

UNIFORM POWER OF ATTORNEY ACT (EXCERPT)
Act 187 of 2023

ARTICLE 1
GENERAL PROVISIONS

***** 556.201.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.201.new Short title.

Sec. 101. This act may be cited as the "uniform power of attorney act".

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.202.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.202.new Definitions.

Sec. 102. As used in this act:

- (a) "Actual knowledge" means knowledge in fact.
- (b) "Agent" means a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise. Agent includes an original agent, a coagent, a successor agent, and a person to whom an agent's authority is delegated.
- (c) "Court" includes that term as defined in section 1103 of the estates and protected individuals code, 1998 PA 386, MCL 700.1103.
- (d) "Durable", with respect to a power of attorney, means not terminated by the principal's incapacity.
- (e) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- (f) "Entity" means a person other than an individual.
- (g) "General power of appointment" means general power as that term is defined in section 2 of the powers of appointment act of 1967, 1967 PA 224, MCL 556.112.
- (h) "Good faith" means honesty in fact.
- (i) "Incapacity" means inability of an individual to manage property or business affairs for either of the following reasons:
 - (i) The individual has an impairment in the ability to receive and evaluate information or make or communicate decisions even with the use of technological assistance.
 - (ii) The individual is any of the following:
 - (A) Missing.
 - (B) Detained, including incarcerated in a penal system.
 - (C) Outside the United States and unable to return.
- (j) "Person" means an individual or corporation, including a fiduciary of an estate or trust, a business trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
- (k) Unless the context requires otherwise, "power" means a power of attorney.
- (l) "Power of attorney" means a written record that grants authority to an agent to act in 1 or more matters on behalf of the principal, whether or not the term power of attorney is used.
- (m) "Presented for acceptance", with respect to a power of attorney, means that both of the following events have occurred:
 - (i) A person other than the principal or an agent under the power in question has been asked by the principal or an agent under the power to take a specified action or actions in reliance on the power.
 - (ii) The power of attorney itself or a copy of it has been presented to and received by the person that is asked to take action in reliance on the power as described in subparagraph (i).
- (n) "Presently exercisable", with respect to a power of appointment, means that the power of appointment is exercisable by the appointee at the relevant time. A power of appointment that is not exercisable until the occurrence of a specified event, the satisfaction of an ascertainable standard, or the passage of a specified period is presently exercisable only after the occurrence of the specified event, the satisfaction of the ascertainable standard, or the passage of the specified period. A power that is exercisable only by will is not presently exercisable.
- (o) "Principal" means an individual who grants authority to an agent in a power of attorney.
- (p) "Property" means anything that may be the subject of ownership, whether real or personal, or legal or equitable, or any interest or right in such a thing.
- (q) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or

other medium and is retrievable in perceivable form.

(r) "Sign" means to do either of the following with the intent to authenticate or adopt a record:

(i) Execute or adopt a tangible symbol.

(ii) Attach to or logically associate with the record an electronic sound, symbol, or process.

(s) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(t) "Stocks and bonds" means stocks, bonds, mutual funds, and all other types of securities and financial instruments, whether held directly, indirectly, or in any other manner. Stocks and bonds does not include commodity futures contracts or call or put options on stocks or stock indexes.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.202a.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.202a.new Notice or knowledge of a fact involving a power of attorney.

Sec. 102a. (1) Except as otherwise provided in this section, a person has knowledge of a fact involving a power of attorney if 1 or more of the following are true:

(a) The person has actual knowledge of the fact.

(b) The person has received a notice or notification of the fact.

(c) From all the facts and circumstances known to the person at the time in question, the person has reason to know the fact.

(2) An entity that conducts activities through 1 or more employees has notice or knowledge of a fact involving a power of attorney, a principal, or an agent only from the time the information is received by an employee conducting a transaction or from the time the information would have been brought to the employee's attention if the entity had exercised reasonable diligence.

(3) An entity that conducts activities through 1 or more employees has actual knowledge of a fact relating to a power of attorney, a principal, or an agent only if the employee conducting the transaction has actual knowledge of the fact.

