On September 13, 2013, the Board of Governors of the Iowa State Bar Association approved the Iowa Power of Attorney Act as part of the Iowa State Bar Association’s affirmative legislative package for the 2014 legislative session. This Act is attached to this Executive Summary and Explanation as Exhibit A. Exhibit A includes the language of the Uniform Power of Attorney Act, with the changes from that Act marked. The changes from the Uniform Act were made by the Probate and Trust Law Section of the Iowa State Bar Association, and are discussed in detail in the explanation portion of this outline.

EXECUTIVE SUMMARY

Background of Uniform Act. In 2006, the National Conference of Commissioners on Uniform State Laws published the Uniform Power of Attorney Act (the “Uniform Act”), a comprehensive Act concerning the creation and use of financial powers of attorney. The Uniform Act includes guidance on all aspects of creating and using a financial power of attorney, including, but not limited to the technical aspects of how to create such a power of attorney, what duties are imposed on and what powers are granted an agent acting under a power of attorney. In addition, the Uniform Act makes clear that the agent owes a fiduciary duty to the principal and gives straightforward and clear guidance to the agent. The Uniform Act also provides remedies in case of abuse of authority by the agent and a simple form for use by individuals.

The Act is what is called a ‘default’ statute. The powers and authorities granted by the act can in most instances be changed by the actual power of attorney document signed by the principal.

Implementation in Iowa. The members of the Probate and Trust Law Section and the Elder Law Section of the Iowa State Bar Association have been concerned about the pervasive abuse of powers of attorney, resulting in the fraudulent transfer of significant amounts of money from elderly and vulnerable individuals.

In addition, the sections see a need for a comprehensive and detailed Act to govern financial powers of attorney. Iowa currently has a very rudimentary power of attorney act, which is not nearly as comprehensive as the Uniform Act.
Accordingly, the Probate and Trust Law Section has studied the Uniform Act, has determined that it is legislation that covers all matters required to be covered by such an Act, and has recommended the passage of the Uniform Act, with amendments made so the Act is in conformance with Iowa Law and Practice. The Act has also been reviewed by the Elder Law Section.

The Iowa State Bar Association is not the only group in the state suggesting enactment of legislation regarding financial powers of attorney. Groups such as AARP, the Alzheimer’s Association and other advocacy groups for older Iowans are asking for legislation that will help curb abuse. In the 2012 legislative session, bills were introduced that would have affected powers of attorney in Iowa. It is the position of the Probate and Trust Law Section that the Uniform Act will achieve the goals expressed by the above advocacy groups and others.

**Reasons for Implementation in Iowa.** There are several reasons why it is important to pass this legislation in Iowa, including:

- The need to provide clear, statutory guidance to agents acting under financial powers of attorney.
- The need to authorize certain individuals and entities the right to question in court the actions of an agent. Under current law, only the principal (the person signing the power of attorney, and who is likely incapacitated) and the principal’s conservator (which most likely does not exist) have the right to bring an action in court. Under the Uniform Act, spouses, children and other individuals close to the principal can request the court’s review of an agent’s actions.
- The need to be specific about the powers of co-agents under the Act.
- The need to be specific about what powers a principal can give to the agent.
- The need for a statutory form of power of attorney to be used by individuals who may not have the financial means to hire an attorney to complete the power of attorney.

The Iowa State Bar Association, including the Probate and Trust Law Section and the Elder Law Section, urges the passage of this Uniform Act.
EXPLANATION OF PROVISIONS

ARTICLE 1 - General Provisions.

The Iowa Uniform Power of Attorney Act (the “Iowa Act”) is intended to replace current Iowa Code Chapter 633B. It is a comprehensive statute dealing with creating a power of attorney, provides default rules for operating under such a power of attorney, and provides remedies for those who have been taken advantage of by an agent acting under a power of attorney. The Iowa Act is based on the terms of the Uniform Power of Attorney Act adopted by the National Conference of Commissioners on Uniform State Laws in July, 2006. In this Explanation, this Uniform Power of Attorney Act is referred to as the “Uniform Act”.

The Iowa State Bar Association Probate and Trust Law Section formed a committee to study the Uniform Act and recommend any changes to it (the “Committee”).

The Act is a default act. In other words, most of the provisions of the act can be overridden by language in the actual power of attorney (the “POA”). There are certain rules, however, that cannot be overridden by the terms of a POA. This includes imposition of certain minimum fiduciary duties on an agent who has accepted appointment (section 114(a), recognition of persons who have standing to request judicial construction of the power of attorney or review of the agent’s conduct (Section 116, and protections for persons who accept an acknowledged POA without actual knowledge that the power of attorney or the agent’s authority is void, invalid or terminated (section 119). See General Comment on Article 1 of Uniform Act.

Section 102. Definitions.

The word ‘attorney-in-fact’ will no longer be the name of the person acting on behalf of the Principal. From now on, that person will be referred to as the “Agent.”

