act

On January 1, 2012, the Alabama Uniform Power of Attorney Act (the “Act”) became effective.

- The Act applies to all powers of attorney executed on or after January 1, 2012.
- Unless expressly provided otherwise, all powers of attorney are durable and thus not terminated by the principal’s incapacity.
- A power of attorney is effective when signed, unless the power expressly indicates that it is springing.
- A power of attorney continues in effect even upon a long lapse of time since execution of the power of attorney.
- Notarization is not required to create a valid power of attorney. However, an acknowledged power of attorney is strongly encouraged because an acknowledged signature carried a presumption of genuineness.
- A photocopy or electronically transmitted copy of a power of attorney has the same effect as the original power of attorney.
- A third party may not require an additional or different power of attorney, even if the power of attorney does not follow the statutory form.
- A third party without actual knowledge that the power of attorney was void, invalid or terminated or that the purported agent’s authority was void, invalid, terminated, or exceeded is fully exonerated from any liability for effecting the transaction in reliance upon the power of attorney.
 - Actual knowledge will only be found if the actual person effecting the transaction had knowledge; therefore, the knowledge of one employee is not imputed to the entire organization.
- A third party may request an agent certification (which is attached to this update), a translation, or an opinion of counsel as to any matter of law concerning the power of attorney.
 - The third party will be fully exonerated from liability in relying on the certification, translation, or opinion of counsel.
 - *Best Practice:* Require a certification by the agent.
- A third party can refuse a power of attorney while waiting for a certification, translation, or opinion of counsel, and under the following circumstances:
 - (1) the principal does not have the authority to effect the transaction;
 - (2) the third party believes *in good faith* that engaging in the transaction would be inconsistent with current laws or regulations;
 - (3) the third party has *actual knowledge or a good faith belief* that the power of attorney was void, invalid or terminated or that the purported agent’s authority was void, invalid, terminated, or exceeded; or
 - (4) the third party knows or has made a report to the Department of Human Services stating a belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.
- The third party who refuses in violation of the Act to complete a transaction in reliance upon an acknowledged power to attorney absent actual knowledge or a good faith belief is subject to (1) a court order mandating the person complete such transaction and (2) liability for reasonable attorney’s fees and costs.
 - *Best Practice:* If the power of attorney is to be refused because of a good faith belief even after receipt of a certification, the reasons behind the good faith belief need to be documented.

**AGENT'S CERTIFICATION
AS TO THE VALIDITY OF POWER OF ATTORNEY AND AGENT'S AUTHORITY**

State of Alabama
County of _____

I, _____(Name of Agent), certify under penalty of perjury that _____
_____(Name of Principal) granted me authority as an agent or successor agent in a power of attorney
dated _____, 20_____.

I further certify that to my knowledge:

(1) the Principal is alive and has not revoked the Power of Attorney or my authority to act under the Power of Attorney and the Power of Attorney and my authority to act under the Power of Attorney have not terminated;

(2) if the Power of Attorney was drafted to become effective upon the happening of an event or contingency, the event or contingency has occurred;

(3) if I was named as a successor agent, the prior agent is no longer able or willing to serve; and

(4) _____

(Insert other relevant statements)

SIGNATURE AND ACKNOWLEDGMENT

Agent's Signature

Date

Agent's Name Printed:

Agent's Address:

Agent's Telephone Number:

I, the undersigned, a Notary Public, in and for the County or State, hereby certify that
_____, whose name is signed to the foregoing document, and who is known to
me, acknowledged before me on this day that, being informed of the contents of the document, he or she executed
the same voluntarily on the day the same bears date.
Given under my hand this the ___ day of April, 2012.

_____(seal, if any)
Signature of Notary

My commission expires: _____