(4) As used in this section:

(a) "Reasonable diligence" means the maintenance of and reasonable compliance with reasonable routines for communicating significant information to the employee conducting the transaction. Reasonable diligence does not require an employee of the entity to communicate information unless the communication is part of the individual's regular duties or the individual knows a matter concerning the transaction would be materially affected by the information.

(b) "Transaction" means a transaction that is conducted for the entity and that involves the power of attorney.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.203.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.203.new Applicability of act.

Sec. 103. This act applies to all powers of attorney except the following:

(a) A power to the extent it is coupled with an interest in the subject of the power, including a power given to or for the benefit of a creditor in connection with a credit transaction.

(b) A patient advocate designation under section 5506 of the estates and protected individuals code, 1998 PA 386, MCL 700.5506.

(c) A delegation of a parent's or guardian's power regarding care, custody, or property of a minor child or ward under section 5103 of the estates and protected individuals code, 1998 PA 386, MCL 700.5103.

(d) A proxy or other delegation to exercise voting rights or management rights with respect to an entity.

(e) A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.204.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.204.new Limited presumption of durability.

Sec. 104. A power of attorney created on or after the effective date of this act that is executed in accordance with section 105(2) or (3) is durable unless it expressly provides that it is terminated by the incapacity of the principal. A power of attorney created on or after the effective date of this act that is not executed in accordance with section 105(2) or (3) is not durable.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.205.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.205.new Execution of power of attorney; requirements.

Sec. 105. (1) To be effective, a power of attorney created on or after the effective date of this act must be signed by 1 of the following individuals:

(a) The principal.

(b) If signed in the principal's conscious presence, another individual directed by the principal to sign the principal's name.

(2) To be durable, a power of attorney signed under subsection (1)(a) must meet 1 of the following requirements:

(a) Be acknowledged by the principal before a notary public or other individual authorized to take acknowledgments.

(b) Be signed in the presence of 2 witnesses, both of whom also sign the power, subject to both of the following:

(i) A witness may not be an agent nominated in the power.

(ii) One of the witnesses may be an individual who also acts, in the principal's execution of the power, as a notary public or other individual authorized to take acknowledgments.

(3) To be durable, a power of attorney signed under subsection (1)(b) must be signed in the presence of 2 witnesses as described in subsection (2)(b), regardless of whether the power is acknowledged.

(4) A signature on a power of attorney is presumed to be genuine if the principal acknowledges the signature before a notary public or other individual authorized by law to take acknowledgments.

(5) A signature on a power of attorney that is witnessed as described in subsection (2)(b) but is not acknowledged by the principal before a notary public or other individual authorized by law to take acknowledgments is not entitled to the presumption of genuineness under subsection (4), and the power is not acknowledged within the meaning of sections 119 and 120.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.206.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.206.new Validity of power of attorney.

Sec. 106. (1) A power of attorney executed in this state is valid in this state if, when the power was executed, the execution complied with the requirements for the execution of a power of attorney under the law of this state as it existed at that time.

(2) A power of attorney that is not executed in this state is valid in this state if, when the power was executed, the execution complied with either of the following:

(a) The requirements for the execution of a power of attorney under the law of the jurisdiction that determines the meaning and effect of the power under section 107 or under the law of the jurisdiction in which the principal was domiciled at the time of execution.

(b) The requirements for a military power of attorney under 10 USC 1044b.

(3) Except as otherwise provided in the power of attorney or by statute other than this act, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.207.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.207.new Meaning and effect of power of attorney.

Sec. 107. The meaning and effect of a power of attorney is determined by the law of the jurisdiction indicated in the power and, in the absence of an indication of jurisdiction, by the law of the jurisdiction in which the power was executed.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.208.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.208.new Nomination of conservator or guardian; relation of agent to court-appointed fiduciary.

Sec. 108. (1) 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 a protective proceeding if a protective proceeding for the

principal's estate or person commences after the principal executes the power. If consistent with applicable law on priority and suitability, the court shall make its appointment in accordance with the principal's most recent nomination in a power of attorney.