The committee thought it appropriate to include definitions of the words Conservator, Conservatorship, Guardian and Guardianship because of the fact that oftentimes a conservator or guardian is appointed for a person who has an effective or active POA.

In addition, the Committee provided a definition of Incapacity that would be the same as Iowa Code section 633.566 regarding the disability required for a conservatorship.

Section 103. Applicability.

The Act applies to all powers of attorney other than health care POA’s, a voing proxy, a power created on a governmental form for a governmental purpose, and a power “coupled with an interest” such as a creditor’s right to protect title in pledged collateral.

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1 The Committee working on this Act included the following individuals: Ronni Begleiter; Martin Begleiter; Breanna Young, Chris Even, Josephine Gittler, Sheldon Kurtz, Paige Thorson, Randy Caldwell, Tom Tarbox, Susan Pence and Margaret Van Houten.
Section 104. Power of Attorney is Durable.

Unlike current law, the presumption under the Uniform Act and Iowa Act is that a POA is *durable unless stated otherwise.*

Section 105. Execution of Power of Attorney.

The Uniform Act requires only a signature, without a required acknowledgment. An acknowledged signature is required, though, to obtain a presumption of genuineness.

The Iowa Act will require an acknowledgment to be an effective POA.

Section 106. Validity of Power of Attorney

This section deals with when POA is valid, including when and where the POA is signed. It also provides for use of a photocopy or electronically transmitted copy instead of the original. This would not be effective if another law, such as the recording laws of the state, require an original.


This section provides that a POA is governed by the law of the jurisdiction indicated in the power of attorney when signed and if there is no such indication, by the law of the jurisdiction in which the POA was created.

Section 108. Nomination of Conservator or Guardian; Relation of Agent to Court-Appointed Fiduciary.

The Uniform Act authorizes a principal to appoint a conservator or guardian in the terms of the POA. In addition, the Uniform Act provides that the POA continues to be effective unless the court orders otherwise, but the agent must report to the conservator and/or guardian.

The Iowa Act has changed some of these provisions. First, the principal may appoint a conservator or guardian in the POA, but the provisions for appointment of a standby guardian and conservator are also retained. In addition, the authority of an agent to act under the POA is suspended during the time the Conservator is acting. The Committee recommended this divergence from the Uniform Act to make sure that there are not multiple financial agents acting on behalf of one individual.

Section 109. When Power of Attorney Effective.

This section provides specific rules as far as when a POA becomes effective. The default rule is that the POA becomes effective when executed, unless provided otherwise. The section also provides for determination that the principal is incapacitated.
**Section 110. Termination of Power of Attorney or Agent’s Authority.**

Generally, a POA terminates upon death, incapacity (if the POA is not durable), revocation, end of the term, the purpose of the POA is accomplished, or the agent dies, incapacitated or resigns, with no successor in place.

The Iowa Act also provides for revocation of ‘all general or plenary powers of attorney previously executed in the state of Iowa by the principal, but does not revoke a power of attorney limited to a specific and identifiable action or transaction, which action or transaction is still capable of performance but has not yet been fully accomplished by the agent.’ Iowa Act section 110(f).

The Uniform Act does not provide for automatic revocation of prior powers of attorney by execution of a new POA. The new POA must revoke prior POA’s under the Uniform Act.

**Section 111. Co-Agents.**

The Uniform Act provides for each co-agent to have full authority to act independently.

The Iowa Act provides the same standards for actions by co-agents as is the case for co-trustees under the Iowa Trust Code.

As with current law, a principal may appoint successor agents to act, with the same authorities as granted to the original agent.

This section also provides that an agent with actual knowledge of a breach or imminent breach of fiduciary duty by another agent shall notify the principal or, if the principal is incapacitated, to take action to safeguard the principal’s best interest. Section 111(d).

**Section 112. Reimbursement and Compensation of Agent.**

The Uniform Act continues with the presumption that an agent is not subject to compensation unless the POA states otherwise.

The Iowa Act provides that an individual who is an individual may only receive compensation (in excess of expense reimbursement) if the POA provides for it. A bank or trust company is allowed reasonable compensation.

**Section 113. Agent’s Acceptance.**

An Agent’s acceptance can be evidenced by exercising authority or performing duties as an agent or by any other assertion or conduct indicating acceptance.

Now written acceptance is required.
Section 114. Agent’s Duties.

This is a very important provision of the Act, because it specifies the duties of the Agent, including specification of fiduciary duties owed to the Principal, and grants protections to an Agent who acts in good faith and follows the provisions of the Act. Iowa law does not currently have any such specification of duties.

Section 115. Exoneration of Agent.

This section authorizes a POA to exonerate an agent from liability for breach of duty other than with respect to any provision that “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 “was inserted as a result of an abuse of a confidential or fiduciary relationship with the principal.”

The comments state that the mandatory minimum standard of conduct required of an agent is equivalent to the good faith standard applicable to trustees.

Section 116. Judicial Relief.

