

Power of Attorney Abuse:  
What States Can Do About It

A Comparison of Current State Laws  
with the New Uniform Power of Attorney Act

Lori A. Stiegel, JD, and Ellen VanCleave Klem, JD  
American Bar Association Commission on Law and Aging

Research Report

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AARP's Public Policy Institute informs and stimulates public debate on the issues we face as we age. Through research, analysis, and dialogue with the nation's leading experts, PPI promotes development of sound, creative policies to address our common need for economic security, health care, and quality of life.

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AARP, 601 E Street, NW, Washington, DC 20049

<http://www.aarp.org/ppi>

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- Steven C. Perlis, JD, Elder Law Office of Steven Perlis & Associates
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<sup>1</sup> Inclusion of the names of these individuals and their affiliations does not imply that either they or the organizations with which they are associated endorse the contents of this report or the UPOAA.

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## FOREWORD

AARP encourages advance planning for incapacity through the use of durable powers of attorney as well as joint bank accounts, trusts, health care advance directives, and other legal tools. These mechanisms promote autonomy, avoid guardianship, cut costs, and help family members and others make decisions on behalf of others if they become incapacitated due to dementia or other conditions. While the potential benefits of powers of attorney are considerable, there may be significant drawbacks to their use as they involve little third-party oversight and thus have great potential for financial abuse. Adult protective services agencies and practitioners in the civil justice system report an explosion of financial exploitation cases, particularly those involving misuse of money and assets by agents under a power of attorney. Media reports of power of attorney abuse proliferate, and criminal prosecutions appear to be on the increase.

Powers of attorney are regulated by state law. In 2006, the Uniform Law Commissioners (ULC), who draft and propose specific statutes in areas of the law where uniformity among the states is desirable, approved the Uniform Power of Attorney Act (UPOAA). Among other goals, the UPOAA aims to promote autonomy and prevent, detect, and redress power of attorney abuse. Shortly after the Act's approval by the ULC, the AARP Public Policy Institute contracted with the American Bar Association Commission on Law and Aging to examine existing state power of attorney laws and compare them to the UPOAA provisions relevant to addressing abuse and promoting individual autonomy.

This careful assessment of state laws in the context of the new model act is aimed at highlighting the ways states can protect incapacitated older people and people with disabilities persons who have delegated extensive authority to others. We hope it will prove useful to state legislators, other policymakers, and various organizations and individuals concerned with enhancing financial planning opportunities while preventing financial exploitation. The report's narrative will provide an understanding of powers of attorney, their benefits, and the risks they may pose. The detailed charts provide a snapshot of current law and thorough explanations of the UPOAA's detailed provisions that are relevant to all of us in planning for our futures.

George J. Gaberlavage  
Director, Consumer and State Affairs

Naomi Karp  
Strategic Policy Advisor

AARP Public Policy Institute

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## EXECUTIVE SUMMARY

A power of attorney (POA) is a legal document used by individuals to allow someone else to act on their behalf, commonly recommended by elder law and estate planning attorneys as a tool for planning for incapacity. In most cases when used for this purpose, the POA specifies that it will continue if incapacity occurs, and it is known as a durable power of attorney.

Powers of attorney are regulated by state law. In 2006, the Uniform Law Commissioners (ULC), who draft and propose specific statutes in areas of the law where uniformity among the states is desirable, approved the Uniform Power of Attorney Act (UPOAA or Act). Among other goals, the UPOAA aims to promote autonomy and prevent, detect, and redress power of attorney abuse. The Act defines a POA as durable unless otherwise indicated by the person who creates it, and this report will use the term POA to include durable powers (unless that would be inconsistent with a title or text of a referenced document).

The primary goal of this report is to inform state legislators, policymakers, practitioners, and advocates about the UPOAA provisions that protect against POA abuse and promote autonomy, and to support enactment efforts within the states. The report provides background on POAs and their use and misuse. In addition, it gives readers—including legal professionals—information about their own state’s laws and the laws of other states, explains why the UPOAA was developed, and identifies and discusses the relevant UPOAA provisions.

The report provides a series of charts that compares the state POA laws in effect on December 31, 2007, to each relevant provision of the UPOAA. A master chart of all provisions allows readers to assess (1) whether their state law has provisions related to protecting against POA abuse or preserving autonomy similar to the UPOAA provisions and (2) how their state law compares to those of other states. Finally, the report includes materials aimed at helping advocates to promote adoption of the UPOAA provisions in their state.

Through the charts, this report highlights key provisions of the UPOAA that benefit and protect people who execute powers of attorney, such as the following:

- The clear statement of an agent’s duties, including the agent’s responsibility to act in good faith, within the scope of authority granted, and according to the principal’s known expectations or best interests—as well as more specific duties such as preserving the principal’s estate plan, keeping careful records, and cooperating with the principal’s health care proxy (sections 114(a) and (b));
- The mandate that express language is required to give the agent “hot powers,” which authorize actions with a particularly high propensity for dissipating the principal’s property or altering the estate plan, such as creating a trust, making a gift, or changing a beneficiary designation (sections 201 and 301);
- The provision that a third party may refuse to honor a POA when there is good faith belief that the principal may be subject to abuse, and the requirement that the third

person make a report to adult protective services (section 114(h); Alternative A, section 120(b); and Alternative B, section 120(c))

- The provision that an agent found liable for violating the Act must restore the value of the principal's property to what it would have been had the agent not breached his or her duties and reimburse any attorney's fees and costs advanced from the principal's property to defend the agent (section 117); and
- The imposition of sanctions for an unlawful refusal by a third party to accept a POA (Alternative A, section 120(c) and Alternative B, section 120(d)).

These and other provisions of the UPOAA enhance the effectiveness of a POA as a planning tool and help to prevent, detect, or remedy abuse of this legal instrument.

The analysis in this report's narrative and the detailed charts within the report serve as a yardstick for each state's current law and a guide for improving protections through legislative reform and drafting stronger individual documents. Advocacy tips and a fact sheet for states (developed by the ULC) will aid in efforts to enact the UPOAA.

## INTRODUCTION

“Ronald Slomski is described as a man who married a woman with two daughters, whom he helped raise to adulthood. Slomski named his step-daughters as the successor beneficiaries of both his pension plan and will. Because he and his wife both became ill, Slomski gave his mother broad authority under a general power of attorney to handle his affairs. Slomski’s wife predeceased him by six months. Two weeks before Slomski’s own death, his mother instructed his employer to change the beneficiaries on his pension plan to his siblings. The office manager, who was described as uneasy about the change, consulted the company’s lawyer, but then permitted Slomski’s mother to make the beneficiary changes because she had the authority under Slomski’s power of attorney to ‘exercise all powers with respect to retirement plans that the principal could if present.’ As stated in the newspaper account, by the time Slomski died, ‘[e]verything he had saved had been moved beyond the reach of the heirs designated in his will.’

“Sadly, there may be no recourse under Pennsylvania law for Slomski’s step-daughters because Slomski’s mother had actual authority to change the beneficiary designations and these changes did not amount to self dealing in the technical sense.”<sup>2</sup>

A power of attorney (POA) is a type of legal document used by individuals to allow someone else to act on their behalf temporarily for purposes of convenience or, as often recommended by elder law and estate planning attorneys, for purposes of planning for incapacity. In most states, the latter purpose necessitates the use of a POA that specifies that it will continue if incapacity occurs, and such a POA is known as a durable power of attorney (DPA). The Slomski case offers an example of the problems increasingly associated with POAs, durable or otherwise. At the same time, the case demonstrates the benefits of the new Uniform Power of Attorney Act (UPOAA or Act), which contains a number of provisions related to (1) preventing, detecting, and remedying POA abuse and (2) promoting the autonomy of the individual who makes the POA. The Slomski stepdaughters might have been able to successfully challenge the agent’s actions had the UPOAA been in effect in their jurisdiction.

In keeping with the UPOAA’s new definition of a POA as durable unless otherwise indicated by the person who is authorizing someone else to act on his or her behalf,<sup>3</sup> this report will use the term POA rather than DPA unless doing so would be inconsistent with the terminology used in the title or text of a document discussed in the report. Furthermore, this report will generally use “protect against POA abuse and promote autonomy” as shorthand for the concepts of (1) preventing, detecting, and remedying POA abuse and (2) promoting the autonomy of the individual who makes the POA.

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2 The description of this case and how it might have been redressed had the Uniform Power of Attorney Act been law in Pennsylvania is quoted directly from Linda S. Whitton, “The Uniform Power of Attorney Act: Striking a Balance Between Autonomy and Protection,” *Phoenix L. Rev. Symposium*, 10-13 (Jan. 25, 2008). The quotations within Professor Whitton’s description are from Dennis P. Roddy, “Courting Trouble: The document granting ‘power of attorney’ often leads to abuse,” *Pitt. Post-Gazette*, Sept. 2, 2007, <http://www.post-gazette.com/pg/07245/814095-84.stm>.

3 Unif. Power of Atty Act, § 104 (2006).

The primary goal of this report is to inform state legislators, policymakers, practitioners, and advocates about the UPOAA provisions that protect against POA abuse and promote autonomy, and to support enactment efforts within the states. The secondary goal is to offer legal professionals information about their own state's law and the laws of other states. The latter information may foster inclusion of additional protections in the POA those professionals draft for clients, as well as inform advocacy efforts by the state bar association or other organizations.

Toward those goals, this report highlights the problem of POA abuse, explains why the UPOAA was developed, and identifies and discusses the UPOAA provisions related to protecting against POA abuse and promoting autonomy. It provides a series of charts that compare the state POA laws in effect on December 31, 2007, to each relevant provision of the UPOAA, as well as a master chart for all provisions. Finally, the report's appendixes include tips for advocates who desire to promote adoption of the UPOAA provisions in their state, a document titled "Why States Should Adopt the Uniform Power of Attorney Act (2006)," and a chart of citations to state POA laws.

The UPOAA with Prefatory Note and Comments is available on the Internet at [www.law.upenn.edu/bll/archives/ulc/dpoaa/2006final.htm](http://www.law.upenn.edu/bll/archives/ulc/dpoaa/2006final.htm). Background information, including drafts, memoranda, and an analysis of statutory research and survey results, is available at [www.law.upenn.edu/bll/archives/ulc/ulc.htm#dpoaa](http://www.law.upenn.edu/bll/archives/ulc/ulc.htm#dpoaa).

### Terminology

This report uses a number of terms that require definition. Some of these definitions are taken from the UPOAA, because it provides a clear and current statement of the meaning of these terms.

- The "principal" is "an individual who grants authority to an agent in a power of attorney."<sup>4</sup>
- The "agent" is "a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. The term includes an original agent, coagent, successor agent, and a person to which an agent's authority is delegated."<sup>5</sup>
- A "power of attorney" (POA) is a "writing or other record that grants authority to an agent to act in the place of the principal, whether or not the term power of attorney is used."<sup>6</sup> An agent's authority ends if the principal revokes that authority or if the principal dies. Under most state statutes, the agent's authority also ends if the principal becomes incapacitated and cannot revoke the agent's authority unless

*(continued)*

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4 Unif. Power of Atty Act, § 102(9) (2006).

5 Unif. Power of Atty Act, § 102(1) (2006).

6 Unif. Power of Atty Act, § 102(7) (2006).

the principal indicates that the POA is durable. The law does this to protect incapacitated principals who are no longer able to monitor their agents and take action if the agents abuse their authority. However, the UPOAA makes a significant change by providing that a POA is durable “unless it expressly provides that it is terminated by the incapacity of the principal.”<sup>7</sup>

- “‘Durable,’ with respect to a power of attorney, means not terminated by the principal’s incapacity.”<sup>8</sup> A “durable power of attorney” (DPA) is a POA that remains valid even if the principal becomes incapacitated and unable to revoke the agent’s authority. State laws established the DPA as an inexpensive, accessible legal tool for people who wanted to plan for the possibility of incapacity. Many people plan for incapacity to avoid the appointment of a guardian or conservator, which occurs when a court declares that a person lacks decision-making capacity and then appoints someone to make personal or property decisions on behalf of the incapacitated person.
- “Springing power of attorney” is a POA that does not become effective when the principal signs it (unlike the immediate POA, which does become effective upon signing). Instead, it springs into effect at a later time or when a certain event specified in the POA, such as a determination of the principal’s incapacity, occurs. A springing POA may also be known as a “contingent” POA.
- “‘Incapacity’ means inability of an individual to manage property or business affairs because the individual:
  - (A) has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance....”<sup>9</sup>

NOTE: This report addresses powers concerning the principal’s finances and property. It does not address health care POAs (also known as health care proxies) that authorize an agent to make health care decisions on the principal’s behalf. A few states still have provisions authorizing health care POAs embedded in their financial power of attorney law, but the recent trend has been to have separate laws on those issues.<sup>10</sup>

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7 Unif. Power of Atty Act, § 104 (2006).

8 Unif. Power of Atty Act, § 102(2) (2006).

9 Unif. Power of Atty Act, § 102(5) (2006). The definition also contains a second part that is not relevant to the purpose of this report. That part adds the following to the definition: “or (B) is (i) missing; (ii) detained, including incarcerated in a penal system; or (iii) outside the United States and unable to return.”

10 Charles P. Sabatino, Health Care Power of Attorney and Combined Advance Directive Legislation: January 2008 (2008), <http://www.abanet.org/aging/legislativeupdates/docs/HCPA-CHT08-Final.pdf>.

## THE PROBLEM OF POWER OF ATTORNEY ABUSE

### THE MANIFESTATIONS OF POWER OF ATTORNEY ABUSE

Anecdotal reports from professionals, requests for help from victims of POA abuse or concerned family members, and stories in the media demonstrate that POA abuse manifests in numerous ways. These sources illustrate that POA abuse may or may not be considered a crime. They indicate that POA abuse occurs everywhere. They reveal that POA is committed by both family members and nonfamily members.<sup>11</sup>

These sources reveal that POA abuse may occur because the agent does not understand his or her role and the duties owed to the principal, or because an agent who understands the duties owed to the principal intentionally violates them. Adding to the complexity, intentional POA abuse may be opportunistic or targeted. Opportunistic abuse occurs when an agent—whether a family member or not—takes advantage of an opportunity to exploit a vulnerable principal. Targeted abuse occurs when an individual—again, whether a family member or not—deliberately targets and develops or enhances a relationship with a vulnerable elder in order to become the elder’s agent and then commit POA abuse.

Professor Linda Whitton, the UPOAA reporter,<sup>12</sup> suggests the following three categories of POA abuse:

- (1) “Transactions that exceed the intended scope of authority,” such as making gifts of the principal’s property when not granted gift-making authority;
- (2) “Transactions conducted for self-dealing purposes,” such as when an agent spends the principal’s money to buy him- or herself a car rather than pay for the principal’s nursing home care; and
- (3) “Transactions conducted in contravention of the principal’s expectations,” such as when an agent has gift-making authority, but makes gifts that undermine the principal’s estate plan.<sup>13</sup>

Anecdotal evidence clearly supports Professor Whitton’s categories but also indicates that POA abuse may manifest even before the agent starts acting on the principal’s behalf. In other words, there may be problems with the circumstances surrounding the creation of the POA document. For example, an older person who lacks decision-making capacity may be persuaded or tricked into signing a POA. An older person with capacity

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11 The authors recognize that the definition of “family” differs among groups in our society and is increasingly value laden. Nonetheless, however one defines “family,” it is clear that everyone distinguishes between family and nonfamily.