(2) 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, both of the following apply:

(a) The agent is accountable to the fiduciary as well as to the principal.

(b) The power of attorney is not terminated, and the agent's authority continues unless limited, suspended, or terminated by the court.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.209.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.209.new Effective date of power of attorney.

Sec. 109. (1) A power of attorney is effective when executed unless the principal provides in the power that it becomes effective at a specified future date or on the occurrence of a specified future event or contingency.

(2) If a power of attorney is intended to become effective on the occurrence of a specified future event or contingency, the principal may, in the power, authorize 1 or more persons to determine in a record that the event or contingency has occurred.

(3) If a power of attorney is intended to become effective on 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 becomes effective on a determination in a record by either of the following:

(a) A physician or licensed psychologist that the principal is incapacitated within the meaning of section 102(i)(i).

(b) An attorney at law, a judge, or an appropriate governmental official that the principal is incapacitated within the meaning of section 102(i)(ii).

(4) A person authorized by the principal in the power of attorney to determine that the principal is incapacitated may, to the extent necessary or convenient in making that determination, act as the principal's personal representative under the health insurance portability and accountability act of 1996, Public Law 104-191, sections 1171 to 1179 of the social security act, 42 USC 1320d to 1320d-8, and applicable regulations, to obtain access to the principal's health care information and communicate with the principal's health care provider.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.210.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.210.new Termination of power of attorney or agents authority.

Sec. 110. (1) A power of attorney terminates if any of the following occur:

(a) The principal dies.

(b) For a power of attorney that is not durable, the principal becomes incapacitated.

(c) The principal revokes the power of attorney.

(d) An event occurs that, according to the terms of the power of attorney, terminates the power.

(e) For a power of attorney that is intended only for a specified, limited purpose, the specified purpose of the power is accomplished.

(f) The principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power.

(2) An agent's authority terminates if any of the following occur:

(a) The principal revokes the authority.

(b) The agent dies, becomes incapacitated, or resigns.

(c) An action is filed for the dissolution or annulment of the agent's marriage to the principal or for the legal separation of the agent and the principal, unless the power of attorney provides otherwise.

(d) The power of attorney terminates.

(3) Unless the power of attorney provides otherwise, an agent's authority is exercisable until the authority terminates under subsection (2), notwithstanding any lapse of time since the execution of the power.

(4) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under or in reliance upon the

power. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(5) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under or in reliance on the power. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(6) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power provides that the previous power is revoked or that all other powers of attorney are revoked.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.211.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.211.new Designation of agents and successor agents.

Sec. 111. (1) A principal may designate 2 or more persons to act as coagents. Unless the power of attorney otherwise provides, each coagent may exercise the authority granted in the power independently.

(2) A principal may designate 1 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 1 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 has the same authority as that granted to the original agent and shall not act until all of the successor agent's predecessors under the terms of the power of attorney have resigned, died, become incapacitated, are no longer qualified to serve, or have declined to serve.

(3) Except to the extent the power provides that coagents and successor agents are liable for one another's misconduct, an agent under a given power of attorney who does not participate in or conceal a breach of fiduciary duty committed by another agent who is or was serving under that power, including a predecessor agent under the power, is liable for the actions of the other agent only as provided in subsection (4).

(4) An agent serving under a given power of attorney that has knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power, including a predecessor agent under the power, 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.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.212.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.212.new Reimbursement and compensation of agent.

Sec. 112. Unless the power of attorney provides otherwise, an agent is entitled to both of the following:

- (a) Reimbursement of expenses reasonably incurred on behalf of the principal.
- (b) Reasonable compensation for services rendered on behalf of the principal.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.213.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.213.new Agent's acceptance; acknowledgement of duties.

Sec. 113. (1) Except as otherwise provided in the power of attorney, a person accepts appointment as an agent under a power of attorney by exercising authority as an agent or by any other assertion or conduct indicating acceptance.

(2) Before exercising authority under a durable power of attorney, an agent shall execute an acknowledgment of the agent's duties that contains all the substantive statements contained in the optional template "Agent's Acknowledgment" provided in section 302 in substantially the form of that optional template.

