

**Practical Probate:
The New Connecticut Uniform
Power of Attorney Act Part 1**

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A power of attorney is a legal document that allows an adult to designate a trusted friend or family member with legal authority to manage their affairs. Depending on the circumstances, a valid durable power of attorney can provide a means to manage the estate of someone who later becomes legally incapacitated. It may prevent the need for appointment of an involuntary conservator. In Connecticut probate courts, proceedings to appoint an involuntary conservator can be time consuming and expensive, especially when compared with the ease and relative economy of a durable power of attorney. However, once legal incapacity strikes, it's often too late for a durable power of attorney to be executed. This is because an adult must have legal capacity to sign a durable power of attorney; if the power of attorney is signed by someone who lacks capacity, that power of attorney may not be valid.

Beginning October 1, 2016, significant changes to Connecticut law governing powers of attorney became effective. This article highlights some changes that the new law creates. In future articles, each of these changes will be examined in more detail.

The changes in Connecticut law are designed to achieve six general

objectives. One objective is to preserve powers of attorney as an inexpensive means of incapacity planning that is flexible and private.

A second objective the new law addresses is the inclusion of safeguards to protect the person who creates the power of attorney (called the "principal"), the person who acts under the power of attorney (called the "agent"), and third parties that perform an action based on the power of attorney (for example, a bank that allows the agent access to a financial account owned by the principal).

A third objective is to modernize powers of attorney so that retirement plans and certain estate planning documents could be managed under a power of attorney.

A fourth area – a particularly important one – is to encourage the acceptance of valid powers of attorney by third parties. Certain financial institutions, in particular, have long had a reputation of refusing to recognize valid powers of attorney. Some of these institutions would only recognize a power of attorney created on their own forms. Frequently these forms amounted to little more than a document that exonerated the institution should any problems arise as a result of the use of the power of attorney.

A fifth area addresses situations where the agent acts properly but may also have a conflict of interest. An example of this would be where assets are transferred to family members under the power of attorney.

Finally, the new law provides ways to customize the power of attorney document. This is not entirely new – it was also allowed under the previous version of Connecticut law.

In the next few articles, I'll look more closely at each of these areas and highlight how the new law works.

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