12 The role of a reporter for a uniform act is, according to ULC, to “primarily [be] responsible for providing research and for drafting the act for consideration by the drafting committee.... The reporter’s obligation is to raise all relevant issues and to be open about furnishing all information and raising all considerations that might be helpful in resolving the issues, bearing in mind that some members of the drafting committee may not be as expert as others.” E-mail from Michelle W. Clayton, senior counsel, Legislative, Scope & Program, Uniform Law Commission, to Lori A. Stiegel, associate staff director, American Bar Association Commission on Law & Aging (Mar. 11, 2008, 10:43:00 EST) (on file with recipient).

13 Linda S. Whitton, *The Uniform Power of Attorney Act: Striking a Balance Between Autonomy and Protection*, Phoenix L. Rev. Symposium, 10-13 (Jan. 25, 2008).

may sign a POA and name an individual as agent as a result of undue influence, fraud, or misrepresentation by the agent or a collaborator. An older person's signature on a POA may be forged, or the terms of the POA may not reflect the principal's actual wishes. With the exception of section 115, the UPOAA provisions protecting against abuse and promoting autonomy focus on the forms of POA abuse that occur once the agent has begun exercising the principal's authority.

## **WHY IT IS EASY TO COMMIT POWER OF ATTORNEY ABUSE**

AARP, other advocates for older persons, lawyers, and financial planners commonly encourage consumers to plan for the possibility of incapacity through the use of legal tools, including the POA. The potential benefits of a POA are substantial: promoting autonomy and choice, avoiding guardianship, cutting costs, maintaining privacy, and helping family members or others make decisions on behalf of individuals who become incapacitated due to dementia or other causes.

The POA has significant drawbacks, however. Advocates for older persons often call the POA a "license to steal."

Three characteristics inherent in the POA make it easy for an agent to financially exploit an incapacitated individual:

- *Broad decision-making authority.* To be used effectively as a tool for planning for incapacity, a POA must give the agent broad decision-making authority over the principal's finances and property. This authority may include the right to sell or mortgage the principal's home, withdraw and deposit money in bank and retirement accounts, make gifts, change the principal's estate plan, and much more.
- *Lack of monitoring.* POA abuse can occur whether or not the principal has decision-making capacity. Abuse is rarely detected if the principal has become incapacitated because there is no monitoring of the agent's actions by a third party unless the principal has authorized such monitoring in the POA. Indeed, some of the reasons for the popularity of the POA as a tool for planning for incapacity are the ability to maintain privacy and avoid court oversight or the burden of accounting<sup>14</sup> that comes when a guardian or conservator is appointed.
- *Unclear standard for agent conduct.* As indicated in this report, most state POA laws lack legal standards and clarity about the duty the agent owes to the principal.

In addition to the characteristics of the POA, there are also external factors that enhance the likelihood of POA abuse:

- *Lack of awareness of risks.* Many people make a POA without fully understanding its inherent risks. Form documents are readily available from the Internet or how-to books, so it is easy to prepare a POA without the benefit of legal advice. As many

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<sup>14</sup> See Naomi Karp and Erica Wood, *Guardianship Monitoring: A National Survey of Court Practices* (Washington, DC: AARP Public Policy Institute, June 2006), and Naomi Karp and Erica Wood, *Guarding the Guardians: Promising Practices for Court Monitoring* (Washington, DC: AARP Public Policy Institute, December 2007).

lawyers are not knowledgeable about elder abuse, even individuals who obtain legal advice may not receive adequate counseling about the risk of financial exploitation. And consumers who are fully advised about the risks may choose to discount them, believing that their agent “would never do something like that.”

- *Delayed detection of abuse.* The POA abuse may not be detectable until the principal has died. As the Slomski case illustrates, an agent’s abusive actions may not come to light until the principal’s estate is probated or the principal’s successors discover that they will not receive anticipated assets as beneficiaries of the principal’s nonprobate estate.
- *Challenges to holding abusers accountable.* Even if the POA abuse is detected, there are several reasons why it can be difficult for the civil justice system to hold the agent liable and for the criminal justice system to hold the agent accountable. The lack of statutory clarity about agent duties poses challenges to civil litigation and criminal prosecution. Many victims of POA abuse lack the capacity or the financial resources to pursue often-costly civil litigation against the agent. The agent may have dissipated the principal’s assets. Law enforcement officers may not understand that POA abuse may be a crime and thus may fail to investigate allegations, telling the victims or concerned family members that “it’s a civil problem, not a criminal problem.” Prosecutors may not receive case referrals from adult protective services (APS) agencies,<sup>15</sup> banks, or law enforcement agencies. They may lack knowledge about POA abuse or lack the resources to prosecute these cases, which can be extremely challenging and labor intensive.

## THE EXTENT OF THE PROBLEM

Due to the lack of funding to support research and data collection, there are no national data on the incidence and prevalence of elder abuse in general or POA abuse in particular.<sup>16</sup> Nonetheless, some information about the extent of the problem can be derived from compilations of reports to state APS programs and from surveys of lawyers and other professionals.

Individual APS professionals relate an explosion of financial exploitation cases, particularly those involving POA abuse. There are no data that allow consistent comparisons of APS reports over time, but the most recent analysis of compiled state APS data, collected during 2003, indicates that 20.8 percent of the reports made to state APS agencies about persons age 60 or older concerned financial exploitation.<sup>17</sup>

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15 An APS agency is responsible for receiving reports of elder or adult abuse, neglect, and exploitation (including POA abuse) and investigating the reports to determine whether the subject of the report is in need of protective services and whether a referral should be made to another agency, such as law enforcement or a prosecutor, about the subject’s circumstances. APS agencies do not have authority to sue in civil court to recover a victim’s property or to bring criminal charges against the agent.

16 Panel to Review Risk and Prevalence of Elder Abuse and Neglect & National Research Council, *Elder Mistreatment: Abuse, Neglect, and Exploitation in an Aging America* (Richard J. Bonnie & Robert B. Wallace, eds., National Academies Press) (2003).

17 The National Committee for the Prevention of Elder Abuse & The National Adult Protective Services Association, *The 2004 Survey of Adult Protective Services Data: Abuse of Adults Age 60 Years and Older*, Feb. 2006, [http://www.ncea.aoa.gov/NCEAroot/Main\\_Site/pdf/2-14-06%20FINAL%2060+REPORT.pdf](http://www.ncea.aoa.gov/NCEAroot/Main_Site/pdf/2-14-06%20FINAL%2060+REPORT.pdf).

National surveys of lawyers and other professionals conducted between 1993 and 2002 provide information about professional awareness of the problem and its impact on victims.

- In a 1993 national study by Albany Law School's Government Law Center, 94 percent of the 410 elder law attorneys, service providers, judges, and prosecutors who responded expressed a belief that DPA abuse happens occasionally or frequently, and 66 percent of respondents had actually encountered DPA abuse.<sup>18</sup> In 19 percent of 270 situations described by respondents, approximately 75 percent or more of the principal's assets were exploited.<sup>19</sup>
- In 1995, the ABA Section of Real Property, Probate and Trust Law surveyed 2,242 of its members who practiced in the probate and trust areas about their knowledge of DPA "misuse."<sup>20</sup> Forty percent of the 854 members who responded reported awareness of misuse of one or more DPAs. While respondents indicated that DPA abuse does not occur often, they stated that when it does occur, it can be devastating to the principal.<sup>21</sup>
- The American College of Trust and Estate Counsel surveyed its 2,711 fellows about DPA abuse in 1995. Two hundred forty seven of the 776 respondents (32 percent) indicated that they personally knew of DPA abuse; a slightly larger number (299 respondents, or 39 percent) expressed a belief that DPA abuse occurs.<sup>22</sup>
- In 2002, the ULC Joint Editorial Board for Uniform Trust and Estate Acts conducted a national survey of probate and elder law practitioners, APS staff, law enforcement officers, prosecutors, and others. Sixty-four percent of the 371 respondents stated that they had encountered DPA abuse in their own work, and 78 percent indicated awareness of such abuse outside their work.<sup>23</sup>

These survey results are bolstered by more current anecdotal evidence. Practitioners in the civil justice system report growth of the problem and indicate that numerous guardianships are initiated after a vulnerable person has been exploited by a fiduciary such as an agent. News accounts<sup>24</sup> and accounts from criminal justice professionals indicate a substantial increase in prosecutions for POA abuse.

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18 Jonathan Federman & Meg Reed, Abuse and the Durable Power of Attorney: Options for Reform, 29 (Alb. Law Sch. ed.) (Mar. 1994).

19 Jonathan Federman & Meg Reed, Abuse and the Durable Power of Attorney: Options for Reform, 39 (Alb. Law Sch. ed.) (Mar. 1994).

20 David M. English & Kimberly K. Wolff, *Survey Results: Use of Durable Powers*, 10 Prob. & Prop. 33, 33 (Jan./Feb. 1996).

21 David M. English & Kimberly K. Wolff, *Survey Results: Use of Durable Powers*, 10 Prob. & Prop. 33, 34 (Jan./Feb. 1996).

22 E. Thomas Schilling, Report on ACTEC Elder Law Committee Questionnaire on Possible Abuse of Financial Durable Power of Attorney, 21 ACTEC Notes 247, 249 (1995).

23 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

24 See, e.g., Sarah Antonacci, *Caretaker Accused of Taking \$813,000*, State J. Reg., Nov. 2, 2007, available at <http://www.sj-r.com/News/stories/19298.asp>; Clair Johnson, *Former Legislator Testifies in Fraud Trial; Jury Gets Case*, Billings Gazette,

## HISTORY OF THE UNIFORM POWER OF ATTORNEY ACT

The problem of POA abuse was one of the reasons the ULC (formerly known as the National Conference of Commissioners on Uniform State Laws or NCCUSL) developed the UPOAA. The purpose of the ULC is “to study and review the law of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law where uniformity between the states is desirable. The Conference can only propose—no uniform law is effective until a state legislature adopts it.”<sup>25</sup>

To assess the need for the UPOAA, the ULC conducted an analysis of state statutes and a national survey of probate and elder law practitioners and of APS staff, law enforcement officers, prosecutors, and others.<sup>26</sup> These efforts demonstrated that the Uniform Durable Power of Attorney Act (UDPAA), last amended in 1987, was no longer uniformly followed by a majority of states. The ULC assessment identified the following areas of divergence, all of which have relevance to POA abuse as well as other issues that ULC sought to address through the UPOAA: “(1) the authority of multiple agents; (2) the authority of a later-appointed fiduciary or guardian; (3) the impact of dissolution or annulment of the principal’s marriage to the agent; (4) activation of contingent powers; (5) the authority to make gifts; and (6) standards for agent conduct and liability.”<sup>27</sup> The survey results also found a striking level of consensus about recommendations to address POA abuse: 75 percent suggested that POA statutes should provide remedies and sanctions for abuse, and 81 percent said such statutes should include safeguards against abuse by agents.<sup>28</sup>

Informed by these results, the ULC developed the UPOAA and approved it in August 2006. In the final step of the process, the ABA House of Delegates approved the UPOAA in February 2007. As of March 2008, two states—New Mexico and Idaho<sup>29</sup>—had enacted the UPOAA, but several other states are considering it and even more are expected to do so later in 2008 or in 2009.<sup>30</sup>

Despite the significant potential for abuse by an agent, protections for principals have been largely absent from POA laws. History provides an explanation. The ULC had developed

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Nov. 16, 2007, available at <http://www.billingsgazette.net/articles/2007/11/16/news/local/49-fraud.txt>; Brian Skoloff, *Holocaust Hero Accused of Swindling*, Associated Press, Nov. 21, 2007, available at <http://www6.comcast.net/news/articles/national/2007/11/20/Holocaust.Hero.Charged/> (last visited Jan. 4, 2008).

25 Uniform Law Commission, *Organization*, 2002, <http://www.nccusl.org/Update/DesktopDefault.aspx?tabindex=0&tabid=1>.

26 National Conference of Commissioners on Uniform State Laws, *Uniform Power of Attorney Act*, Prefatory Note, 2006, <http://www.law.upenn.edu/bll/archives/ulc/dpoaa/2006final.htm>.

27 National Conference of Commissioners on Uniform State Laws, *Uniform Power of Attorney Act*, Prefatory Note, 2006, <http://www.law.upenn.edu/bll/archives/ulc/dpoaa/2006final.htm>.

28 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, 13 (Dec. 29, 2002), <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

29 New Mexico enacted the UPOAA in 2007 and Idaho enacted it in 2008. The comparison charts in this report only reflect New Mexico’s enactment as they cover state laws effective on December 31, 2007.

30 The ULC Web site provides bill tracking information at <http://www.nccusl.org/Update/ActSearchResults.aspx>.

three model or uniform POA acts prior to the UPOAA. The Model Special Power of Attorney for Small Property Interests Act, promulgated in 1964, was intended to provide a less expensive alternative to guardianship for persons with small estates. This model act, despite its limited applicability, contained three alternate standards for agent liability due to disagreement among the ULC members.<sup>31</sup> The Uniform Probate Code (UPC) in 1969 and the alternative, freestanding Uniform Durable Power of Attorney Act (UDPAA), created in 1979 and amended in 1987, removed the provisions limiting use of the POA to small estates, thus making it possible for anyone to execute a DPA, but also removed the provisions related to agent liability.<sup>32</sup> These changes ran counter to the comments of the 1964 act, which stated that if the restrictions on estate size were removed, then “extensive safeguards and more detailed and complicated procedures with attendant increased expenses” would be required to protect principals.<sup>33</sup> The UDPAA, as amended, “contains only five short sections that define the creation and effect of a DPA, the relationship of an attorney-in-fact to a later court-appointed fiduciary, the binding effect of agent action taken without actual knowledge of the principal’s death, and the sufficiency of an agent’s affidavit as proof of the power’s validity.”<sup>34</sup>

The UPC/UDPAA provisions were widely adopted or adapted by state legislatures, and “by 1984, all states and the District of Columbia had enacted DPA provisions.”<sup>35</sup> Since the mid-1990s, however, concerns about POA abuse have grown. During that time, the surveys discussed earlier demonstrated professional dissatisfaction with the lack of protections for the principal in the UPC/UDPAA. Legal scholars also raised similar concerns.<sup>36</sup> The organizations conducting those surveys (described above in “The Extent of the Problem”) and the legal scholars promoted recommendations to address the problem, some of which were enacted in some states. Those enactments, among others, led to the increased diversity among state statutes that helped motivate the ULC to develop the UPOAA. Ultimately, some of the recommendations were included in the UPOAA, although not always in the manner suggested by the respondents to the organizations’ surveys.<sup>37</sup> The recommendations (paraphrased) suggested by survey respondents include the following:

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31 Carolyn L. Dessin, *Acting as Agent Under a Financial Durable Power of Attorney: An Unscripted Role*, 75 Neb. L. Rev. 574, 578 (1996); Karen E. Boxx, *The Durable Power of Attorney’s Place in the Family of Fiduciary Relationships*, 36 Ga. L. Rev. 1, 9 (2001).

32 Karen E. Boxx, *The Durable Power of Attorney’s Place in the Family of Fiduciary Relationships*, 36 Ga. L. Rev. 1, 9 (2001).

33 Karen E. Boxx, *The Durable Power of Attorney’s Place in the Family of Fiduciary Relationships*, 36 Ga. L. Rev. 1, 9 (2001).

34 Linda S. Whitton, *Crossing State Lines with Durable Powers*, 17 Prob. & Prop. 28, 28 (Sept./Oct. 2003)

35 Karen E. Boxx, *The Durable Power of Attorney’s Place in the Family of Fiduciary Relationships*, 36 Ga. L. Rev. 1, 12 (2001).

