

ARKANSAS UNIFORM POWER OF ATTORNEY ACT

The Arkansas Uniform Power of Attorney Act became effective January 1, 2012, and is Codified at Ark. Code Ann. §28-68-101 *et seq.* The Act contains significant changes to previous power of attorney law in Arkansas and covers all powers of attorney created before, on or after January 1, 2012. However, any power or attorney created prior to January 1, 2012, which was valid under the law in effect at the time of creation is deemed to be valid under the Act. The act also provides for recognition of powers of attorney executed in another jurisdiction or pursuant to requirements for military powers of attorney.

The Act repeals all of the previous Title 28, Chapter 68 regarding powers of attorney and substitutes the new uniform act. Some of the most significant and interesting changes are set forth below.

Key Provisions

1. Statutory Form: The Act provides “statutory form” powers of attorney which may be used in order to meet the requirements of the Act.
 - a. If the statutory form POA is presented, the party receiving it may not require an additional or different form of POA.
 - b. A person who refuses to accept an acknowledged statutory form POA may be subject to a court order mandating acceptance of the POA and payment of reasonable attorney’s fees and costs incurred in any proceeding that confirms the validity of the POA or mandates acceptance.
2. Durability: All powers of attorney are durable unless otherwise provided therein.
3. Effective Date:
 - a. A power of attorney is effective when executed unless it expressly provides that it is to become effective upon some other occurrence, such as the principal becoming incapacitated.
 - b. If the POA is triggered by incapacity but does not provide a means for determining incapacitation or designate a party to make the determination, such a determination can be made by a physician, a licensed psychologist, an attorney, or a judge.

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4. Effect of Acknowledgment: The signature of the principal is presumed to be genuine if acknowledged by a notary.
5. Presentation of POA:
 - a. A party presented with a power of attorney may:
 - i. accept the power of attorney,
 - ii. request a certification, or
 - iii. request an opinion of counsel.
 - b. *Request for Certification/Opinion of Counsel* – A request for certification or opinion of counsel must be made no later than 7 business days after presentation of the POA, and if the certification or opinion is received, the POA must be accepted no later than 5 days thereafter.
6. Refusal to Accept: A party is not required to accept an acknowledged statutory form power of attorney if:
 - a. the person has actual knowledge of the termination of the agent's authority or of the power of attorney,
 - b. a request for a certification, for translation, or for an opinion of counsel under Ark. Code Ann. § 28-68-119(d) has been refused,
 - c. the person in good faith believes the POA is not valid or that the agent does not have authority to perform the act requested, (whether or not a certification or an opinion of counsel under Ark. Code Ann. § 28-68-119(d) has been requested or provided, or
 - d. the person makes, or has actual knowledge that another person has made a report to the Department of Human Services stating a good faith belief that the principal may be subject to physical or financial abuse, neglect, exploitation, or abandonment by the agent or a person acting for or with the agent.

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7. Powers Which must Be Specifically Stated: Certain actions by the agent under must be stated specifically in the POA. These include, but are not limited to:
- a. amend, revoke, or terminate a trust created by the principal,
 - b. make gifts,
 - c. create or change rights of survivorship, and
 - d. delegate authority under the power of attorney to another.

Note: The statute differentiates and allows for certain types of gifts and other acts by an agent who is an ancestor, spouse, or descendant of the principal.

8. Limitations on Gifts: The Act also provides certain other limitations on an agent's authority to make a gift of property, including a limitation in an amount per donee not to exceed the annual dollar limits of the federal gift tax exclusion. Gifts are not limited to outright gifts but include gifts for the benefit of a person.