Practical Probate:
The New Connecticut Uniform Power of Attorney Act Part 4

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A common shortcoming of powers of attorney is that Connecticut had no requirement for third parties (for example, financial institutions) to honor them. This is a serious issue because powers of attorney are frequently created to allow the person to whom the power of attorney is granted (called the agent) to manage accounts in financial institutions on behalf of the account owner (called the principal), particularly when the principal becomes incapacitated.

Some financial institutions would refuse to recognize valid powers of attorney unless they were drafted on the financial institution's own POA form. Frequently, these "forms" amounted to nothing more than an indemnity of the financial institution for following the POA. This approach by certain financial institutions effectively thwarted a valid POA when it was needed most – when the principal became incapacitated. In those cases, families often had to institute conservatorship proceedings in the probate court. With the 2007 revision of the conservatorship laws, conservatorship proceedings in Connecticut probate courts have become complex, time-consuming, and expensive.

The new Connecticut Uniform Power of Attorney Act addresses this issue by instituting penalties for third parties that refuse to recognize valid powers of attorney. It also provides third parties with options that address concerns they may have about the validity of a power of attorney.

The new law provides that if the power of attorney is acknowledged by a notary public or attorney, it's presumed to be valid, and a third party may rely on it.

There are protections in the new law for third parties asked to honor or rely upon a power of attorney. For example, a third party may request that the agent answer certain questions it may have about the agent, the principal, or the power of attorney document. The third party may also request an affidavit stating that the power of attorney is in full effect and has not been revoked.

A third party may request an opinion of counsel as to any matters of law, but must state the reason for the request. These requests must be in writing and made within seven days of when the power of attorney is presented to the third party. This minimizes opportunities for the third party to delay honoring a valid power of attorney under the premise of requesting additional information. The principal is responsible for expenses of complying with these requests. Beyond the seven-day period in the new law, the cost of complying with such requests may be

the responsibility of the third party.

There are also six “safe harbors” defining circumstances under which it is permissible for a third party to refuse to honor a power of attorney.

If a third party refuses to accept or honor an acknowledged power of attorney, without falling under the safe harbor provisions, it will be subject to an order by a court mandating acceptance of the power of attorney.

About the author

Dom Calabrese has been a Connecticut Probate Judge since 2002. He’s currently the judge in the Region 22 Probate District in Southbury, Connecticut and is a judge in the Waterbury Regional Children’s Court.

Dom also practices law with locations in Stamford and Watertown, Connecticut. His areas of practice include probate, estate planning, trusts, wills, planning for incapacity, asset protection, commercial transactions, contracts and agreements, and business counsel.

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