(3) An agent's failure to comply with subsection (2) does not affect the agent's authority to act for the principal as provided in the durable power of attorney or this act, does not alter the agent's duties under the power and this act, and does not mitigate the agent's potential liability for breach of those duties.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.214.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.214.new Agent's duties; liability; breach of fiduciary duty.

Sec. 114. (1) Notwithstanding provisions to the contrary in the power of attorney, an agent that has accepted appointment shall do all of the following:

(a) Act in accordance with reasonable expectations of the principal that are actually known to the agent and, to the extent the expectations are not actually known, act in the principal's best interest.

(b) Act in good faith.

(c) Act only within the scope of authority granted by the principal.

(d) Keep reasonable records of receipts, disbursements, and transactions made by the agent on behalf of the principal.

(2) Except as otherwise provided in the power of attorney, an agent who has accepted appointment shall do all of the following:

(a) Act loyally for the principal's benefit.

(b) 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.

(c) Act with the care, competence, and diligence that a prudent person would in dealing with the property of another.

(d) Cooperate with a person that has authority to make health care decisions for the principal to carry out reasonable expectations of the principal concerning health care that are actually known to the agent and, to the extent the expectations are not actually known, to act in the principal's best interest.

(e) Attempt to preserve the principal's estate plan to the extent that plan is actually known to the agent and preserving the plan is consistent with the principal's best interest based on relevant factors including all of the following:

(i) The value and nature of the principal's property.

(ii) The principal's foreseeable obligations and need for maintenance.

(iii) The desirability of minimizing taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes.

(iv) Eligibility for a benefit, a program, or assistance under a statute or regulation.

(3) An agent who acts in good faith is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(4) An agent who acts for the best interest of the principal with the care, competence, and diligence that a prudent person would in dealing with the property of another is not liable solely because the agent also benefits from the act or has an individual or conflicting interest in relation to the property or affairs of the principal.

(5) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence.

(6) A decline in the value of the principal's property is not in itself sufficient to establish a breach of fiduciary duty.

(7) An agent serving under a power of attorney that does not have knowledge of a breach or imminent breach of fiduciary duty by another agent who is or was serving under that power does not have a duty to investigate the conduct of any coagent or predecessor agent to rule out the possibility of any breach.

(8) An agent who exercises authority to delegate to another person the authority granted by the principal or who engages another person on behalf of the principal is not liable for an act, error of judgment, or default of the person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(9) 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, or adult protective services, or, on the death of the principal, by the personal representative or successor in interest of the principal's estate. If a person that is authorized by the power of attorney or by this subsection to request a disclosure described in this subsection makes a request, the agent shall comply with the request within 30 days or provide a record substantiating why additional time is needed. If additional time is needed, the agent shall comply with the request within an additional 30 days.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.215.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.215.new Exoneration of agent for breach of duty; exceptions.

Sec. 115. (1) 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 either of the following applies:

(a) The provision relieves the agent of liability for breach of duty committed in bad faith or, except as provided in subsection (2), with reckless indifference to the purposes of the power of attorney or the best interest of the principal.

(b) The provision was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

(2) A provision in a power of attorney relieving an agent of liability under section 111(4) is binding on the principal and the principal's successors in interest except to the extent that it relieves the agent of liability for breach of duty committed in bad faith or was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.216.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.216.new Judicial relief; dismissal of petition.

Sec. 116. (1) Without precluding other bases on which such matters may properly be brought before the court, any of the following persons may petition a court to construe a power of attorney or review the agent's conduct and grant appropriate relief:

(a) The principal or the agent.

(b) A guardian, conservator, or other fiduciary acting for the principal.

(c) A person that, at the time of the petition, is exercising authority to make health care decisions for the principal.

(d) An individual who, at the time of the petition, would be an heir of the principal if the principal were to die intestate at that time.

(e) 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 the trustee of which has a financial interest in the principal's estate.

(f) The personal representative of the principal's estate.

