



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2009 Wisconsin Act 319
[2009 Assembly Bill 704]

Uniform Power of Attorney

2009 Wisconsin Act 319 adopts the Uniform Power of Attorney Act which provides statutory authorization for a person to act on someone else's behalf in legal or business matters. The person authorized to act is the "agent," and the person granting the authorization is the "principal." The durable power of attorney provides a method of surrogate decision-making for a person whose modest assets may not justify incapacity planning with a trust and may be used to avoid guardianship.

The Act updates existing statutes addressing uniform power of attorney and supersedes both prior uniform acts in the following ways:

- *Durable Power of Attorney* -- Under the Act a power of attorney is durable unless it contains express language indicating otherwise. The Act contains a sample durable power of attorney form and a sample agent certification form.
- *Effective Upon Execution* -- The Act makes a power of attorney effective when executed unless the principal specifies that the power of attorney becomes effective upon a future date or event.
- *Automatic Revocation* -- 2009 Wisconsin Act 319 revokes authority granted to principal's spouse upon commencement of proceedings for legal separation, marital dissolution, or annulment. Additionally, it revokes a domestic partner's authority if the domestic partnership is terminated.
- *Agent Conduct* -- Guidance regarding default rules for co-agents' and successor agents' reimbursement and compensation, an agent's acceptance of appointment, the agent's duties, and an agent's resignation is contained in the Act. Additionally, 2009 Wisconsin Act 319 institutes a default rule prohibiting an agent, other than the principal's spouse or domestic partner, from making a gift to the agent or certain other persons and sets out a comprehensive

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.state.wi.us/>.

list of persons who may petition the court to review the agent's conduct, and addresses agent liability.

- *Good Faith Acceptance* -- 2009 Wisconsin Act 319 protects persons, who in good faith, accept an acknowledged power of attorney without actual knowledge that the power of attorney is revoked, terminated, invalid, or that the agent is exceeding or improperly exercising the agent's powers.
- *Good Faith Refusal* -- The Act allows a person to refuse to accept an acknowledged power of attorney if the person believes it is invalid, it is illegal, it would be inconsistent with federal law, or the person has actual knowledge of the termination of the agent's authority. Under 2009 Wisconsin Act 319 a person whose power of attorney is rejected may seek a court order directing the acceptance of the power of attorney at the requester's expense.
- *Incorporation* -- 2009 Wisconsin Act 319 allows a person to incorporate a particular authority relating to subjects such as real property, retirement plans, and taxes, into the power of attorney either by a reference to the short descriptive terms for the subject used in the Act or by a reference to the statutory section number.

2009 Wisconsin Act 319 clarifies that unless displaced by specific statutory provisions, the principles of common law supplement the statutory language. The statutory language is not intended to supersede any law applicable to financial institutions or insurance businesses. The remedies under the Act are not exclusive and do not abrogate any other cause of action or remedy available under current law.

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