

Georgia's Uniform Power of Attorney Act

What it means for you and what actions you should take

A General Durable Power of Attorney is a critical document for all adults. It allows someone to act on your behalf for financial matters. In 2017, the Georgia legislature took steps to improve the current Georgia code. Learn the why's and how's of this important change.

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1. **What are the major features of the new Uniform Power of Attorney Act?**
The UPOAA provides ways to protect individuals from “bad actor agents” who are misusing the POAs, often for their own benefit. Of special concern are those who are suffering from some form of cognitive impairment, such as Alzheimer’s disease. It also provides some way to force third parties, such as banks and other financial institutions, to honor a POA.
2. **Are old POAs still good?**
Yes; however, any POA executed prior to July 1, 2017, regardless of the language, will not receive the protections featured in the UPOAA.
3. **How does the UPOAA make a POA easier to use?**
The UPOAA allows electronic and photocopied versions to be utilized. The original is still required for real estate transactions.
4. **What is required in the new POA to receive the protections?**
 - a. Must use the statutory form (or language that substantially reflects the form) in OCGA Section 10-6B-70.
 - b. The POA must have been executed on or after July 1, 2017.
 - c. The POA must be signed by the principal and one or more witnesses and a notary public.
5. **How can I force a bank or other institution to accept my new POA?**
Certain steps must be followed to force acceptance:
 - a. Present the POA for acceptance.
 - b. If refused, the third party has up to seven (7) business days after being presented with the POA to request an agent’s certification, an English translation, or an opinion of attorney.
 - c. After presented, the third party has five (5) business days after receipt of the requested documents to accept the POA.
6. **What are the consequences for a third party that still won’t accept a POA?**
If all proper steps are followed and a third party has no reason to deny the validity of a POA, then a court can issue an order finding the document valid and require the third party to accept it. In addition, the third party can be required to repay the principal for things like attorney fees and litigation expenses. The third party may also be liable for actual damages, like loss of value.
7. **What does the new law do to help protect me?**
A person who accepts the role of “agent” under a POA will now be held liable for breaching their fiduciary duty. For example, if your “agent” buys a Corvette for themselves while not paying for your caregivers, they could be liable. There are mandatory requirements such as acting in the best interest of the principal. Non-mandatory requirements, such as conflict of interest and the Prudent Person Standard, may be modified while drafting the POA.
8. **What action do you recommend?**
Review your current POA. If it still meets your needs, it is still effective. If you are concerned with financial institution acceptance (as you should be), consider executing a new POA that conforms with the new law.