(g) Adult protective services.

(h) A caregiver or another person that demonstrates sufficient interest in the principal's welfare.

(i) A person asked to accept the power of attorney.

(2) Upon motion by the principal, the court shall dismiss a petition filed under subsection (1) unless the court finds 1 of the following:

(a) That the principal lacks capacity to revoke the agent's authority or the power of attorney.

(b) That the motion is the effect of undue influence, fraud, or duress.

(3) Without precluding other bases on which such matters may properly be brought before the court, any of the following persons may petition a court to review conduct regulated by this act on the part of a person to whom a power of attorney is presented for acceptance and to grant appropriate relief:

(a) The principal or the agent.

(b) A guardian, conservator, or other court-appointed fiduciary acting for the principal.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.217.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.217.new Violation of act; agent's liability.

Sec. 117. (1) An agent who violates this act is liable to the principal or the principal's successors in interest for the amount required to restore the value of the principal's property to what it would have been had the violation not occurred, including reimbursement of attorney fees and costs paid on the agent's behalf in the defense of conduct constituting or contributing to the violation.

(2) If an agent embezzles or wrongfully converts the principal's property, or refuses, without colorable claim of right, to transfer possession of the principal's property to the principal or the principal's successors in interest on demand, the agent is liable in an action brought by the principal or the principal's successors in interest for treble the value of any property embezzled, converted, or wrongfully withheld from the principal or the principal's successors in interest.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.218.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.218.new Agent's resignation; notice.

Sec. 118. Unless the power of attorney provides a different method for an agent's resignation, an agent may resign by notifying the principal if the principal is not incapacitated or, if the principal is incapacitated, by notifying the following persons, as applicable:

- (a) If a conservator or guardian has been appointed for the principal, the conservator or guardian.
- (b) If a coagent or successor agent has been designated, the coagent or successor agent.
- (c) If there is not a person described in subdivision (a) or (b), 1 of the following:
 - (i) A caregiver of the principal who is reasonably believed by the agent to have a significant interest in the principal's welfare or another person that is reasonably believed by the agent to have the significant interest.
 - (ii) Adult protective services.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.219.new *THIS NEW SECTION IS EFFECTIVE JULY 1, 2024* *****

556.219.new Acceptance of and reliance upon acknowledged power of attorney; good faith.

Sec. 119. (1) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 105(4) that the signature is genuine.

(2) A person that in good faith accepts a power of attorney that is either an acknowledged power or a vintage durable power without actual knowledge that the power is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding the agent's authority may rely on the power as if the power were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. This subsection applies regardless of whether the purported agent under a durable power has executed an acknowledgment that complies with section 113(2) or any similar requirement under prior law.

(3) If a power of attorney that is durable is presented for acceptance without an agent's acknowledgment that complies with section 113(2) and is signed by the agent who is to act on the principal's behalf in the transaction in question, a person that is asked to accept the power may require that the agent provide the acknowledgment before accepting the power.

(4) A person that is asked to accept an acknowledged power of attorney may request and may rely, without further investigation, upon any of the following:

(a) A certification under penalty of perjury, including, as may be appropriate for the intended purpose, an affidavit in recordable form, by an agent or an attorney at law who represents either the agent or the principal of any factual matter concerning the principal, agent, or power of attorney.

(b) An English translation of the power of attorney if the power contains, in whole or in part, language other than English and the translation's accuracy is the subject of either a certification or an opinion of counsel.

(c) An opinion of counsel as to any matter of law concerning the power of attorney if the person requesting the opinion explains the reason for the request in a record.

(5) Except as provided in subsection (6), an English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

(6) If a person that is asked to accept an acknowledged power of attorney requests an opinion of counsel under subsection (4), and a court finds that the reason for the request as stated in the required record is frivolous, the person making the request is subject to liability for attorney fees and costs incurred in providing the requested opinion. In deciding whether the stated reason for the request is frivolous, the court shall consider, in addition to other relevant factors, whether, in light of the language of the power, the provisions of this act, and the surrounding circumstances, there is arguable merit to the legal concern that the request addresses.

