

## NEBRASKA UNIFORM POWER OF ATTORNEY ACT

### §1. Cited as Nebraska Uniform Power of Attorney Act

### §2. Key definitions, not an exhaustive list:

1. Agent: a person authorized to act for a principal under a power of attorney
2. Durable: not terminated by the principal's incapacity
3. Power of Attorney (POA): a writing or other record that grants authority to an agent to act in place of a principal
4. Principal: an individual who grants authority to an agent in a power of attorney

### §3. Not applicable to.

1. power coupled with an interest
2. power to make health care decisions
3. proxy or other delegation to exercise voting rights or management rights with respect to an entity
4. power created on a form prescribed by a government or a governmental subdivision, agency, or instrumentality for a governmental purpose

### §4. Durability. A POA created after 1/1/13 shall be durable unless it expressly provides for termination upon incapacity of the Principal.

### §5. Formalities of execution.

1. signed or marked by Principal in accordance with §64-105.02, Neb. Rev. Stat.
2. signed in Principal's conscious presence by another individual directed by the Principal to sign Principal's name
3. acknowledged by notary public or other individual authorized by law
4. signature presumed to be genuine if acknowledged by notary public

### §6. Validity.

1. POA executed in Nebraska on or after operative date (1/1/13) is valid if execution complies with §5.
2. POA executed in Nebraska before operative date is valid if it conformed to the law of Nebraska at the time of execution.
3. POA executed in another state is valid in Nebraska if, at time of execution, it complied with the law of that state.
4. POA valid if it complies with the requirements of a military power of attorney.
5. Photocopy or electronically transmitted copy of a POA has same effect as original except as otherwise provided by statute.

### §7. Choice of law. The meaning and effect of a POA is determined by:

1. jurisdiction indicated in the POA
2. if not indicated in the POA, then jurisdiction in which executed

### §8. Other fiduciaries.

1. Principal may nominate, in the POA a conservator or guardian if protective proceedings are begun after execution of the POA
2. If court of Principal's domicile appoints conservator or other fiduciary, agent is accountable to fiduciary and Principal
3. Fiduciary has same power to revoke or amend the POA that Principal would have had if not disabled or incapacitated

§10. POA terminates:

1. death of Principal
2. Principal becomes incapacitated if POA not durable
3. Principal revokes
4. POA provides that it terminates
5. purpose of POA is accomplished
6. Principal revokes agent's authority, or agent dies, becomes incapacitated, or resigns and no successor named in POA

Agent's authority terminates:

1. Principal revokes
2. Agent dies, becomes incapacitated or resigns
3. Action for dissolution or annulment of agent's marriage to Principal, unless otherwise provided
4. POA terminates
5. Agent's authority exercisable, unless otherwise provided, until authority terminates under a, b, c, or d, above, notwithstanding lapse of time since POA executed
6. Termination of agent's authority not effective as to agent who acts without actual knowledge and in good faith
7. Incapacity of Principal does not terminate the POA as to agent who acts without actual knowledge and in good faith
8. Execution of a POA does not revoke a prior power of attorney unless subsequent POA provides for revocation of prior POA

§11. Coagents/successor agents.

1. Principal may designate two or more coagents who may operate independently unless POA otherwise provides.
2. Principal may designate two or more successor agents to act if an agent cannot serve or resigns. Unless POA provides otherwise, successor agent
  1. has same authority granted original agent
  2. may not act until all predecessor agents have resigned, died, etc.
  3. agent who does not participate in breach of fiduciary duty by another agent not liable for action of other agent, unless POA specifies otherwise
  4. agent who has knowledge of breach of fiduciary duty must notify Principal

§12. Intentionally omitted.

§13. Intentionally omitted.

§14. Agent's duties. (among others)

1. act only in scope of authority granted
2. act so as not to create conflict of interest, except as otherwise provided

§15. Intentionally omitted.

§16. Intentionally omitted.

§17. Intentionally omitted.

§18. Intentionally omitted.

§19. Acceptance of acknowledged POA

1. person who accepts in good faith an acknowledged POA without actual knowledge signature not genuine may rely upon presumption that signature is genuine (see §5.d.).
2. person who is asked to accept an acknowledged POA may request and rely on:
  1. agent's certification of any factual matter
  2. English translation of the POA (at Principal's expense unless request made more than 7 business days after POA presented)
  3. Opinion of counsel as to any matter of law (at Principal's expense unless request made more than 7 business days after POA presented)
  4. Person conducting activities through employees is without actual knowledge of a fact relating to a POA if the employee is without such actual knowledge. (refer to subpar. 1, immediately above)

§20. Criteria for Acceptance:

1. accept or request certification, translation or attorney's opinion within 7 days
2. accept not later than 5 days after receipt of certification, translation or opinion
3. may not require additional or different form
4. not required to accept unacknowledged POA
5. not required to accept if
  1. not otherwise required to engage in transaction with Principal in the same circumstances
  2. transaction inconsistent with federal law
  3. actual knowledge of termination of authority
  4. request for certification, translation or attorney opinion refused
  5. good faith belief the power invalid/agent without authority
  6. information that another person has made a report to social services agency that Principal subject to abuse, etc.
  7. judicial proceeding for construction of POA or agent's conduct
  8. POA effective upon occurrence of a contingency and no evidence of occurrence of event or contingency presented
6. Refusal not permitted if:
  1. refusal based on date POA executed
  2. refusal based solely on mandate that different form be used
7. Consequences of wrongful refusal:
  1. court order mandating acceptance

2. liability for attorney fees, costs in proceeding that confirms validity or mandates acceptance

§§21-23. Intentionally omitted.

§24. Agent's powers:

1. Only if expressly granted:
  1. create, amend, revoke, terminate an inter vivos trust
  2. make a gift
  3. create or change rights of survivorship
  4. create or change a beneficiary designation
  5. exercise fiduciary powers Principal has authority to delegate
  6. renounce or disclaim property
2. Unless otherwise provided, agent who is not ancestor, spouse or issue of P may not create an interest in P's property (gift, right of survivorship, beneficiary designation, etc.)

§25. If POA refers to general grant of authority, agent has authority to do anything described in §§ 27-40.

§26. Intentionally omitted.

§27. Real Estate. Unless otherwise provided in POA, activities are authorized with respect to real estate.

§§28-31. Authority with respect to other types of property.

§32. Authority with respect to operation of an entity or business.

§33. Intentionally omitted.

§34. Unless otherwise provided, general authority with respect to estates, trusts.

§§35-40. Intentionally omitted.

§§41-42. Forms. Section 42 contains a statutory form of Certification as to the Validity of Power of Attorney Agent's Authority, which is similar to the currently used Affidavit of Attorney in Fact. Underwriters will probably require that this new form be used.

§§43-44. Intentionally omitted.

§45. Applicability. Act applies to POA created before, on, or after operative date.

§§46-47. Intentionally omitted.

§48. Operative date. January 1, 2013

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  3. create or change rights of survivorship
  4. create or change a beneficiary designation
  5. exercise fiduciary powers Principal has authority to delegate
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