This much needed provision lists persons who may petition a court to construe a power of attorney or review the agent’s conduct, and grant appropriate relief. The list of persons who have this authority includes the principal, the agent, a guardian, conservator or other fiduciary acting for the principal; the principal’s agent for health care decisions; a family member; a beneficiary under any of the principal’s assets, a government agency having regulatory authority to protect the welfare of the principal, a caregiver, a person designated by the principal in the POA or a person asked to accept the POA.

Generally the costs of such action shall be paid by the principal or the principal’s estate, but there is a provision for assessing the costs against the petitioner or the agent for good cause shown.

Section 117. Agent’s Liability

An agent who violates the Act is liable to the principal or the principal’s successor to restore the value of the property lost, and reimburse the principal or the principal’s successor for the attorney’s fees and costs paid on the agent’s behalf.

Section 118. Agent’s Resignation; Notice.

This authorizes for the resignation by giving notice to the principal and if the principal is incapacitated, to the conservator or guardian or to a caregiver, or to a government agency or to another person reasonably believed by the agent to have sufficient interest in the principal’s welfare.
Section 119. Acceptance of and Reliance Upon Acknowledged Power of Attorney.

A financial institution or other person is given authority to accept and rely upon an acknowledged power of attorney.

Section 120. Liability for Refusal to Accept Acknowledged Power of Attorney.

This section provides a penalty for failure to accept an acknowledged power of attorney. The penalty is in the form of a court order mandating the acceptance of the power of attorney and liability for damages, and attorney’s fees and costs.

The Iowa Act contains a provision that any action for such liability must be brought within one year of the initial request for acceptance of the power of attorney.

Section 121. Principles of Law and Equity.

This section provides that unless there is a specific provision of the act that applies, the general principles of law and equity supplement this Act.

For example, the common law of agency, which has always been applicable to powers of attorney, will continue to apply to such relationships. The rules regarding the burden proof, the presumption that a transaction between a principal and his agent is fraudulent and the rules concerning confidential relationships will continue to be effective.

Section 122. Laws Applicable to Financial Institutions and Entities. The Act does not supersede any other law applicable to financial institutions or other entities, and the other law controls if inconsistent with this Act.

Section 123. Remedies under Other Law. The remedies under the Act are not exclusive and do not abrogate any right or remedy.

ARTICLE 2 - AUTHORITY.

The provisions of Article 2 contain a detailed laundry list of the specific authority granted to the agent.

Section 201. Authority That Requires Specific Grant; Grant of General Authority. There are two types of authority. The first type of authority is the type that requires a specific grant in the POA in order to be effective. This includes the following powers:

- The power to create, amend, revoke, or terminate an inter vivos trust;
- To make a gift (to anyone);
- To create or change rights of survivorship;
- To create or change a beneficiary designation;
- To delegate authority granted under the power of attorney;
- To waive the principal’s right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
- To exercise fiduciary powers that the principal has authority to delegate; or
- To disclaim property, including a power of appointment

Iowa Act section 201(a).

Subsection (b) of section 201 provides that even if the POA contains authority set out above, an agent who is not an ancestor, spouse or descendent may not exercise authority under a power of attorney to make a gift to the agent or to anyone to whom the agent owes a legal obligation of support.

Subsection (c) of section 201 does provide that the specific powers listed above will be deemed to be granted if there is a grant of authority to do “all acts that a principal could.”

Section 202. Incorporation of Authority.

This sections authorizes a POA to be drafted incorporating by reference the general authorities set forth in sections 204-217 of the Act. This is the way the sample form is drafted.

Section 203. Construction of Authority Generally.

This section is an exhaustive list of actions an agent is authorized to take with respect to the powers with respect to specific assets set out in sections 204-217 of the Act.

Sections 204 through 217. Authorities Granted:

- Section 204 Real Property
- Section 205 Tangible Personal Property
- Section 206 Stocks and Bonds
- Section 207 Commodities and Options
- Section 208 Banks and other Financial Institutions
- Section 209 Operation of Entity or Business
- Section 210 Insurance and Annuities
- Section 211 Estates, Trusts, and other Beneficial Interests
- Section 212 Claims and Litigation
- Section 213 Personal and Family Maintenance. This is a very important provision that gives authority to continue to maintain an individual’s and his or her family with support.
- Section 214 Benefits from Governmental Programs or Civil or Military Service
- Section 215 Retirement Plans
- Section 216 Taxes
- Section 217 Gifts. Generally, gifts to someone other than the agent (which are generally prohibited) are limited to the annual exclusion gift exemption amount unless
stated otherwise. And no gifts are to be made unless such gifts are consistent with the principal’s objectives and if the objectives are unknown and the factors in section 217(b) are met.

ARTICLE 3. STATUTORY FORMS.

The Statutory Form, set forth in section 301, is established as a simple form, which can be filled in by an individual. Also included is a statement of information for the agent.

ATTACHMENTS:

A. Iowa Uniform Power of Attorney Act, as Proposed
B. Outline Regarding Abuse of Power of Attorney