36 Carolyn L. Dessin, *Financial Abuse of the Elderly: Is the Solution a Problem?*, 34 McGeorge L. Rev. 267 (2003); Karen E. Boxx, *The Durable Power of Attorney’s Place in the Family of Fiduciary Relationships*, 36 Ga. L. Rev. 1, 9 (2001).

37 For example, some respondents to the Joint Editorial Board survey recommended that statutes require notice by an agent no longer willing or able to act as such, but the UPOAA does not require such notice. It does, however, encourage it and provide a list of individuals or agencies that may be notified if the principal is incapacitated. See Unif. Power of Atty Act, § 118 (2006).

- Permit interested parties to petition a court to terminate the POA if the agent is acting improperly.<sup>38</sup>
- Set forth default standards for agents' fiduciary duties.<sup>39</sup>
- Require express authorization of gift-making authority.<sup>40</sup>
- Permit the principal to alter the default fiduciary standard.<sup>41</sup>
- Require notice by the agent when he or she is no longer willing or able to act.<sup>42</sup>
- Revoke a spouse-agent's authority upon divorce, annulment, or the filing of a petition for divorce.<sup>43</sup>
- Include a provision for remedies and sanctions for abuse by the agent.<sup>44</sup>
- Include safeguards against abuse by the agent.<sup>45</sup>

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38 Jonathan Federman & Meg Reed, Abuse and the Durable Power of Attorney: Options for Reform, 29 (Alb. Law Sch. ed.) (Mar. 1994).

39 Jonathan Federman & Meg Reed, Abuse and the Durable Power of Attorney: Options for Reform, 29 (Alb. Law Sch. ed.) (Mar. 1994); David M. English & Kimberly K. Wolff, *Survey Results: Use of Durable Powers*, 10 Prob. & Prop. 33, 34 (Jan./Feb. 1996); Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

40 Jonathan Federman & Meg Reed, Abuse and the Durable Power of Attorney: Options for Reform, 29 (Alb. Law Sch. ed.) (Mar. 1994); David M. English & Kimberly K. Wolff, *Survey Results: Use of Durable Powers*, 10 Prob. & Prop. 33, 34 (Jan./Feb. 1996); Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

41 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

42 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

43 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

44 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

45 Linda S. Whitton, *National Durable Power of Attorney Survey Results and Analysis*, Oct. 29, 2002, <http://www.law.upenn.edu/bll/ulc/dpoaa/surveyoct2002.htm>.

### **Methodology**

AARP's Public Policy Institute funded the American Bar Association Commission on Law and Aging (ABA Commission) to (1) analyze the provisions of the UPOAA related to protecting against POA abuse and preserving autonomy, (2) compare those provisions to the existing state POA laws, and (3) develop this report to impart that information. ABA Commission staff members conducted a literature review, analyzed the UPOAA to determine which provisions were relevant to this project, and then compared the UPOAA provisions to the state POA laws in effect on December 31, 2007.

To minimize bias and ensure accurate interpretation of the state statutes, two ABA staff members read the state laws. Results were compared and when interpretations differed, the questioned provisions were reassessed. Staff also compared their results to the Uniform Law Commission (ULC, formerly known as the National Conference of Commissioners on Uniform State Laws or NCCUSL) analyses developed by the UPOAA reporter and, when necessary, solicited her advice about statutory meanings and their similarity to relevant UPOAA provisions.

ABA Commission staff members were guided by an advisory committee composed of experts in POA abuse, including two law professors (one of whom was the UPOAA reporter); a prosecutor; an elder law practitioner; and AARP's Oregon state office director, who is an attorney with extensive knowledge of the issue of POA abuse in his state.

## **THE PROVISIONS OF THE UNIFORM POWER OF ATTORNEY ACT THAT PROTECT AGAINST POWER OF ATTORNEY ABUSE OR PROMOTE AUTONOMY**

Through the methods described previously, ABA Commission staff, AARP staff, and advisory committee members identified 21 provisions in the UPOAA that protect against abuse and promote autonomy. These provisions seek to fix the three inherent problems with the POA that were discussed earlier: (1) the breadth of control that an agent generally has over the principal's property, (2) the lack of third-party oversight of the agent's actions if the principal has become incapacitated, and (3) the lack of legal standards and clarity about the duty owed by the agent to the principal. The provisions also reflect the UPOAA emphasis on "striking a balance between the need for flexibility and acceptance of an agent's authority and the need to prevent and redress financial abuse."<sup>46</sup>

Following are the 21 identified provisions:

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<sup>46</sup> National Conference of Commissioners on Uniform State Laws, *Uniform Power of Attorney Act*, Prefatory Note, 2006, <http://www.law.upenn.edu/bll/archives/ulc/dpoaa/2006final.htm>.

- Section 108, which defines the relationship between an agent and a fiduciary subsequently appointed by a court (such as a guardian of the estate)
- Section 109, which authorizes the springing POA and provides guidance on how to determine whether the future event or contingency specified in the POA has occurred
- Section 110(b), which addresses the termination of a spouse-agent's authority if the marriage ends, recognizing that a spouse-agent may have conflicting interests in such circumstances
- Section 111(a), which allows the appointment of coagents and provides guidance on how and whether coagents are to act jointly or independently
- Section 111(b), which allows the appointment of successor agents and provides guidance on when and how they are to act
- Section 111(d), which addresses the responsibility of coagents or successor agents to protect the principal if another agent breaches or is about to breach his or her fiduciary duty
- Section 113, which clarifies when an individual who has been named as an agent has accepted the responsibility of acting as agent
- Sections 114(a), (b), and (h), which clarify the mandatory and default duties of the agent and indicate under what circumstances an agent must disclose information about his or her actions to a third party (including courts, other fiduciaries, or APS or other protective agencies)
- Section 115, which addresses the circumstances under which a principal's attempt to exonerate an agent from liability will not be binding
- Sections 116(a) and (b), which indicate who may petition a court to construe a POA or review an agent's conduct and restrict a court from dismissing such a petition at the principal's request if the principal lacks capacity to revoke the agent's authority or the POA
- Section 117, which governs liability for agents who violate the POA law
- Section 118, which provides guidance to an agent who resigns his or her role to protect an incapacitated principal from being left without a decision maker
- Section 119, which addresses third-party acceptance of and reliance upon a POA
- Sections 120(b)/(c) and (c)/(d), which list circumstances under which a third party may legitimately refuse to accept a POA and provide sanctions for unlawful refusals
- Section 123, which states that the remedies under the POA law are not exclusive and do not limit the rights or remedies provided under other state laws
- Sections 201 and 301, which set forth the powers that an agent cannot exercise unless the POA expressly authorizes the agent to do so because of the harm that can occur to the principal's property and estate plan if the powers are misused

The text of the provisions protecting against POA abuse and promoting autonomy is provided in the charts that begin on page 21. Those charts also indicate the following:

1. Why the provision is relevant to protecting against POA abuse and promoting autonomy; and
2. What state POA laws contain provisions that are:
  - i. Identical or equivalent to the UPOAA (1 symbolized by ✓++)
  - ii. Substantially similar to the UPOAA (symbolized by ✓+)
  - iii. Somewhat similar to the UPOAA (symbolized by ✓)

Each chart explains how the authors determined the level of similarity between the UPOAA provision and the state law. If a state's POA law was not found to be at least somewhat similar to the UPOAA provision, the state was not listed in the chart. The Master Chart, which precedes the 21 provisions charts, allows readers to assess (1) whether their state law has one or more provisions related to protecting against POA abuse or preserving autonomy similar to the UPOAA provisions and (2) how their state law compares to those of other states.

Readers should keep the following caveats in mind as they review the Master Chart and provisions charts:

1. Some state laws provide principals with protections that exceed or are simply different than those in the UPOAA. For example, Arizona and New Hampshire have provisions that take into account the possibility of deception or undue influence by an agent, but at different points in time. Arizona's POA law says that an agent who "acted with intimidation or deception ... in procuring the POA or any authority provided in the POA" is subject to prosecution and civil liability.<sup>47</sup> New Hampshire's POA law provides that if a "petitioner establishes that the agent made a transfer for less than adequate consideration, and the transfer is not explicitly authorized by a durable POA drafted in accordance with [the statute], the agent shall be required to prove by a preponderance of evidence that the transfer was authorized and was not a result of undue influence, fraud, or misrepresentation."<sup>48</sup> Many individuals believe that the UPOAA should provide additional protections against POA abuse. It was not, however, the purpose of this project to analyze or describe such protections.
2. The authors tried very hard to be objective and nonjudgmental in their comparisons of the state POA laws to the UPOAA. Nonetheless, statutory interpretation and comparison is an art, not a science, and reasonable minds may and do differ. Moreover, these comparisons were made without analysis of other relevant statutes such as criminal laws or other laws governing agency relationships or of judicial decisions that may elucidate statutory meaning.

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47 Ariz. Rev. Stat. Ann. § 14-5506(C) (2005).

48 N.H. Rev. Stat. Ann. § 506:7(IV)(b) (LexisNexis 1997 & Supp. 2005).

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## APPENDIX A

### ADVOCACY TIPS FOR ENACTING THE UPOAA PROVISIONS THAT PROTECT AGAINST POWER OF ATTORNEY ABUSE OR PROMOTE AUTONOMY

Although the political climate for POA law reform may vary from state to state, the following tips illuminate key issues and raise awareness about the array of stakeholders that may be interested in attempts to reform a jurisdiction's POA statute. Additionally, the ULC statement about why states should enact the UPOAA is provided in Appendix B.

- There are many provisions in the UPOAA besides those that protect against POA abuse and promote autonomy. Professional groups and organizations that have little or no interest in enacting protections for the principal may feel they have a lot at stake in more comprehensive law reform efforts. For example, if the POA law also governs health care advance directives, it is highly likely that faith-based organizations will be interested in reform efforts. It is important that such stakeholders participate early in the review process so that enactment efforts are not derailed by last-minute objections.
- There is likely to be diversity of interests even among members of the same professional or advocacy group. For example, lawyers who prepare POAs for clients may have very different priorities than lawyers who represent third parties (such as banks) or prosecutors who pursue criminal responsibility for POA abuse.
- Successful POA law reform efforts usually involve a study process orchestrated by a section or committee of the state bar. Typically, such efforts originate in the trusts and estates or elder law section of a state bar. The following is a list of potential stakeholders (in alphabetical order) that may have an interest in participating in the study and recommendation process:
  - AARP state offices
  - APS professionals
  - Advocates for elder abuse victims
  - Aging services and other social services agencies
  - Attorneys general
  - Banks, brokerage firms, credit unions, and other financial institutions
  - Bar association committees and sections (e.g., elder law, property, trusts and estates)
  - Court administrators (e.g., court clerks, registers of deeds)
  - Faith-based organizations
  - Family members of victims of POA abuse

- Guardians and conservators
- Health care professionals and organizations
- Judges
- Law enforcement professionals
- Lawyers (e.g., civil lawyers, criminal defense lawyers, lawyers representing APS agencies, lawyers representing banks and other business interests, prosecutors)
- Notaries public
- Real estate professionals (e.g., brokers, mortgage lenders)
- Victims of POA abuse

## **APPENDIX B**

### **WHY STATES SHOULD ADOPT THE UNIFORM POWER OF ATTORNEY ACT (2006)**

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Available at [www.nccusl.org/Update/uniformact\\_why/uniformacts-why-upoaa.asp](http://www.nccusl.org/Update/uniformact_why/uniformacts-why-upoaa.asp)

The Uniform Law Commission first incorporated the concept of a “power of attorney” in the 1969 Uniform Probate Code. Originally viewed as an inexpensive method of surrogate decision making for people of modest means, the durable power of attorney is now widely used for incapacity planning as well as convenience. The Uniform Power of Attorney Act (2006) (UPOAA), if widely enacted, will clarify and modernize the now largely divergent state law. There are many reasons why every state should adopt the UPOAA. Among its attributes, the UPOAA:

- Preserves the effectiveness of durable powers as a low-cost, flexible, and private form of surrogate decision-making.
- Provides mandatory provisions that protect the principal, the agent, and persons who are asked to rely on the agent’s authority.
- Provides default provisions that can be tailored to suit a principal’s individual needs.
- Modernizes the definitions of authority that can be granted to an agent and requires an express grant of authority to do enumerated acts that could dissipate the principal’s property or alter the principal’s estate plan.
- Gives step-by-step prompts for using the optional statutory form.
- Provides clearer guidelines and protections for the agent by:
  - Requiring an agent to act in good faith, within the scope of authority granted, and according to the principal’s expectations, if known, and otherwise in the principal’s best interest.
  - Permitting a principal to tailor other default duties under the Act and to include an exoneration provision for the benefit of the agent.
  - Recognizing that an agent who acts with care, competence, and diligence for the benefit of a principal should not be liable solely because the agent also benefits from the act or has conflicting interests.
  - Providing a method for agents to give notice of resignation after the principal is incapacitated.

- Encourages third persons to accept a power of attorney by:
  - Providing broad protections for the good faith acceptance or refusal of a power of attorney.
  - Recognizing portability of powers of attorney validly created in other states.
  - Providing for the recovery of attorney's fees and costs associated with an unreasonable refusal of a power of attorney.

The Uniform Power of Attorney Act (2006) will enhance the usefulness of durable powers while at the same time protecting the principal, the agent, and those who deal with the agent. It should be enacted in every jurisdiction as quickly as possible.

## APPENDIX C

### POWER OF ATTORNEY LAWS: CITATIONS, BY STATE

(Laws current as of 12/31/07)

State	Citation(s)
Alabama	Ala. Code §§ 26-1-2 to -2.1 (LexisNexis 1992 & Supp. 2006)
Alaska	Alaska Stat. §§ 13.26.332 to .358 (2004 & Supp. 2005)
Arizona	Ariz. Rev. Stat. Ann. §§ 14-5501 to -5507 (2005)
Arkansas	Ark. Code Ann. §§ 28-68-101 to -419 (2004)
California	Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)
Colorado	Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)
Connecticut	Conn. Gen. Stat. Ann. §§ 1-42 to 1-56, 1-56a to 1-56b (West 2008), Conn. Gen. Stat. Ann. § 45a-562 (West 2004)
Delaware	Del. Code Ann. tit. 12, §§ 4901-4905 (2001)
District of Columbia	D.C. Code §§ 21-2081 to -2085, 2101 to 2118 (2001 & Supp. 2007)
Florida	Fla. Stat. Ann. § 709.08 (West 2000 & Supp. 2006)
Georgia	Ga. Code Ann. §§ 10-6-1 to -39 (2000)
Guam	Guam Code Ann. tit. 18, § 21501 (2007)
Hawaii	Haw. Rev. Stat. Ann. §§ 551D-1 to -7 (LexisNexis 2006)
Idaho	Idaho Code §§ 15-5-501 to -507 (2001)
Illinois	755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)
Indiana	Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)
Iowa	Iowa Code Ann. §§ 633B.1 to .2 (West Supp. 2006)
Kansas	Kan. Stat. Ann. §§ 58-650 to -665 (2006)
Kentucky	Ky. Rev. Stat. Ann. § 386.093 (West 2005)
Louisiana	La. Civ. Code Ann. art. 2985-3032 (2005)
Maine	Me. Rev. Stat. Ann. tit. 18-A, §§ 5-501 to -510 (1998 & Supp. 2005)
Maryland	Md. Code Ann., Est. & Trusts §§ 13-601 to -602 (LexisNexis 2001)
Massachusetts	Mass. Ann. Laws ch. 201B §§ 1-7 (LexisNexis 1994 & Supp. 2006)

*(continued)*

## Power of Attorney Abuse: What States Can Do About It

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*Power of Attorney Laws: Citations, by State (continued)*