(7) As used in this section:

(a) "Acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

(b) "Vintage durable power" means a power of attorney to which all of the following apply:

(i) The power is valid within the meaning of section 106.

(ii) The power is durable under the law that validates the power within the meaning of section 106.

(iii) The power was executed after September 29, 2012 and before the effective date of this act.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.220.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.220.new Acceptance of acknowledged power of attorney; exceptions; liability for refusal to accept acknowledged power of attorney.

Sec. 120. (1) Except as otherwise provided in subsection (3), a person shall either accept an acknowledged power of attorney or request an agent's acknowledgment under section 119(3) or a certification, translation, or opinion of counsel under section 119(4) not later than 7 business days after the power is presented for acceptance, and a person shall not require either of the following:

(a) An additional or different form of power of attorney for authority granted in the acknowledged power presented.

(b) An additional or different form of agent's acknowledgment if an acknowledgment that complies with section 113(2) and is signed by the agent who is to act on the principal's behalf in the transaction in question is presented with the acknowledged power presented or in response to a request under section 119(3).

(2) Except as otherwise provided in subsection (3), if a person requests an agent's acknowledgment under section 119(3) or a certification, translation, or opinion of counsel under section 119(4), the person shall accept the power of attorney not later than 5 business days after receipt of the requested agent's acknowledgment, certification, translation, or opinion of counsel or, if more than 1 item has been timely requested in response to the same presentation, 5 business days after the requesting person has received all of the items timely requested.

(3) A person is not required to accept a power of attorney if any of the following apply:

(a) The person is not required to engage in a transaction with the principal in the same circumstances.

(b) Engaging in a transaction with the agent or the principal in the same circumstances would be inconsistent with federal law or with guidance issued by a federal regulatory agency to whose jurisdiction the person is subject.

(c) The person has actual knowledge of the termination of the agent's authority or of the power of attorney before exercise of the power.

(d) The person's timely request for an agent's acknowledgment under section 119(3) or a certification, translation, or opinion of counsel under section 119(4) is refused.

(e) 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 an agent's acknowledgment under section 119(3) or a certification, translation, or opinion of counsel under section 119(4) has been requested or provided.

(f) The person in good faith makes, or has actual knowledge that another person has made, a report to adult protective services as defined in section 3 of the financial exploitation prevention act, 2020 PA 344, MCL 487.2083, stating a belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

(g) The person is a financial institution as defined in section 3 of the financial exploitation prevention act, 2020 PA 344, MCL 487.2083, and the person is, at the time in question, delaying or placing a freeze on transactions or assets relative to the principal under the financial exploitation prevention act, 2020 PA 344, MCL 487.2081 to 487.2091.

(4) A person that refuses in violation of this section to accept an acknowledged power of attorney is subject to a court order mandating acceptance of the power and liability for reasonable attorney fees and costs incurred in any action or proceeding that confirms the validity of the power or mandates acceptance of the power.

(5) A person that refuses in violation of this section to accept an acknowledged power of attorney after having requested and received a certification, a translation, or an opinion of counsel under section 119(4) is subject to, in addition to the liability described in subsection (4), liability for reasonable attorney fees and costs incurred in providing the requested certification, translation, or opinion of counsel.

(6) As used in this section, "acknowledged" means that term as defined in section 119.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.221.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.221.new Principles of common law and equity.

Sec. 121. Unless displaced by a provision of this act, principles of common law and equity supplement this act.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.222.new THIS NEW SECTION IS EFFECTIVE JULY 1, 2024 *****

556.222.new Laws applicable to financial institutions and certain other entities.

Sec. 122. This act does not supersede any other law applicable to financial institutions or other regulated entities, and that other law controls to the extent it is inconsistent with this act.

History: 2023, Act 187, Eff. July 1, 2024.

***** 556.223.new *THIS NEW SECTION IS EFFECTIVE JULY 1, 2024* *****

556.223.new Remedies under other law.

Sec. 123. 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.

History: 2023, Act 187, Eff. July 1, 2024.