

**Practical Probate:  
The New Connecticut Uniform  
Power of Attorney Act Part 5**

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The fifth area addressed by the new Connecticut Uniform Power of Attorney Act is where the agent (the person granted authority under a power of attorney) 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.

Agents have a duty to act in ways that avoid conflicts of interest. An agent is a fiduciary. Fiduciaries are required to place the interests of another above their own. It's common for the agent to be a family member of the principal (the person granting the power of attorney) - a spouse, son or daughter. Estate plans may involve transferring assets or control of assets to a family member. It's easy to understand how an agent who is a family member might potentially have to transfer the principal's assets to him or herself, or to the agent's children. Anytime an agent benefits from their actions under a power of attorney, there is an inherent conflict of interest.

The new law allows the principal to waive the requirement that the agent avoid conflicts of interest. While there is always potential for an agent to abuse their authority under any power of attorney, that potential is greatly enhanced if the requirement of avoiding conflict of interest is waived.

Transfers of assets to family members may facilitate estate planning. Managing a business is another example where the new law could be useful. A third example is a family vacation home that the agent may benefit from using or controlling.

The sixth area addressed by the new statute is to allow the power of attorney document to be customized to address unique needs and circumstances. This provision is consistent with the previous Connecticut Power of Attorney Act, which also allowed powers of attorney to be customized.

The discussion above on conflicts of interest is just one example of how powers of attorney may be customized. Certain provisions in powers of attorney under the new law are automatically in place unless the power of attorney specifically provides otherwise. In addition to avoiding conflicts of interest, other "automatic" provisions include the duty of loyalty; the duty to act with care, competence and diligence; the duty to keep a record of all receipts, disbursements and transactions made on behalf of the principal; the duty to cooperate with the principal's health care agent; and the duty to preserve the principal's estate plan to the extent known by the agent, if it's consistent with the principal's best interest.

While the new law represents a step forward, the increased complexity that goes along with it makes it more important than ever that powers of attorney be created only by qualified estate planning attorneys.

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### **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.

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