<b>State</b>	<b>Citation(s)</b>
Michigan	Mich. Comp. Laws Ann. §§ 700.5501 to .5520 (West 2002 & Supp. 2006)
Minnesota	Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)
Mississippi	Miss. Code Ann. §§ 87-3-101 to -113 (West 1999)
Missouri	Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)
Montana	Mont. Code Ann. §§ 72-5-501, 72-5-502, 72-31-201 to -238 (2005)
Nebraska	Neb. Rev. Stat. §§ 30-2664 to -2672 (1995), Neb. Rev. Stat. §§ 49-1501 to -1561 (2004)
Nevada	Nev. Rev. Stat. Ann. §§ 111.450 to .470 (LexisNexis 2004)
New Hampshire	N.H. Rev. Stat. Ann. §§ 506:5 to :7 (LexisNexis 1997 & Supp. 2005)
New Jersey	N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)
New Mexico	N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)
New York	N.Y. Gen. Oblig. Law §§ 5-1501 to -1506 (McKinney 2001 & Supp. 2006)
North Carolina	N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)
North Dakota	N.D. Cent. Code §§ 30.1-30-01 to -06 (1996)
Ohio	Ohio Rev. Code Ann. §§ 1337.01 to 1337.10 (LexisNexis 2002 & Supp. 2006)
Oklahoma	Okla. Stat. Ann. tit. 58, §§ 1071 to 1077, 1081 (West 1995 & Supp. 2006), Okla. Stat. Ann. tit. 15, §§ 1001 to 1020 (West Supp. 2006)
Oregon	Or. Rev. Stat. §§ 127.005 to 127.045 (2005)
Pennsylvania	20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)
Rhode Island	R.I. Gen Laws §§ 34-22-6 to -7 (1995 & Supp. 2005)
South Carolina	S.C. Code Ann. §§ 62-5-501 to -505 (1987 & Supp. 2005)
South Dakota	S.D. Codified Laws §§ 59-7-1 to -9 (2007)
Tennessee	Tenn. Code Ann. §§ 34-6-101 to 34-6-111 (West 2007)
Texas	Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)
Utah	Utah Code Ann. §§ 75-5-501 to -504 (1993 & Supp. 2006)
Vermont	Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)
Virgin Islands	V.I. Code Ann. tit. 15, §§ 1261 to 1267 (2007)
Virginia	Va. Code Ann. §§ 11-9.1 to -9.7 (West 2008)
Washington	Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)
West Virginia	W. Va. Code Ann. §§ 39-4-1 to -7 (LexisNexis 2004)
Wisconsin	Wis. Stat. Ann. §§ 243.07, 243.10 (West 2001 & Supp. 2005)
Wyoming	Wyo. Stat. Ann. §§ 3-5-101 to -103 (2005)

## CHARTS

### Chart 1 Master Chart

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA  
Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.

UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301	
Ala. Code §§ 26-1-2 to -2.1 (LexisNexis 1992 & Supp. 2006)	✓+		✓+																		✓	
Alaska Stat. §§ 13.26.332 to .358 (2004 & Supp. 2005)	✓	✓		✓+	✓+																✓	
Ariz. Rev. Stat. Ann. §§ 14-5501 to -5507 (2005)	✓+							✓						✓++								
Ark. Code Ann. §§ 28-68-101 to -419 (2004)	✓+																					
Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)	✓+ ✓	✓ ✓		✓+	✓+		✓ ✓ ✓+	✓	✓ ✓ ✓	✓++					✓		✓ ✓				✓+ ✓	
Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)	✓+				✓			✓	✓												✓ ✓	

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
Conn. Gen. Stat. Ann. §§ 1-42 to 1-56, 1-56a to 1-56b (West 2008), Conn. Gen. Stat. Ann. § 45a-562 (West 2004)				✓+																	
				✓+																	
				✓+																	
Del. Code Ann. tit. 12, §§ 4901-4905 (2001)	✓+																				
D.C. Code §§ 21-2081 to -2085, 2101 to 2118 (2001 & Supp. 2007)	✓+																				
Fla. Stat. Ann. § 709.08 (West 2000 & Supp. 2006)		✓		✓+										✓							
Ga. Code Ann. §§ 10-6-1 to -39 (2000)		✓						✓	✓												
Guam Code Ann. tit. 18, § 21501 (2007)	✓+																				

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
Haw. Rev. Stat. Ann. §§ 551D-1 to -7 (LexisNexis 2006)	✓+																				
Idaho Code §§ 15-5-501 to -507 (2001)	✓+																				
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓+ ✓		✓		✓ ✓			✓ ✓	✓ ✓	✓		✓ ✓								✓ ✓+ ✓+	
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓+			✓++	✓+			✓	✓	✓++	✓	✓					✓	✓++			
Iowa Code Ann. §§ 633B.1 to .2 (West Supp. 2006)																					
Kan. Stat. Ann. §§ 58-650 to -665 (2006)				✓+	✓			✓++												✓++	

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																						
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301	
Ky. Rev. Stat. Ann. § 386.093 (West 2005)		✓+																		✓		
La. Civ. Code Ann. art. 2985-3032 (2005)					✓				✓	✓				✓							✓	✓
Me. Rev. Stat. Ann. tit. 18-A, §§ 5-501 to -510 (1998 & Supp. 2005)	✓+																				✓	
Md. Code Ann., Est. & Trusts §§ 13-601 to -602 (LexisNexis 2001)																						
Mass. Ann. Laws ch. 201B §§ 1-7 (LexisNexis 1994 & Supp. 2006)	✓+																					
Mich. Comp. Laws Ann. §§ 700.5501 to .5520 (West 2002 & Supp. 2006)	✓+																					

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)			✓+ ✓+	✓++ ✓+	✓ ✓				✓	✓+				✓			✓	✓		✓	
Miss. Code Ann. §§ 87-3-101 to -113 (West 1999)	✓+																				
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)			✓+	✓+	✓ ✓ ✓+			✓++ ✓+ ✓	✓		✓	✓+ ✓	✓++	✓++							✓+
Mont. Code Ann. §§ 72-5-501, 72-5-502, 72-31-201 to -238 (2005)	✓+ ✓				✓																
Neb. Rev. Stat. §§ 30-2664 to -2672 (1995), Neb. Rev. Stat. §§ 49-1501 to -1561 (2004)	✓+			✓+																	
Nev. Rev. Stat. Ann. §§ 111.450 to .470 (LexisNexis 2004)																					

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
N.H. Rev. Stat. Ann. §§ 506:5 to :7 (LexisNexis 1997 & Supp. 2005)							✓					✓+		✓						✓	✓+
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓+			✓+	✓+			✓	✓	✓+		✓				✓	✓			✓	
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++	✓++
N.Y. Gen. Oblig. Law §§ 5-1501 to -1506 (McKinney 2001 & Supp. 2006)		✓ ✓+		✓+ ✓+	✓															✓	
N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)	✓+				✓											✓	✓+	✓++		✓	✓
N.D. Cent. Code §§ 30.1-30-01 to -06 (1996)	✓+																				

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
Ohio Rev. Code Ann. §§ 1337.01 to 1337.10 (LexisNexis 2002 & Supp. 2006)	✓		✓																		
Okla. Stat. Ann. tit. 58, §§ 1071 to 1077, 1081 (West 1995 & Supp. 2006), Okla. Stat. Ann. tit. 15, §§ 1001 to 1020 (West Supp. 2006)	✓+				✓																
Or. Rev. Stat. §§ 127.005 to 127.045 (2005)																					
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓+		✓+	✓+	✓+		✓		✓	✓		✓				✓	✓	✓+		✓	✓
R.I. Gen Laws §§ 34-22-6 to -7 (1995 & Supp. 2005)																					

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
S.C. Code Ann. §§ 62-5-501 to -505 (1987 & Supp. 2005)		✓			✓																
S.D. Codified Laws §§ 59-7-1 to -9 (2007)	✓																				
Tenn. Code Ann. §§ 34-6-101 to 34-6-111 (West 2007)	✓+	✓+								✓										✓+	
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)		✓	✓		✓		✓+		✓	✓+		✓								✓	
Utah Code Ann. §§ 75-5-501 to -504 (1993 & Supp. 2006)										✓										✓	
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓+	✓ ✓		✓	✓		✓	✓ ✓+	✓+	✓ ✓		✓	✓++	✓+					✓++	✓	✓+
V.I. Code Ann. tit. 15, §§ 1261 to 1267 (2007)	✓+																				

(continued)

Chart 1: Master Chart (continued)

✓++ = IDENTICAL OR EQUIVALENT to the UPOAA, ✓+ = SUBSTANTIAL SIMILARITY to the UPOAA, ✓ = SOME SIMILARITY to the UPOAA Some states have multiple relevant provisions. Those are indicated here with a line between each check mark.																					
UPOAA Provision	§ 108(a) & (b)	§ 109	§ 110(b) (3) & (c)	§ 111(a)	§ 111(b)	§ 111(d)	§ 113	§ 114(a)	§ 114(b)	§ 114(h)	§ 115	§ 116(a)	§ 116(b)	§ 117	§ 118	§ 119(d)	§ 120(b) Alt. A & § 120(c) Alt. B	§ 120(c) Alt. A & § 120(d) Alt. B	§ 123	§ 201(a) & 301	§ 201(b) & 301
Va. Code Ann. §§ 11-9.1 to -9.7 (West 2008)	✓									✓		✓ ✓		✓							
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓+		✓+							✓+		✓+		✓			✓ ✓	✓++		✓+	
W. Va. Code Ann. §§ 39-4-1 to -7 (LexisNexis 2004)	✓+																				
Wis. Stat. Ann. §§ 243.07, 243.10 (West 2001 & Supp. 2005)	✓+ ✓+				✓							✓ ✓									
Wyo. Stat. Ann. §§ 3-5-101 to -103 (2005)																					

<b>Chart 2</b> <b>UPOAA Section 108(a) &amp; (b)</b>	
<b>UPOAA section 108(a) &amp; (b)</b>	<p>SECTION 108. “NOMINATION OF [CONSERVATOR OR GUARDIAN]; RELATION OF AGENT TO COURT-APPOINTED FIDUCIARY.</p> <p>(a) In a power of attorney, a principal may nominate a [conservator or guardian] of the principal's estate or [guardian] of the principal's person for consideration by the court if protective proceedings for the principal's estate or person are begun after the principal executes the power of attorney. [Except for good cause shown or disqualification, the court shall make its appointment in accordance with the principal's most recent nomination.]</p> <p>(b) If, after a principal executes a power of attorney, a court appoints a [conservator or guardian] of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. [The power of attorney is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court.]</p> <p>Legislative Note: The brackets in this section indicate areas where an enacting jurisdiction should reference its respective guardianship, conservatorship, or other protective proceedings statutes and amend, if necessary for consistency, the terminology and substance of the bracketed language.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal's autonomy</b>	<p>This has four relevant elements provision. Each of these elements also supports the principal's autonomy and choice.</p> <p>The first element is that the principal may nominate a person to serve as guardian/conservator in the event a court later determines need for one. [§ 108(a)]</p> <p>The second element is that the court is directed to appoint the principal's nominee unless good cause or disqualification is shown. [§ 108(a)]</p> <p>The third element is that if, after a principal executes a POA, a court appoints a guardian of the principal's estate or other fiduciary charged with the management of some or all of the principal's property, the agent is accountable to the fiduciary as well as to the principal. [§ 108(b)]</p> <p>The fourth element is that the POA is not terminated and the agent's authority continues unless limited, suspended, or terminated by the court, not the guardian. [§ 108(b)]</p> <p>The first element is relevant because it can help prevent POA abuse. For example, family feuds over the control of the principal or principal's estate, or the appointment of a potentially abusive adult child by the court, might be discouraged or minimized if the principal indicates his or her choice for guardian or conservator.</p> <p>The second element is relevant because it balances the principal's right to autonomy with the need to protect an incapacitated principal from an abusive or otherwise inappropriate agent.</p>

(continued)

Chart 2: UPOAA Section 108(a) & (b) (continued)

<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal's autonomy (continued)</b></p>	<p>The third element is relevant because it ensures that the agent remains accountable to the principal but also is accountable to the court-appointed fiduciary. The commentary states, “This approach assumes that the later-appointed fiduciary's authority should supplement, not truncate, the agent's authority. If, however, a fiduciary appointment is required because of the agent's inadequate performance or breach of fiduciary duties, the court, having considered this evidence during the appointment proceedings, may limit or terminate the agent's authority contemporaneously with appointment of the fiduciary.”</p> <p>The fourth element is relevant because it forces the court to consider whether the agency established by the DPA is sufficient and whether the agent has abused his or her authority. According to the commentary, “Section 108(b) is a departure from the Uniform Durable Power of Attorney Act, which gave a court-appointed fiduciary the same power to revoke or amend a power of attorney as the principal would have if not incapacitated. See Unif. Durable Power of Atty. Act § 3(a) (1987). In contrast, this Act gives deference to the principal's choice of agent by providing that the agent's authority continues, notwithstanding the later court appointment of a fiduciary, unless the court acts to limit or terminate the agent's authority.”</p>
<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has all four elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two or three of the four elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the four elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Ala. Code §§ 26-1-2 to -2.1 (LexisNexis 1992 &amp; Supp. 2006)</p>	<p>✓+ § 26-1-2(c)</p>
<p>Alaska Stat. §§ 13.26.332 to .358 (2004 &amp; Supp. 2005)</p>	<p>✓ § 13.26.335(3)</p>
<p>Ariz. Rev. Stat. Ann. §§ 14-5501 to -5507 (2005)</p>	<p>✓+ § 14.5503</p>
<p>Ark. Code Ann. §§ 28-68-101 to -419 (2004)</p>	<p>✓+ § 28-68-203</p>

(continued)

Power of Attorney Abuse: What States Can Do About It

Chart 2: UPOAA Section 108(a) & (b) (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)	✓+ § 4126
	✓ § 4206(a)
Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)	✓+ § 15-1-1302(b)(7)
Del. Code Ann. tit. 12, §§ 4901-4905 (2001)	✓+ § 4903
D.C. Code §§ 21-2081 to -2085, 2101 to 2118 (2001 & Supp. 2007)	✓+ § 21-2083
Guam Code Ann. tit. 18, § 21501 (2007)	✓+ § 21503
Haw. Rev. Stat. Ann. §§ 551D-1 to -7 (LexisNexis 2006)	✓+ § 551D-3
Idaho Code §§ 15-5-501 to -507 (2001)	✓+ § 15-5-503
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓+ § 45/2-10
	✓ § 45/3-3(9)
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓+ § 30-5-3-4
Me. Rev. Stat. Ann. tit. 18-A, §§ 5-501 to -510 (1998 & Supp. 2005)	✓+ § 5-503
Mass. Ann. Laws ch. 201B §§ 1-7 (LexisNexis 1994 & Supp. 2006)	✓+ § 3
Mich. Comp. Laws Ann. §§ 700.5501 to .5520 (West 2002 & Supp. 2006)	✓+ § 700.5503
Miss. Code Ann. §§ 87-3-101 to -113 (West 1999)	✓+ § 87-3-109
Mont. Code Ann. §§ 72-5-501, 72-5-502, 72-31-201 to -238 (2005)	✓+ § 72-5-501(2)
	✓ § 72-31-201

(continued)

