



Bankers Advisory

COMPLIANCE MONITOR

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Hawaii Establishes Uniform Power of Attorney Act

By Lee Greenberg

The state of Hawaii recently adopted provisions to establish the Uniform Power of Attorney Act in Senate Bill 2229. The new chapter is effective immediately.

Applicability

The new legislation applies to all powers of attorney except the following:

- 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;
- A power to make health care decisions;
- A power created by a legal parent or guardian placing the care of a minor or disabled adult under another person;
- A proxy or other delegation to exercise voting rights or management rights with respect to an entity; and
- A power created on a form prescribed by a government or governmental subdivision, agency, or instrumentality for a governmental purpose.

Power of Attorney

A power of attorney created under the new law is durable unless it expressly provides that it is terminated by the incapacity of the principal. The power of attorney must be signed by the principal or in the principal's conscious presence by another individual directed by the principal to sign the principal's name on the power of attorney. 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.

A power of attorney executed in Hawaii on or after January 1, 2015 is valid if its execution complied with the law of Hawaii as it existed at the time of execution. A power of attorney executed outside of Hawaii is valid in Hawaii if, when the power of attorney was executed, the execution complied with the law of the jurisdiction that determines the meaning and effect of the power of attorney or the requirements for a military power of attorney.

Effective Date of Power of Attorney

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.

Termination of Power of Attorney or Agent's Authority

A power of attorney terminates upon the following occurrences:

- The principal dies;
- The principal becomes incapacitated, if the power of attorney is not durable;
- The principal revokes the power of attorney;
- The power of attorney provides that it terminates;
- The purpose of the power of attorney is accomplished; or
- 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 of attorney.

Liability for Refusal to Accept Acknowledged Power of Attorney

A person must either accept an acknowledged power of attorney or request a certification, a translation, or an opinion of counsel no later than seven business days after presentation of the power of attorney for acceptance.

If a person requests a certification, a translation or an opinion of counsel, the person must accept the power of attorney no later than five business days after receipt of the certification, translation or opinion of counsel.

A person may not require an additional or different form of power of attorney for authority granted in the power of attorney presented.

A person that refuses to accept an acknowledged power of attorney in violation of the new law shall be subject to a court order mandating acceptance of the power of attorney and liability for reasonable attorney's fees and costs incurred in any action on proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney.

General Authority

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:

- Create, amend, revoke or terminate an inter vivos trust;
- Make a gift;
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Delegate authority granted under the power of attorney;
- Waive the principal's right to be a beneficiary of a joint and survivor annuity; or
- Exercise fiduciary powers that the principal has authority to delegate.

If a power of attorney grants to an agent authority to do all acts that a principal could do, the agent shall have the general authority to:

- Demand, receive, and obtain by litigation or otherwise, money or another thing of value to which the principal is, may become, or claims to be entitled, and conserve, invest, disburse, or use anything so received or obtained for the purposes intended;
- Contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, cancel, terminate, reform, restate, release, or modify the contract or another contract made by or on behalf of the principal;
- Execute, acknowledge, seal, deliver, file, or record any instrument or communication the agent considers desirable to accomplish a purpose of a transaction, including creating at any time a schedule listing some or all of the principal's property and attaching it to the power of attorney;
- Initiate, participate in, submit to alternative dispute resolution, settle, oppose, or propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;
- Seek on the principal's behalf the assistance of a court or other governmental agency to carry out an act authorized in the power of attorney;
- Engage, compensate, and discharge an attorney, accountant, discretionary investment manager, expert witness, or other advisor;
- Prepare, execute, and file a record, report, or other document to safeguard or promote the principal's interest under a statute or regulation;
- Communicate with any representative or employee of a government or governmental subdivision, agency, or instrumentality, on behalf of the principal;
- Access communications intended for, and communicate on behalf of the principal, whether by mail, electronic transmission, telephone, or other means; and
- Do any lawful act with respect to the subject and all property related to the subject.

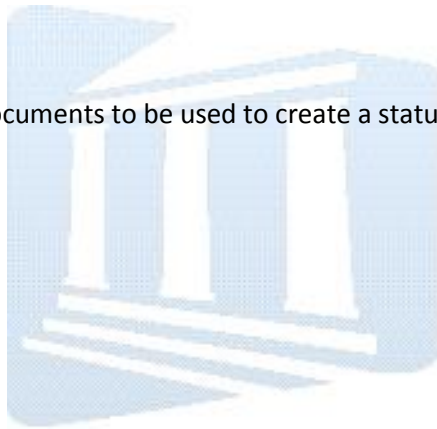
Language in a power of attorney granting general authority with respect to banks and other financial institutions shall authorize the agent to:

- Continue, modify, and terminate an account or other banking arrangement made by or on behalf of the principal;
- Establish, modify, and terminate an account or other banking arrangement with a bank, trust company, savings and loan association, credit union, thrift company, brokerage firm, or other financial institution selected by the agent;
- Contract for services available from a financial institution, including renting a safe deposit box or space in a vault;
- Withdraw, by check, order, electronic funds transfer, or otherwise, money or property of the principal deposited with or left in the custody of a financial institution;
- Receive statements of account, vouchers, notices, and similar documents from a financial institution and act with respect to them;

- Enter a safe deposit box or vault and withdraw or add to the contents;
- Borrower money and pledge as security personal property of the principal necessary to borrower money or pay, renew, or extend the time of payment of a debt of the principal or a debt guaranteed by the principal;
- Make, assign, draw, endorse, discount, guarantee, and negotiate promissory notes, checks, drafts, and other negotiable or nonnegotiable paper of the principal or payable to the principal or the principal's order, transfer money, receive the cash or other proceeds of those transactions, and accept a draft drawn by a person upon the principal and pay it when due;
- Receive for the principal and act upon a sight draft, warehouse receipt, or other document of title whether tangible or electronic, or other negotiable or nonnegotiable instrument;
- Apply for, receive, and use letters of credit, credit and debit cards, electronic transaction authorizations, and traveler's checks from a financial institution and give an indemnity or other agreement in connection with letters of credit; and
- Consent to an extension of the time of payment with respect to commercial paper or a financial transaction with a financial institution.

Statutory Forms

Lastly, the law provides sample documents to be used to create a statutory form power of attorney.



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