Power of Attorney Abuse: What States Can Do About It

Chart 2: UPOAA Section 108(a) & (b) (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
Neb. Rev. Stat. §§ 30-2664 to -2672 (1995), Neb. Rev. Stat. §§ 49-1501 to -1561 (2004)	✓+ § 30-2667
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓+ § 46:2B-8.4
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-108
N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)	✓+ § 32A-10
N.D. Cent. Code §§ 30.1-30-01 to -06 (1996)	✓+ § 30.1-30-03
Ohio Rev. Code Ann. §§ 1337.01 to 1337.10 (LexisNexis 2002 & Supp. 2006)	✓ § 1337.09(C)-(D)
Okla. Stat. Ann. tit. 58, §§ 1071 to 1077, 1081 (West 1995 & Supp. 2006), Okla. Stat. Ann. tit. 15, §§ 1001 to 1020 (West Supp. 2006)	✓+ § 1074
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓+ § 5604(c)
S.D. Codified Laws §§ 59-7-1 to -8 (2007)	✓ § 59-7-2.4
Tenn. Code Ann. §§ 34-6-101 to 34-6-111 (West 2007)	✓+ § 34-6-104
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓+ § 3509(a)-(b)
V.I. Code Ann. tit. 15, §§ 1261 to 1267 (2007)	✓+ § 1264
Va. Code Ann. §§ 11-9.1 to -9.7 (West 2008)	✓ § 11-9.1
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓+ § 11.94.010(1)
W. Va. Code Ann. §§ 39-4-1 to -7 (LexisNexis 2004)	✓+ § 39-4-3
Wis. Stat. Ann. §§ 243.07, 243.10 (West 2001 & Supp. 2005)	✓+ § 243.07(3)
	✓+ § 243.10(1) & (7)

<b>Chart 3</b> <b>UPOAA Section 109</b>	
<b>UPOAA section 109</b>	<p>SECTION 109. “WHEN POWER OF ATTORNEY EFFECTIVE.</p> <p>(a) A power of attorney is effective when executed unless the principal provides in the power of attorney that it becomes effective at a future date or upon the occurrence of a future event or contingency.</p> <p>(b) If a power of attorney becomes effective upon the occurrence of a future event or contingency, the principal, in the power of attorney, may authorize one or more persons to determine in a writing or other record that the event or contingency has occurred.</p> <p>(c) If a power of attorney becomes effective upon the principal’s incapacity and the principal has not authorized a person to determine whether the principal is incapacitated, or the person authorized is unable or unwilling to make the determination, the power of attorney becomes effective upon a determination in a writing or other record by:</p> <p>(1) a physician [or licensed psychologist] that the principal is incapacitated within the meaning of Section 102(5)(A); or</p> <p>(2) an attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of Section 102(5)(B).</p> <p>(d) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may act as the principal’s personal representative pursuant to the Health Insurance Portability and Accountability Act, Sections 1171 through 1179 of the Social Security Act, 42 U.S.C. Section 1320d, [as amended,] and applicable regulations, to obtain access to the principal’s health-care information and communicate with the principal’s health-care provider.</p> <p>Legislative Note: The phrase “or licensed psychologist” is bracketed in subsection (c)(1) to indicate where an enacting jurisdiction should insert the appropriate designation for the mental health professional or professionals in that jurisdiction who are qualified to make capacity determinations. An enacting jurisdiction should also review its respective guardianship, conservatorship, or other protective proceedings statutes and amend, if necessary for consistency, the definition of incapacity.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>Three elements in this UPOAA provision are relevant. The first element allows a principal who wishes to make a “springing” POA to indicate in the POA who is to determine whether the future event or contingency specified in the POA has occurred and how that determination is to be made.</p> <p>The second element establishes a default mechanism to be used if the POA provides that the document becomes effective upon the principal’s incapacity but does not provide instructions on who should determine if the principal is incapacitated or if the person named is unable or unwilling to make that determination.</p> <p>The third element enables the person named to determine if the principal is incapacitated to be treated as a personal representative under the Health Insurance Portability and Accountability Act and thereby obtain otherwise-confidential health care information and communicate with the principal’s health care providers.</p>

(continued)

Chart 3: UPOAA Section 109 (continued)

<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal's autonomy (continued)</b></p>	<p>The first element relates to preventing POA abuse by enabling a principal to prevent individuals from being involved or minimize their role in the determination of incapacity if the principal is concerned about the motives or intent of those individuals. For example, a principal who fears that an adult child might try to collude with a family doctor and spring the POA prematurely could indicate that neither of those individuals may be involved in the determination process. Alternatively, this provision allows a principal to indicate in the POA that a certain trusted physician or psychologist must be involved in determining whether incapacity has occurred.</p> <p>In addition to supporting the principal's autonomy and choice, the second element also helps prevent battles over the principal's incapacity demonstration. The UPOAA commentary states, "The default mechanism for triggering a power of attorney is available only when no incapacity determination has been made. It is not available to challenge the determination made by the principal's authorized designee."</p> <p>The third element also supports the principal's autonomy and choice and may help prevent battles over the principal's incapacity determination by ensuring that the person named to determine the principal's incapacity has the information necessary for making that judgment.</p>
<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Alaska Stat. §§ 13.26.332 to .358 (2004 &amp; Supp. 2005)</p>	<p>✓ § 13.26.353(a)</p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓ § 4129</p> <p>✓ § 4405(a)</p>
<p>Fla. Stat. Ann. § 709.08 (West 2000 &amp; Supp. 2006)</p>	<p>✓ § 709.08(1) &amp; (4)(d)</p>
<p>Ga. Code Ann. §§ 10-6-1 to -39 (2000)</p>	<p>✓ § 10-6-6(b) – (c)</p>
<p>Ky. Rev. Stat. Ann. § 386.093 (West 2005)</p>	<p>✓+ § 386.093(5)</p>

(continued)

Power of Attorney Abuse: What States Can Do About It

Chart 3: UPOAA Section 109 (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-109
N.Y. Gen. Oblig. Law §§ 5-1501 to -1506 (McKinney 2001 & Supp. 2006)	✓ § 5-1506(2)
	✓+ § 5-1506(5)
S.C. Code Ann. §§ 62-5-501 to -505 (1987 & Supp. 2005)	✓ § 62-5-501(A)
Tenn. Code Ann. §§ 34-6-101 to 34-6-111 (West 2007)	✓+ § 36-6-111
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓ § 490
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3502(c)(2)
	✓ § 3508(b)

<b>Chart 4</b> <b>UPOAA Section 110(b)(3) &amp; (c)</b>	
<b>UPOAA section 110(b)(3) &amp; (c)</b>	<p>SECTION 110. “TERMINATION OF POWER OF ATTORNEY OR AGENT’S AUTHORITY.</p> <p>(b) An agent’s authority terminates when:...</p> <p>(3) an action is filed for the [dissolution] or annulment of the agent’s marriage to the principal or their legal separation, unless the power of attorney otherwise provides;...</p> <p>(c) Unless the power of attorney otherwise provides, an agent’s authority is exercisable until the authority terminates under subsection (b), notwithstanding a lapse of time since the execution of the power of attorney.</p> <p>Legislative Note: The word “dissolution” is bracketed in subsection (b)(3) to indicate where an enacting jurisdiction should insert that jurisdiction’s term for divorce or marital dissolution.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains three relevant elements.</p> <p>The first element is that a spouse-agent’s authority terminates upon the filing of an action for dissolution or annulment.</p> <p>The second element is that a spouse-agent’s authority terminates upon legal separation.</p> <p>The third element is that the spouse-principal may indicate in the DPA that the spouse-agent’s authority shall not terminate upon any of these events.</p> <p>The first two elements are relevant because they provide a spouse-principal with protection against POA abuse by a spouse-agent as soon as steps are taken to end the marriage. Some state laws terminate the spouse-agent’s authority when an order for dissolution of the marriage is entered. Those laws provide some protection to the spouse-principal, but there may be a lengthy period of time between the filing of actions for dissolution or annulment and the final termination of the marital relationship when a spouse-agent can cause harm. These two UPOAA elements provide a spouse-principal with earlier protection against POA abuse by a spouse-agent.</p> <p>The third element is relevant in two ways. It protects the principal’s autonomy and choice by, as the UPOAA commentary indicates, recognizing that “There may be special circumstances precipitating the dissolution, such as catastrophic illness and the need for public benefits, that would prompt the principal to specify that the agent’s authority continues notwithstanding dissolution, annulment or legal separation.” It also may ensure that a spouse-principal who becomes incapacitated still has an agent who can act to protect the vulnerable spouse-principal from abuse by third parties.</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>

(continued)

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Chart 4: UPOAA Section 110(b)(3) & (c) (continued)

State and citation(s) to POA law	Symbol(s) and citation(s) to section(s) of POA law
Ala. Code §§ 26-1-2 to -2.1 (LexisNexis 1992 & Supp. 2006)	✓+ § 26-1-2(g)(3)
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓ § 45/2-6
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)	✓+ § 523.08
	✓+ § 523.23
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓+ § 404.717(1)(6)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-110
Ohio Rev. Code Ann. §§ 1337.01 to 1337.10 (LexisNexis 2002 & Supp. 2006)	✓ § 1337.091(c)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓+ § 5605(c)
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓ § 485A
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓+ § 11.94.080(1)

<b>Chart 5</b> <b>UPOAA Section 111(a)</b>	
<b>UPOAA section 111(a)</b>	SECTION 111(a). “COAGENTS AND SUCCESSOR AGENTS. (a) A principal may designate two or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise its authority independently.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains three relevant elements.</p> <p>The first element is that a principal may choose to appoint coagents.</p> <p>The second element is that a principal may indicate whether persons appointed as coagents must act jointly (meaning there must be unanimity of decision and action) or independently (meaning there does not have to be unanimity of decision and action).</p> <p>The third element is that if the principal does not indicate whether the agents shall act jointly or independently, the UPOAA provides by default that the coagents act independently.</p> <p>The first two elements support the principal’s autonomy and choice by allowing the principal to decide whether to name coagents and to determine how they must act. According to the UPOAA commentary, the third element also supports the principal’s autonomy and choice; by providing clarity about the role of coagents if the principal fails to do so, the third element facilitates acceptance of the POA by third parties.</p> <p>The provisions are also relevant to preventing, detecting, or remedying POA abuse, however. Although the UPOAA commentary cautions about the use of coagents, it is possible that the very existence of a coagent could prevent POA abuse by the other coagent. Moreover, a coagent may be able to detect and then remedy POA abuse by the other coagent that might otherwise go unnoticed. Toward that end, the UPOAA has a separate provision requiring a coagent who has actual knowledge of a breach or imminent breach of fiduciary duty by another coagent to notify the principal or take reasonably appropriate action to protect the best interests of an incapacitated principal (see section 111(d)).</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
Alaska Stat. §§ 13.26.332 to .358 (2004 & Supp. 2005)	✓+ § 13.26.341

(continued)

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Chart 5: UPOAA Section 111a (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)	✓+ § 4401
Conn. Gen. Stat. Ann. §§ 1-42 to 1-56, 1-56a to 1-56b (West 2008), Conn. Gen. Stat. Ann. § 45a-562 (West 2004)	✓+ § 1-43(a)
	✓+ § 1-43(c)
	✓+ § 1-56b(a)
Fla. Stat. Ann. § 709.08 (West 2000 & Supp. 2006)	✓+ § 709.08(9)
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓++ § 30-5-4-3(a)
Kan. Stat. Ann. §§ 58-650 to -665 (2006)	✓+ § 58-653(a)
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)	✓++ § 523.13
	✓+ § 523.23
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓+ § 404.707(1)
Neb. Rev. Stat. §§ 30-2664 to -2672 (1995), Neb. Rev. Stat. §§ 49-1501 to -1561 (2004)	✓+ § 49-1523(3)
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓+ § 46:2B-8.7
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-111(a)
N.Y. Gen. Oblig. Law §§ 5-1501 to -1506 (McKinney 2001 & Supp. 2006)	✓+ § 5-1501(1)
	✓+ § 5-1506(5)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓+ § 5602(b)

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Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3502
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<b>Chart 6</b> <b>UPOAA Section 111(b)</b>	
<b>UPOAA section 111(b)</b>	<p>SECTION 111(b). “COAGENTS AND SUCCESSOR AGENTS.</p> <p>(b) A principal may designate one or more successor agents to act if an agent resigns, dies, becomes incapacitated, is not qualified to serve, or declines to serve. A principal may grant authority to designate one or more successor agents to an agent or other person designated by name, office, or function. Unless the power of attorney otherwise provides, a successor agent:</p> <p>(1) has the same authority as that granted to the original agent; and</p> <p>(2) may not act until all predecessor agents have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains five relevant elements.</p> <p>The first is that the principal may name a successor agent who can act if the original agent is unable or unwilling to act in the principal’s behalf.</p> <p>The second is that the principal may authorize an agent or another person “designated by name, office, or function” to name one or more successor agents.</p> <p>The third is the default provision stating that a successor agent has the same authority as that granted to the original agent.</p> <p>The fourth is the default provision stating that a successor agent may not act until all predecessor agents are unable or unwilling to serve.</p> <p>The fifth is that the principal may override the third or fourth elements and indicate that the successor agent should have a different scope of authority than that granted to the original agent or that the successor agent may begin acting even before all predecessor agents are unable or unwilling to serve.</p> <p>The first two elements support the principal’s autonomy and choice. They are relevant to abuse prevention because they enable a principal to avoid naming coagents, a potentially problematic approach (see UPOAA commentary to section 111(a)).</p> <p>The third and fourth elements provide clarity about a successor agent’s authority and the commencement of fiduciary duties if the principal fails to address those issues in the POA. A clear statutory demarcation of agent authority and the commencement of fiduciary duties provides the basis for redress if those duties are subsequently breached by the agent.</p> <p>The fifth element supports the principal’s autonomy and choice and may prevent POA abuse. This provision recognizes, for example, that a principal may not know more than one totally trustworthy person to name as agent but may still want to try to avoid a guardianship by naming a successor agent with a narrower scope of authority. The UPOAA commentary provides another example, stating “... authority to make gifts, to create, amend, or revoke an inter vivos trust, or to create or change survivorship and beneficiary designations (see Section 201(a)) may be appropriate for a spouse-agent, but not for an adult child who is named as the successor agent.”</p>

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Chart 6: UPOAA Section 111(b) (continued)

<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has all five elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++). A state POA law that has any three or four of the five elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+). A state POA law that has any one or two of the five elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Alaska Stat. §§ 13.26.332 to .358 (2004 &amp; Supp. 2005)</p>	<p>✓+ §13.26.335(2)</p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓+ § 4203(a) – (b)</p>
<p>Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)</p>	<p>✓ § 15-1-1302(b)(8)</p>
<p>755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 &amp; Supp. 2006)</p>	<p>✓ § 45/3-3</p>
	<p>✓ § 45/3-3(8)</p>
<p>Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 &amp; Supp. 2005)</p>	<p>✓+ § 30-5-4-4(c)</p>
<p>Kan. Stat. Ann. §§ 58-650 to -665 (2006)</p>	<p>✓ § 58-654(f)(11)</p>
<p>La. Civ. Code Ann. art. 2985-3032 (2005)</p>	<p>✓ § 3006</p>
<p>Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 &amp; Supp. 2008)</p>	<p>✓ § 523.131</p>
	<p>✓ § 523.23</p>
<p>Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)</p>	<p>✓ § 404.710(6)(11)</p>
	<p>✓ § 404.717(2)</p>
	<p>✓+ § 404.723(2)</p>

(continued)

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Chart 6: UPOAA Section 111(b) (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
Mont. Code Ann. §§ 72-5-501, 72-5-502, 72-31-201 to -238 (2005)	✓ § 72-31-201
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓+ § 46:2B-8.7(e)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-111(b)
N.Y. Gen. Oblig. Law §§ 5-1501 to -1506 (McKinney 2001 & Supp. 2006)	✓ § 5-1506(5)
N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)	✓ § 32A-1
Okla. Stat. Ann. tit. 58, §§ 1071 to 1077, 1081 (West 1995 & Supp. 2006), Okla. Stat. Ann. tit. 15, §§ 1001 to 1020 (West Supp. 2006)	✓ § 1072.1(A)(4)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓+ § 5602(b)
S.C. Code Ann. §§ 62-5-501 to -505 (1987 & Supp. 2005)	✓ § 62-5-501(B)
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓ § 490
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3504(g)
Wis. Stat. Ann. §§ 243.07, 243.10 (West 2001 & Supp. 2005)	✓ § 243.10(1)

<b>Chart 7</b> <b>UPOAA Section 111(d)</b>	
<b>UPOAA section 111(d)</b>	SECTION 111(d). “COAGENTS AND SUCCESSOR AGENTS. (d) An agent that has actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal and, if the principal is incapacitated, take any action reasonably appropriate in the circumstances to safeguard the principal’s best interest. An agent that fails to notify the principal or take action as required by this subsection is liable for the reasonably foreseeable damages that could have been avoided if the agent had notified the principal or taken such action.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	This provision contains three relevant elements. The first element requires an agent who has actual knowledge of a breach or imminent breach of fiduciary duty by a coagent to notify the principal. The second element expands on the first by requiring that the agent take reasonably appropriate steps to safeguard the principal’s best interests if the principal is incapacitated. The third element states that an agent who fails to notify the principal or take protective action is liable for the failure to do so. As discussed in the charts for UPOAA section 111(a) and section 111(b), the UPOAA cautions against the use of coagents and authorizes the alternative option of naming successor agents. At the same time, the UPOAA supports the autonomy and choice of principals who want to appoint coagents. These three elements are relevant because they foster detection and remedy of POA abuse by a coagent. The UPOAA attempts to balance the risks and benefits of naming coagents by requiring an agent who learns of a coagent’s breach or imminent breach of fiduciary duties to take steps to notify and protect the principal.
<b>Standard for assessing similarity to UPOAA</b>	A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++). A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+). A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-111(d)

<b>Chart 8 UPOAA Section 113</b>	
<b>UPOAA section 113</b>	SECTION 113. “AGENT’S ACCEPTANCE. Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains three relevant elements.</p> <p>Two of the elements are the default mechanisms for determining whether a person named as an agent has accepted the responsibility of acting as agent. Those mechanisms are (1) exercising authority or performing duties or (2) other assertion or conduct that indicates acceptance.</p> <p>The third element is that the provision also allows the principal to set forth a different way of determining whether the agent has accepted appointment.</p> <p>The first two elements are relevant because, as the UPOAA commentary indicates, “Acceptance is the critical reference point for commencement of the agency relationship and the imposition of fiduciary duties.” A clear statutory demarcation of agent acceptance and the commencement of fiduciary duties provides the basis for redress if those duties are subsequently breached by the agent.</p> <p>The third element supports the principal’s autonomy and choice.</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
State and citation(s) to POA law	Symbol(s) and citation(s) to section(s) of POA law
Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)	✓ § 4128(a)
	✓ § 4230(c)
	✓+ § 4401
N.H. Rev. Stat. Ann. §§ 506:5 to :7 (LexisNexis 1997 & Supp. 2005)	✓ § 506:6 VII(a)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-113
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓ § 5601(d)

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Chart 8: UPOAA Section 113 (continued)

<b>State and citation(s) to POA law (continued)</b>	<b>Symbol(s) and citation(s) to section(s) of POA law (continued)</b>
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓+ § 490
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3503(e)(1)(A) & (2)

<b>Chart 9 UPOAA Section 114(a)</b>	
<b>UPOAA section 114(a)</b>	SECTION 114(a). “AGENT’S DUTIES. (a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall: (1) act in accordance with the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, in the principal’s best interest; (2) act in good faith; and (3) act only within the scope of authority granted in the power of attorney.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	This provision contains three relevant elements, which are the three duties set forth in the provision. These duties are mandatory; they may not be waived or changed by the principal.  All three elements are relevant for several reasons. Clear statements of mandatory duties may help prevent abuse by (1) enabling a principal to understand the importance of selecting a trustworthy agent and providing guidance to that agent and by and (2) enabling an agent to understand and fulfill his or her responsibilities. Clear statements of mandatory duties also (1) help investigative agencies, such as APS or law enforcement, in determining whether an agent has committed POA abuse; (2) help prosecutors or civil lawyers in determining whether to seek remedies for POA abuse in the criminal or civil justice systems; and (3) help judges or juries who hear cases brought by those prosecutors or civil lawyers.
<b>Standard for assessing similarity to UPOAA</b>	A state POA law that has all three duties and makes them mandatory is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).  A state POA law that has any two of the three duties and makes them mandatory is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).  A state POA law that has any one of the three duties and makes it mandatory is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
Ariz. Rev. Stat. Ann. §§ 14-5501 to -5507 (2005)	✓ § 14-5506(A)
Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)	✓ § 4128

(continued)

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Chart 9: UPOAA Section 114(a) (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)	✓ § 15-1-1302(b)
Ga. Code Ann. §§ 10-6-1 to -39 (2000)	✓ § 10-6-21
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓ § 45/2-7 ✓ § 45/3-3
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓ § 30-5-9-1(b)
Kan. Stat. Ann. §§ 58-650 to -665 (2006)	✓++ § 58-654(e)
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓++ § 404.710(5)
	✓+ § 404.714(1)
	✓ § 404.714(7)
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓ § 46:2b-8.13(a)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-114(a)
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3504(2)
	✓+ § 3505(a)(1) & (7)

<b>Chart 10</b> <b>UPOAA Section 114(b)</b>	
<b>UPOAA section 114(b)</b>	<p>SECTION 114(b). “AGENT’S DUTIES.</p> <p>(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:</p> <p>(1) act loyally for the principal’s benefit;</p> <p>(2) act so as not to create a conflict of interest that impairs the agent’s ability to act impartially in the principal’s best interest;</p> <p>(3) act with the care, competence, and diligence ordinarily exercised by agents in similar circumstances;</p> <p>(4) keep a record of all receipts, disbursements, and transactions made on behalf of the principal;</p> <p>(5) cooperate with a person that has authority to make health-care decisions for the principal to carry out the principal’s reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal’s best interest; and</p> <p>(6) attempt to preserve the principal’s estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal’s best interest based on all relevant factors, including:</p> <p>(A) the value and nature of the principal’s property;</p> <p>(B) the principal’s foreseeable obligations and need for maintenance;</p> <p>(C) minimization of taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes; and</p> <p>(D) eligibility for a benefit, a program, or assistance under a statute or regulation.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains six relevant elements, which are the six duties set forth in the provision. Unlike the three mandatory duties provided in section 114(a), the section 114(b) duties, referred to in the commentary as “default duties,” may be changed or eliminated by the principal.</p> <p>All six elements are relevant for several reasons. Clear statements of duties, even of the default duties, may help prevent abuse by (1) enabling a principal to understand the importance of selecting a trustworthy agent and providing guidance to that agent and (2) enabling an agent to understand and fulfill his or her responsibilities. Clear statements of duties also (1) help investigative agencies, such as APS or law enforcement, in determining whether an agent has committed POA abuse; (2) help prosecutors or civil lawyers in determining whether to seek remedies for POA abuse in the criminal or civil justice systems; and (3) help judges or juries who hear cases brought by those prosecutors or civil lawyers.</p>

*(continued)*

Chart 10: UPOAA Section 114(b) (continued)

<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal's autonomy (continued)</b></p>	<p>Compliance with a principal's "reasonable expectations to the extent actually known by the agent" is one of the three mandatory duties in subsection (a). By allowing the principal to change or eliminate the default duties provided in section 114(b), the UPOAA recognizes that a principal's expectations may be at odds with a nonmandatory duty. Put another way, section 114(b) recognizes that there may be circumstances where requiring an agent to follow a default duty might conflict with the agent's mandatory duty to follow the principal's reasonable expectations to the extent known. The commentary provides an example: "... a principal may want to invest in a business owned by a family member who is also the agent in order to improve the economic position of the agent and the agent's family. Without the principal's clear expression of this objective, investment by the agent of the principal's property in the agent's business may be viewed as breaching the default duty to act loyally for the principal's benefit (subsection (b)(1)) or the default duty to avoid conflicts of interest that impair the agent's ability to act impartially for the principal's best interest (subsection (b)(2))."</p> <p>The commentary also indicates that two of the default duties—(b)(5) and (b)(6)—"protect the principal's previously-expressed choices."</p>
<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has five or six of the six elements and allows the principal to change or eliminate them is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any three or four of the six elements and allows the principal to change or eliminate them is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one or two of the six elements and allows the principal to change or eliminate it/them is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓ § 4128(a)</p> <p>✓ § 4232</p> <p>✓ § 4236(a)</p>
<p>Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)</p>	<p>✓ § 15-1-1302(1)(b)</p>
<p>Ga. Code Ann. §§ 10-6-1 to -39 (2000)</p>	<p>✓ § 10-6-24</p>

(continued)

Power of Attorney Abuse: What States Can Do About It

Chart 10: UPOAA Section 114(b) (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓ § 45/2-7
	✓ 45/2-9
	✓ § 45/3-3
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓ § 30-5-6-4(a)
La. Civ. Code Ann. art. 2985-3032 (2005)	✓ § 3001
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)	✓ § 523.21
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓ § 404.714(1)
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓ §46:2B-8.13(a)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-114(b)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓ § 5601(e)(4)
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓ §489B(c) & (d)
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓+ § 3505(a)(2), (3), (5) & (9)

<b>Chart 11</b> <b>UPOAA Section 114(h)</b>	
<b>UPOAA section 114(h)</b>	SECTION 114(h). “AGENT’S DUTIES. (h) Except as otherwise provided in the power of attorney, an agent is not required to disclose receipts, disbursements, or transactions conducted on behalf of the principal unless ordered by a court or requested by the principal, a guardian, a conservator, another fiduciary acting for the principal, a governmental agency having authority to protect the welfare of the principal, or, upon the death of the principal, by the personal representative or successor in interest of the principal’s estate. If so requested, within 30 days the agent shall comply with the request or provide a writing or other record substantiating why additional time is needed and shall comply with the request within an additional 30 days.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains six relevant elements.</p> <p>This provision seeks to balance the privacy rights of the principal with the need to prevent and detect POA abuse. It does this by saying that an agent is not required to disclose receipts, disbursements, or transactions conducted on the principal’s behalf except under the following six circumstances:</p> <ol style="list-style-type: none"> <li>(1) The POA indicates otherwise,</li> <li>(2) The principal requests disclosure,</li> <li>(3) A court orders disclosure,</li> <li>(4) A guardian, conservator, or other fiduciary requests disclosure,</li> <li>(5) A “governmental agency having authority to protect the welfare of the principal” requests disclosure, or</li> <li>(6) Following the principal’s death, the personal representative or successor in interest of the principal’s estate requests disclosure.</li> </ol> <p>The inclusion of these six exclusions to the general rule of nondisclosure recognizes that battles over control of the principal or his or her finances can result in inappropriate requests for accountings and expense to the principal’s estate.</p> <p>It is important to stress that while this default provision enumerates a narrow range of persons who can obtain an accounting, the principal may expand that range if desired. Additionally, as the commentary indicates, the UPOAA “contains a broad standing provision for seeking judicial review of an agent’s conduct. See Section 116 and Comment.”</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has five or six of the six elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any three or four of the six elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one or two of the six elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>

(continued)

Chart 11: UPOAA Section 114(h) (continued)

State and citation(s) to POA law	Symbol(s) and citation(s) to section(s) of POA law
Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)	✓++ § 4236(b)
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓ §45/2-7.5(b)
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓++ § 30-5-6-4(b)
La. Civ. Code Ann. art. 2985-3032 (2005)	✓ § 3003
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)	✓+ § 523.21
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓+ § 46:2B-8.13(b)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-114(h)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓ § 5610
Tenn. Code Ann. §§ 34-6-101 to 34-6-111 (West 2007)	✓ § 34-6-107
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓+ § 489B(d) & (i)
Utah Code Ann. §§ 75-5-501 to 504 (1993 & Supp. 2006)	✓ § 75-5-501(2)(c) & (6)
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3504(h)
	✓ § 3505(a)(10)
Va. Code Ann. §§ 11-9.1 to -9.7 (West 2008)	✓ § 11-9.6
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓+ §11.94.090

<b>Chart 12</b> <b>UPOAA Section 115</b>	
<b>UPOAA section 115</b>	SECTION 115. “EXONERATION OF AGENT. A provision in a power of attorney relieving an agent of liability for breach of duty is binding on the principal and the principal’s successors in interest except to the extent the provision: (1) relieves the agent of liability for breach of duty committed dishonestly, with an improper motive, or with reckless indifference to the purposes of the power of attorney or the best interest of the principal; or (2) was inserted as a result of abuse of a confidential or fiduciary relationship with the principal.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>There are five relevant elements in this UPOAA provision.</p> <p>The first is that a principal is allowed to include in the POA a clause exonerating the agent from liability.</p> <p>The other four elements reflect the four situations when a principal’s attempt to exonerate an agent of liability for breach of duty will not be binding:</p> <ol style="list-style-type: none"> <li>(1) If the breach was committed dishonestly,</li> <li>(2) If the breach was committed with an improper motive,</li> <li>(3) If the breach was committed with reckless indifference to the purposes of the POA or the best interest of the principal, or</li> <li>(4) If the exoneration provision was included in the POA as a result of the agent’s abuse of a confidential or fiduciary relationship with the principal.</li> </ol> <p>This provision supports the principal’s autonomy and choice by allowing the principal to exonerate the agent from liability, if desired.</p> <p>The UPOAA commentary recognizes that an exoneration clause is relevant to preventing POA abuse, stating, “While as a matter of good practice an exoneration provision should be the exception rather than the rule, its inclusion in a power of attorney 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.”</p> <p>The second, third, and fourth elements are relevant to remedying POA abuse because they reflect standards for the agent’s conduct and provide that the principal may not waive those standards.</p> <p>The fifth element also relates to remedying POA abuse. It recognizes that a principal’s decision to include an exoneration clause in the POA may result from the agent’s abuse of a confidential or fiduciary relationship with the principal and provides that the exoneration clause will not be binding on the principal under such circumstances, thus allowing the principal to seek remedies for the breach.</p>

*(continued)*

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Chart 12: UPOAA Section 115 (continued)

<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has all five elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any three or four of the five elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one or two of the five elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 &amp; Supp. 2005)</p>	<p>✓ § 30-5-9-5</p>
<p>Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)</p>	<p>✓ § 404.717(4)</p>
<p>N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)</p>	<p>✓++ § 46B-1-115</p>

<b>Chart 13</b> <b>UPOAA Section 116(a)</b>	
<b>UPOAA section 116(a)</b>	<p>SECTION 116(a). “JUDICIAL RELIEF. (a) The following persons may petition a court to construe a power of attorney or review the agent’s conduct, and grant appropriate relief:</p> <ol style="list-style-type: none"> <li>(1) the principal or the agent;</li> <li>(2) a guardian, conservator, or other fiduciary acting for the principal;</li> <li>(3) a person authorized to make health-care decisions for the principal;</li> <li>(4) the principal’s spouse, parent, or descendant;</li> <li>(5) an individual who would qualify as a presumptive heir of the principal;</li> <li>(6) a person named as a beneficiary to receive any property, benefit, or contractual right on the principal's death or as a beneficiary of a trust created by or for the principal that has a financial interest in the principal's estate;</li> <li>(7) a governmental agency having regulatory authority to protect the welfare of the principal;</li> <li>(8) the principal's caregiver or another person that demonstrates sufficient interest in the principal's welfare; and</li> <li>(9) a person asked to accept the power of attorney.”</li> </ol>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains nine relevant elements. They are the nine groups of persons who may petition a court to construe a POA or review an agent’s conduct.</p> <p>As noted in the commentary of section 114, which provides a narrow range of persons who can obtain an accounting from the agent, section 116 “contains a broad standing provision for seeking judicial review of an agent's conduct.” The commentary to section 116 states that the “primary purpose” for its broad standing provision is “to protect vulnerable or incapacitated principals against financial abuse.” Section 116 goes beyond accountings, however; it governs who has authority to ask a court to interpret the meaning of a POA or to review an agent’s conduct. Possibly of greatest relevance to efforts to prevent, detect, or remedy POA abuse, among the nine groups of persons with that authority are (1) a caregiver or “another person that demonstrates sufficient interest in the principal's welfare” (subsection (a)(8)) and (2) “a governmental agency having regulatory authority to protect the welfare of the principal” (subsection (a)(7)), which could include the APS agency, the long-term care ombudsman program, law enforcement agencies, or other agencies.</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has seven, eight, or nine of the nine elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any four, five, or six of the nine elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one, two, or three of the nine elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>

(continued)

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Chart 13: UPOAA Section 116(a) (continued)

State and citation(s) to POA law	Symbol(s) and citation(s) to section(s) of POA law
Conn. Gen. Stat. Ann. §§ 1-42 to 1-56, 1-56a to 1-56b (West 2008), Conn. Gen. Stat. Ann. § 45a-562 (West 2004)	✓ § 1-43(a)
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓ § 45/2-7.5(c)
	✓ § 45/2-10
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓ § 30-5-3-5
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓+ § 404.727(1)
	✓ § 404.727(5)
N.H. Rev. Stat. Ann. §§ 506:5 to :7 (LexisNexis 1997 & Supp. 2005)	✓+ § 506:7
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓ § 46:2B-8.13(b)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-116(a)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓ §5604(d)(1)
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓ §489B(g) & (i)
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3510(a)-(c)
Va. Code Ann. §§ 11-9.1 to -9.7 (West 2008)	✓ § 11-9.1
	✓ § 11-9.6
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓+ §§ 11.94.090 & 11.94.100(1)(e)
Wis. Stat. Ann. §§ 243.07, 243.10 (West 2001 & Supp. 2005)	✓ § 243.07(6r)
	✓ § 243.10(8)

<b>Chart 14</b> <b>UPOAA Section 116(b)</b>	
<b>UPOAA section 116(b)</b>	SECTION 116(b). “JUDICIAL RELIEF. (b) Upon motion by the principal, the court shall dismiss a petition filed under this section, unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse, or protecting the principal's autonomy</b>	This provision contains one relevant element. The commentary to section 116 states, “Section 116 operates as a check-and-balance on the narrow scope of section 114(h) and provides what, in many circumstances, may be the only means to detect and stop agent abuse of an incapacitated principal.” Section 116(a) authorizes nine categories of individuals and governmental agencies to ask a court to interpret the meaning of a POA or to review an agent’s conduct. (This authority is referred to as “standing,” in legal terminology.) Unlike many of the other UPOAA provisions, section 116(a) does <b>not</b> allow the principal to narrow the range of individuals who may petition a court to construe the POA or review the agent’s conduct. Section 116(b), however, does state that if the principal asks the court to dismiss (i.e., throw out) a petition to construe the POA or review the agent’s conduct, then the court must dismiss the petition unless it finds “that the principal lacks capacity to revoke the agent’s authority or the power of attorney.” In other words, a principal who lacks the capacity to monitor the agent’s actions or to terminate the agent’s authority does not have the capacity to ask the court to ignore a petition filed by someone seeking to construe the agent’s authority or review the agent’s actions.
<b>Standard for assessing similarity to UPOAA</b>	A state POA law that has the one element is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓++ § 404.727(2)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-116(b)
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓++ § 3510(b)

<b>Chart 15</b> <b>UPOAA Section 117</b>	
<b>UPOAA section 117</b>	SECTION 117. “AGENT’S LIABILITY. An agent that violates this [act] is liable to the principal or the principal’s successors in interest for the amount required to:  (1) restore the value of the principal’s property to what it would have been had the violation not occurred; and  (2) reimburse the principal or the principal’s successors in interest for the attorney’s fees and costs paid on the agent’s behalf.”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	This provision contains two relevant elements.  The first element is that an agent who violates the law is liable for restoration of the value of the principal’s property.  The second element is that an agent who violates the law must reimburse the principal or, alternatively, the principal’s successors in interest, for any attorney’s fees and costs paid by the principal’s estate on behalf of the agent.  Both elements are relevant to remedying POA abuse. The first provides a remedy if an agent’s unlawful actions reduced the value of the principal’s estate. The second provides that neither the principal nor the principal’s successors in interest should bear the costs of an agent’s defense of his or her actions as agent if those actions are determined to be unlawful.
<b>Standard for assessing similarity to UPOAA</b>	A state POA law that has both elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).  A state POA law that has either one of the two elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
Ariz. Rev. Stat. Ann. §§ 14-5501 to -5507 (2005)	✓++ § 14-5506(c)
Fla. Stat. Ann. § 709.08 (West 2000 & Supp. 2006)	✓ § 709.08(11)
Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 & Supp. 2005)	✓ § 30-5-6-4.5(c)
La. Civ. Code Ann. art. 2985-3032 (2005)	✓ § 3008
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)	✓ § 523.21
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓++ § 404.717(5)

(continued)

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Chart 15: UPOAA Section 117 (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
N.H. Rev. Stat. Ann. §§ 506:5 to : 7 (LexisNexis 1997 & Supp. 2005)	✓ § 506:7(V)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-117
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓+ § 3511
Va. Code Ann. §§ 11-9.1 to -9.7 (West 2008)	✓ § 11-9.1(C)
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓ § 11.94.120

<b>Chart 16</b> <b>UPOAA Section 118</b>	
<b>UPOAA section 118</b>	<p>SECTION 118. “AGENT’S RESIGNATION; NOTICE. Unless the power of attorney provides a different method for an agent’s resignation, an agent may resign by giving notice to the principal and, if the principal is incapacitated:</p> <p>(1) to the [conservator or guardian], if one has been appointed for the principal, and a coagent or successor agent; or</p> <p>(2) if there is no person described in paragraph (1), to:</p> <p>(A) the principal’s caregiver;</p> <p>(B) another person reasonably believed by the agent to have sufficient interest in the principal’s welfare; or</p> <p>(C) a governmental agency having authority to protect the welfare of the principal.</p> <p>Legislative Note: The brackets in this section indicate where the enacting jurisdiction should review its respective guardianship, conservatorship, or other protective proceedings statutes and amend, if necessary for consistency, the bracketed language.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains six relevant elements.</p> <p>The first element is that the principal is allowed to provide guidance to the agent about resignation.</p> <p>The remaining five elements provide options for an agent to follow if the principal failed to provide guidance in the POA about resignation.</p> <p>The second element is that the agent may notify the principal of his or her resignation.</p> <p>The third through sixth elements apply if the principal is incapacitated. The third element is that the agent may notify a guardian or conservator (if one has been appointed), any coagents, and any successor agents. The fourth through sixth elements provide that if there is no guardian/conservator, coagent, or successor agent, then the agent may notify the principal’s caregiver or another person whom the agent reasonably believes is sufficiently concerned about the principal’s welfare or a government agency that has authority to protect the principal’s welfare, which could include an APS agency, the long-term care ombudsman program, or other government agency.</p> <p>This provision is relevant because practitioners report that agents sometimes simply stop fulfilling their duties without notifying their principals or anyone else if the principals have become incapacitated. This failure to act or to notify someone of the intent to stop acting on behalf of the principal may constitute neglect or abandonment under some states’ elder abuse laws. Additionally, the failure to notify and enable someone else to protect the incapacitated principal may make the principal even more vulnerable to abuse. The latter five elements seek to prevent these problems. The first element supports the principal’s autonomy and choice.</p>

(continued)

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Chart 16: UPOAA Section 118 (continued)

<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has five or six of the six elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any three or four of the six elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one or two of the six elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓ §4207</p>
<p>N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)</p>	<p>✓++ § 46B-1-118</p>

<b>Chart 17</b> <b>UPOAA Section 119</b>	
<b>UPOAA section 119(d)</b>	<p>SECTION 119. “ACCEPTANCE OF AND RELIANCE UPON ACKNOWLEDGED POWER OF ATTORNEY.</p> <p>(d) A person that is asked to accept an acknowledged power of attorney may request, and rely upon, without further investigation:</p> <p>(1) an agent’s certification under penalty of perjury of any factual matter concerning the principal, agent, or power of attorney;</p> <p>(2) an English translation of the power of attorney if the power of attorney contains, in whole or in part, language other than English; and</p> <p>(3) an opinion of counsel as to any matter of law concerning the power of attorney if the person making the request provides in a writing or other record the reason for the request.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>Section 119(d) contains three relevant elements.</p> <p>Sections 119(b) and (c) provide that a third party who accepts an acknowledged POA in good faith and without actual knowledge of its invalidity is entitled to rely on the document as if it were valid and is not obligated to investigate its validity. Section 119(d), however, <i>allows</i> a third party who is asked to accept an acknowledged POA to “request and rely upon, without further investigation,” one or more of the following three documents: (1) a certification, (2) translation, and (3) an opinion of counsel about the POA.</p> <p>The first element is that a third party may request a certification under penalty of perjury any factual matter concerning the principal, agent, or POA.</p> <p>The second element is that a third party may request an English translation of the POA.</p> <p>The third element is that a third party may request an opinion of counsel as to any matter of law concerning the POA if the person making the request provides in a writing or other record the reason for the request.</p> <p>Why might a third party request a certification, translation, or opinion of counsel when sections 119(b) and (c) make it clear that such a request is not required? The request alone may be sufficient to cause an agent intent on abusing the authority granted in the POA to abandon that act. Additionally, the request may provide time for the third party to report suspicions of abuse to a government agency such as APS or law enforcement and enable an investigation before the harm is committed.</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>

(continued)

Power of Attorney Abuse: What States Can Do About It

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Chart 17: UPOAA Section 119 (continued)

State and citation(s) to POA law	Symbol(s) and citation(s) to section(s) of POA law
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓ § 46:2B-8.6(b)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-119
N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)	✓ § 32A-40(b)
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓ § 5606

<b>Chart 18</b> <b>UPOAA Section 120(b), Alternative A and Section 120(c), Alternative B</b>	
<b>UPOAA Alternative A, section 120(b), and Alternative B, section 120(c)</b>	<p>“Legislative Note: Section 120 enumerates the bases for legitimate refusals of a power of attorney as well as sanctions for refusals that violate the Act. Alternatives A and B are identical except that Alternative B applies only to acknowledged statutory form powers of attorney while Alternative A applies to all acknowledged powers of attorney.”</p> <p>[NOTE FROM THE AUTHORS: Alternatives A and B differ in one other respect. The subsection lettering is different because Alternative B begins with a subprovision indicating its applicability only to acknowledged short-form powers of attorney. Alternative A’s subsection (b) is identical to Alternative B’s subsection (c).]</p> <p>Alternative A</p> <p>SECTION 120b. “LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY.</p> <p>(b) A person is not required to accept an acknowledged power of attorney if:</p> <ol style="list-style-type: none"> <li>(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;</li> <li>(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;</li> <li>(3) the person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power;</li> <li>(4) a request for a certification, a translation, or an opinion of counsel under Section 119(d) is refused;</li> <li>(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Section 119(d) has been requested or provided; or</li> <li>(6) the person makes, or has actual knowledge that another person has made, a report to the [local adult protective services office] stating a good faith 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.”</li> </ol> <p>Alternative B</p> <p>SECTION 120c. “LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED STATUTORY FORM POWER OF ATTORNEY.</p> <p>(c) A person is not required to accept an acknowledged statutory form power of attorney if:</p> <ol style="list-style-type: none"> <li>(1) the person is not otherwise required to engage in a transaction with the principal in the same circumstances;</li> <li>(2) engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law;</li> <li>(3) the person has actual knowledge of the termination of the agent’s authority or of the power of attorney before exercise of the power;</li> <li>(4) a request for a certification, a translation, or an opinion of counsel under Section 119(d) is refused;</li> </ol>

*(continued)*

Chart 18: UPOAA Section 120(b), Alternative A and Section 120(c), Alternative B

<p><b>UPOAA Alternative A, section 120(b), and Alternative B, section 120(c) (continued)</b></p>	<p>(5) the person in good faith believes that the power is not valid or that the agent does not have the authority to perform the act requested, whether or not a certification, a translation, or an opinion of counsel under Section 119(d) has been requested or provided; or</p> <p>(6) the person makes, or has actual knowledge that another person has made, a report to the [local adult protective services office] stating a good faith 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.”</p>
<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse, or protecting the principal’s autonomy</b></p>	<p>These identical provisions contain six relevant elements. The following discussion of relevance applies both to section 120(b) in Alternative A and section 120(c) in Alternative B.</p> <p>Section 120 provides six situations when a third party may refuse to accept an acknowledged POA without liability for the refusal. (Lawyers often refer to situations where a party is protected from liability as “safe harbors.”) The six elements are the six safe harbors. As noted above, Alternative A governs an acknowledged POA and Alternative B governs an acknowledged statutory form POA, but otherwise the alternative provisions are substantively the same. Section 119(a) provides that “For purposes of this section and Section 120, ‘acknowledged’ means purportedly verified before a notary public or other individual authorized to take acknowledgements.”</p> <p>Each of these safe harbors relates to preventing and detecting POA abuse, but the fourth and sixth especially so. Each is discussed below.</p> <p>Alternative A subsection (b)(4) and Alternative B subsection (c)(4) – To appreciate the relevance of this provision, one must read it in conjunction with section 119. Sections 119(b) and (c) provide that a third party who accepts an acknowledged POA in good faith and without actual knowledge of its invalidity is entitled to rely on the document as if it were valid and is not obligated to investigate its validity. Section 119(d), however, <i>allows</i> a third party who is asked to accept an acknowledged POA to “request and rely upon, without further investigation,” a certification, translation, or opinion of counsel about the POA. In other words, a third party is not required to request those things but may do so. If the third party makes such a request and the request is refused, then section 120(b)(4) in Alternative A and section 120(c)(4) in Alternative B provide a safe harbor to the third party for refusing to accept the POA. Why might a third party request a certification, translation, or opinion of counsel when sections 119(b) and (c) make it clear that such a request is not required? The request alone may be sufficient to cause an agent intent on abusing the authority granted in the POA to abandon that act. Additionally, the request may provide time for the third party to report suspicions of abuse to a government agency such as APS or law enforcement and enable an investigation before the harm is committed.</p>

(continued)

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Chart 18: UPOAA Section 120(b), Alternative A and Section 120(c), Alternative B

<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse, or protecting the principal's autonomy (continued)</b></p>	<p>Alternative A subsection (b)(6) and Alternative B subsection (c)(6) – This provision enables a third party who “makes, or has actual knowledge that another person has made, a report to the [local adult protective services office] stating a good faith 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” to refuse to accept the POA. To illustrate, if bank personnel suspected that an agent was financially exploiting the principal and had reported that suspicion to APS, they could refuse to accept an acknowledged, otherwise valid POA without fear of liability.</p>
<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has five or six of the six elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).  A state POA law that has any three or four of the six elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).  A state POA law that has any one or two of the six elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓ § 4300</p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓ § 4406(a) &amp; (c)</p>
<p>Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 &amp; Supp. 2005)</p>	<p>✓ § 30-5-9-9(b)</p>
<p>Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 &amp; Supp. 2008)</p>	<p>✓ §523.20</p>
<p>N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 &amp; Supp. 2006)</p>	<p>✓ §46:2B-13(a)-(b)</p>
<p>N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)</p>	<p>✓++ § 46B-1-120(C)</p>
<p>N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)</p>	<p>✓+ § 32A-42</p>
<p>20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)</p>	<p>✓ §5608</p>
<p>Wash. Rev. Code Ann. §§</p>	<p>✓ § 11.94.090(1)(i)</p>

11.94.010 to .150 (West 2006 & Supp. 2008)	✓ § 11.94.120
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<b>Chart 19</b> <b>UPOAA Section 120(c), Alternative A and Section 120(d), Alternative B</b>	
<b>UPOAA Alternative A, section 120(c), and Alternative B, section 120(d)</b>	<p>“Legislative Note: Section 120 enumerates the bases for legitimate refusals of a power of attorney as well as sanctions for refusals that violate the Act. Alternatives A and B are identical except that Alternative B applies only to acknowledged statutory form powers of attorney while Alternative A applies to all acknowledged powers of attorney.”</p> <p>[NOTE FROM THE AUTHORS: Alternatives A and B differ in one other respect. The subsection lettering is different because Alternative B begins with a subprovision indicating its applicability only to acknowledged short-form powers of attorney. Alternative A’s subsection (c) is identical to Alternative B’s subsection (d).]</p> <p>Alternative A</p> <p>SECTION 120c. “LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED POWER OF ATTORNEY.</p> <p>(c) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to:</p> <ol style="list-style-type: none"> <li>(1) a court order mandating acceptance of the power of attorney; and</li> <li>(2) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.”</li> </ol> <p>Alternative B</p> <p>SECTION 120d. “LIABILITY FOR REFUSAL TO ACCEPT ACKNOWLEDGED STATUTORY FORM POWER OF ATTORNEY.</p> <p>(d) A person that refuses in violation of this section to accept an acknowledged statutory form power of attorney is subject to:</p> <ol style="list-style-type: none"> <li>(1) a court order mandating acceptance of the power of attorney; and</li> <li>(2) liability for reasonable attorney's fees and costs incurred in any action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.”</li> </ol>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains three relevant elements.</p> <p>The first element is that only persons who refuse to accept a POA without benefit of any of the six safe harbors set forth in section 120(b)/section 120(c) may be liable for that refusal.</p> <p>The second element is that those persons may be subject to a court order mandating that they accept the POA.</p> <p>The third element is that those persons may be liable for attorney’s fees and costs for legal actions or proceedings that determine that the refusal to accept the POA was not protected by a safe harbor.</p> <p>These elements are relevant in several ways. By precluding liability for persons who refuse to accept a POA in accordance with the safe harbors of section 120(b)/section 120(c), this provision may encourage prevention, detection, or redress of POA abuse.</p>

(continued)

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Chart 19: UPOAA Section 120(c), Alternative A and Section 120(d), Alternative B (continued)

<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal's autonomy (continued)</b></p>	<p>Moreover, this provision supports a principal's autonomy and choice. Indeed, practitioners who attended UPOAA Drafting Committee meetings indicated that they sometimes resorted to obtaining a guardianship for the principal when a third party refused to accept the POA because it was faster and less expensive than challenging the third party's refusal to accept the UPOAA. Linda S. Whitton, <i>The Uniform Power of Attorney Act: Striking a Balance Between Autonomy and Protection</i>, Phoenix Law Review Symposium, January 25, 2008 (forthcoming, 2008).</p>
<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has all three elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).  A state POA law that has any two of the three elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).  A state POA law that has any one of the three elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Ind. Code Ann. §§ 30-5-1-1 to 30-5-10-4 (West 1994 &amp; Supp. 2005)</p>	<p>✓++  § 30-5-9-9(a)</p>
<p>Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 &amp; Supp. 2008)</p>	<p>✓  § 523.20</p>
<p>N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)</p>	<p>✓++  § 46B-1-102(D)</p>
<p>N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)</p>	<p>✓++  § 32A-41(a)</p>
<p>20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)</p>	<p>✓+  § 5608(a)</p>
<p>Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 &amp; Supp. 2008)</p>	<p>✓++  § 11.94.120</p>

<b>Chart 20</b> <b>UPOAA Section 123</b>	
<b>UPOAA section 123</b>	SECTION 123. “REMEDIES UNDER OTHER LAW. The remedies under this [act] are not exclusive and do not abrogate any right or remedy under the law of this state other than this [act].”
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	There is only one relevant element in this provision. This section is relevant to remedying POA abuse. It recognizes that other state laws may provide broader remedies or additional remedies to those included in the UPOAA. For example, state law may provide criminal penalties for POA abuse or may provide enhanced civil damages for financial exploitation of older persons.
<b>Standard for assessing similarity to UPOAA</b>	A state POA law that has the one element is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-123
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓++ § 3512

<b>Chart 21</b> <b>UPOAA Section 201(a) and 301</b>	
<b>UPOAA sections 201(a) and 301</b>	<p>[NOTE FROM THE AUTHORS: Section 201(a) is also included in section 301, which governs short-form powers of attorney.]</p> <p><b>SECTION 201a. “AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF GENERAL AUTHORITY.</b></p> <p>(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal’s property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject:</p> <ol style="list-style-type: none"> <li>(1) create, amend, revoke, or terminate an inter vivos trust;</li> <li>(2) make a gift;</li> <li>(3) create or change rights of survivorship;</li> <li>(4) create or change a beneficiary designation;</li> <li>(5) delegate authority granted under the power of attorney;</li> <li>(6) waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan; [or]</li> <li>(7) exercise fiduciary powers that the principal has authority to delegate[; or</li> <li>(8) disclaim property, including a power of appointment].</li> </ol> <p>Legislative Note: The phrase ‘or disclaim property, including a power of appointment’ is in brackets in subsection (a) and should be deleted if under the law of the enacting jurisdiction a fiduciary has authority to disclaim an interest in, or power over, property and the jurisdiction does not wish to restrict that authority by the Uniform Power of Attorney Act. See Unif. Disclaimer of Property Interests Acts § 5(b) (2006) (providing, ‘[e]xcept to the extent a fiduciary’s right to disclaim is expressly restricted or limited by another statute of this State or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment . . . ’). See also Section 301 Legislative Note.”</p> <p><b>SECTION 301. “GRANT OF SPECIFIC AUTHORITY (OPTIONAL).</b> My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:</p> <p>(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)</p> <p><input type="checkbox"/> Create, amend, revoke, or terminate an inter vivos trust</p> <p><input type="checkbox"/> Make a gift, subject to the limitations of the Uniform Power of Attorney Act [insert citation to Section 217 of the act] and any special instructions in this power of attorney</p> <p><input type="checkbox"/> Create or change rights of survivorship</p> <p><input type="checkbox"/> Create or change a beneficiary designation</p>

(continued)

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Chart 21: UPOAA Section 201(a) and 301 (continued)

<p><b>UPOAA sections 201(a) and 301 (continued)</b></p>	<p>(<input type="checkbox"/>) Authorize another person to exercise the authority granted under this power of attorney</p> <p>(<input type="checkbox"/>) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan</p> <p>(<input type="checkbox"/>) Exercise fiduciary powers that the principal has authority to delegate</p> <p>[(<input type="checkbox"/>) Disclaim or refuse an interest in property, including a power of appointment]"</p>
<p><b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal's autonomy</b></p>	<p>The identical provisions in section 201(a) and section 301 contain eight relevant elements. The following discussion of relevance applies both to section 201(a) and section 301.</p> <p>The eight elements are the eight powers listed in UPOAA section 201(a) and in section 301. According to the commentary, the UPOAA drafters identified those powers that, if misused, pose a high risk “to the principal’s property and estate plan.” The UPOAA requires that those powers may be granted to an agent only if expressly indicated in the DPA. As stated in the commentary, those powers “may not be inferred from a grant of general authority.” The UPOAA does not prohibit the principal from granting those powers, recognizing that they may “be necessary to effectuate the principal's property management and estate planning objectives.” Instead, it attempts to ensure that the principal understands them and grants them knowingly. The commentary even says, “Ideally, these are matters about which the principal will seek advise (sic) before granting authority to an agent.”</p>
<p><b>Standard for assessing similarity to UPOAA</b></p>	<p>A state POA law that has seven or eight of the eight elements is considered to be IDENTICAL OR EQUIVALENT to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has four, five, or six of the eight elements is considered to have SUBSTANTIAL SIMILARITY to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has between one and three of the eight elements is considered to have SOME SIMILARITY to the UPOAA (symbolized by ✓).</p>
<p><b>State and citation(s) to POA law</b></p>	<p><b>Symbol(s) and citation(s) to section(s) of POA law</b></p>
<p>Ala. Code §§ 26-1-2 to -2.1 (LexisNexis 1992 &amp; Supp. 2006)</p>	<p>✓ § 26-1-2.1(a)</p>
<p>Alaska Stat. §§ 13.26.332 to .358 (2004 &amp; Supp. 2005)</p>	<p>✓ § 13.26.332</p>
<p>Cal. Prob. Code §§ 4000-4034, 4050-4054, 4100-4102, 4120-4130, 4150-4155, 4200-4207, 4230-4238, 4260-4266, 4300-4310, 4400-4409, 4450-4465 (West Supp. 2006)</p>	<p>✓+ § 4264</p> <p>✓ §4465</p>

(continued)

Power of Attorney Abuse: What States Can Do About It

Chart 21: UPOAA Section 201(a) and 301 (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
Colo. Rev. Stat. Ann. §§ 15-1-1301 to -1320, 15-14-501 to -509 (West 2005)	✓ § 15-1-1302(b)(3)
	✓ § 15-14-501(1)
Conn. Gen. Stat. Ann. §§ 1-42 to 1-56, 1-56a to 1-56b (West 2008), Conn. Gen. Stat. Ann. § 45a-562 (West 2004)	✓ § 1-43(a)
755 Ill. Comp. Stat. Ann. 45/1-1, 45/2-1 to 45/2-11, 45/3-1 to 45/3-4 (West 1992 & Supp. 2006)	✓ §45/2-9
	✓+ § 45/3-3(3)
	✓+ § 45/3-4
Kan. Stat. Ann. §§ 58-650 to -665 (2006)	✓++ § 58-654(f)
Ky. Rev. Stat. Ann. § 386.093 (West 2005)	✓ § 386.093(6)
La. Civ. Code Ann. art. 2985-3032 (2005)	✓ § 2997
Me. Rev. Stat. Ann. tit. 18-A, §§ 5-501 to -510 (1998 & Supp. 2005)	✓ § 5-508(b)
Minn. Stat. Ann. §§ 523.01 to .24 (West 2006 & Supp. 2008)	✓ § 523.23
Mo. Ann. Stat. §§ 404.700 to .737 (West 2001)	✓+ § 404.710(6)
N.H. Rev. Stat. Ann. §§ 506:5 to :7 (LexisNexis 1997 & Supp. 2005)	✓ § 506:6(V)
N.J. Stat. Ann. §§ 46:2B-8.1 to -19 (West 2003 & Supp. 2006)	✓ § 46:2B-8.13a
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-201(A)
	✓++ § 46B-1-301
N.Y. Gen. Oblig. Law §§ 5-1501 to -1506 (McKinney 2001 & Supp. 2006)	✓ § 5-1501(1)

(continued)

Power of Attorney Abuse: What States Can Do About It

Chart 21: UPOAA Section 201(a) and 301 (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)	✓ § 32A-1
20 Pa. Cons. Stat. Ann. §§ 5601-5611 (West 2005)	✓ § 5601.1(b)-(c)
	✓ § 5601.2(a)-(c)
Tenn. Code Ann. §§ 34-6-101 to 34-6-111 (West 2007)	✓+ §§ 34-6-108(b) & (c) & 34.6-110
Tex. Prob. Code Ann. §§ 481 to 506 (Vernon 2003)	✓ § 490
Utah Code Ann. §§ 75-5-501 to 504 (1993 & Supp. 2006)	✓ § 75-5-503
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓ § 3504(e)-(f)
Wash. Rev. Code Ann. §§ 11.94.010 to .150 (West 2006 & Supp. 2008)	✓+ § 11.94.050

<b>Chart 22</b> <b>UPOAA Section 201(b) and 301</b>	
<b>UPOAA sections 201(b) and 301</b>	<p>[NOTE FROM THE AUTHORS: Section 201(b) is also included in section 301, which governs short-form powers of attorney.]</p> <p><b>SECTION 201b. “AUTHORITY THAT REQUIRES SPECIFIC GRANT; GRANT OF GENERAL AUTHORITY.</b></p> <p>(b) Notwithstanding a grant of authority to do an act described in subsection (a), unless the power of attorney otherwise provides, an agent that is not an ancestor, spouse, or descendant of the principal, may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal’s property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise.”</p> <p><b>SECTION 301. “LIMITATION ON AGENT’S AUTHORITY</b></p> <p>An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.”</p>
<b>Why this provision is relevant to preventing, detecting, or remedying POA abuse or protecting the principal’s autonomy</b>	<p>This provision contains three relevant elements.</p> <p>The first element is that even if an agent has been given express authority related to the principal’s property and estate plan (see section 201(a)), an agent may not engage in self-dealing.</p> <p>The second element is an exception to the first element’s prohibition against self-dealing for agents who are ancestors, spouses, or descendants of the principal.</p> <p>The third element is that the principal may override the prohibition against self-dealing by agents who are not ancestors, spouses, or descendants. The principal may indicate in the POA that a nonrelative agent is allowed to do the acts listed in section 201(b).</p> <p>These elements are relevant because, according to the commentary, they provide “an additional safeguard for the principal.” Agents allowed to self-deal, whether relatives or nonrelative who have been granted this authority by the principal, are still subject to the mandatory duties set forth in section 114(a) and, if applicable, the default duties set forth in section 114(b).</p>
<b>Standard for assessing similarity to UPOAA</b>	<p>A state POA law that has all three elements is considered to be <b>IDENTICAL OR EQUIVALENT</b> to the UPOAA (symbolized by ✓++).</p> <p>A state POA law that has any two of the three elements is considered to have <b>SUBSTANTIAL SIMILARITY</b> to the UPOAA (symbolized by ✓+).</p> <p>A state POA law that has any one of the three elements is considered to have <b>SOME SIMILARITY</b> to the UPOAA (symbolized by ✓).</p>
<b>State and citation(s) to POA law</b>	<b>Symbol(s) and citation(s) to section(s) of POA law</b>
La. Civ. Code Ann. art. 2985-3032 (2005)	✓ § 2998
N.H. Rev. Stat. Ann. §§ 506:5 to :7 (LexisNexis 1997 & Supp. 2005)	✓+ § 506:6(V)(b)

(continued)

Chart 22: UPOAA Section 201(b) and 301 (continued)

State and citation(s) to POA law (continued)	Symbol(s) and citation(s) to section(s) of POA law (continued)
N.M. Stat. Ann. §§ 46B-1-101 to 403 (West 2008)	✓++ § 46B-1-201(b)
	✓++ § 46B-1-301
N.C. Gen. Stat. Ann. §§ 32A-1 to 32A-3, 32A-8 to 32A-14.12, 32A-40 to 32A-43 (West 2007)	✓ § 32A-14.1(b)
Vt. Stat. Ann. tit. 14 §§ 3501-3516 (2002 & Supp. 2005)	✓+ § 3504(f)



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601 E Street, NW | Washington, DC 20049  
202-434-3840 PH | 202-434-6480 F | [www.aarp.org/ppi](http://www.aarp.org/ppi)