

More on Michigan's new Uniform Power of Attorney Act

Thursday, November 30, 2023

Take-Away: Before the new power of attorney law becomes effective, it would be wise to confirm if existing powers of attorney will be accepted by financial institutions.

Background: As was recently reported in an earlier missive, in November Michigan adopted the Uniform Power of Attorney Act which becomes effective on July 1, 2024. One of the stated goals of this new legislation is to decrease the number of guardianships and conservatorships that require a probate court appointment. Also, this new law is intended to encourage banks and other financial institutions to be more receptive to the agent's assertion of authority to act on behalf of their principal under this uniform law that has been adopted by several other states, which also includes enforcement provisions when a third-party unreasonably rejects the agent's assertion of authority under the power of attorney or a financial institution imposes unreasonable conditions to its acceptance of the power of attorney.

Scope of the New Law: While this new power of attorney law contains a generic, statutory form power of attorney that can be used by individuals, the statutory form instrument does not include the designation of a Patient Advocate for a patient's health care decisions, nor does it apply to a parent's formal delegation of his/her parental authority over a minor child. In these situations, a separate power of attorney instrument will still be required.

Practical Problem: While this new uniform power of attorney law is definitely welcome news, it does not invalidate existing powers of attorney instruments. That, then, creates the practical problem of whether existing powers of attorney will be respected by third-parties, or whether third-parties will require the agent under the 'old' power of attorney to present verification or other substantiating documentation, such as an opinion from an attorney, if there is some question either about the validity of the 'old' power of attorney or the scope of the delegated authority to its agent.

Conclusion: Since there is a six month lead time before the new statute becomes effective, it would be wise if there is an existing power of attorney for financial decision-making in place to present that instrument to the financial institution that the agent might regularly have to deal with to confirm if that financial institution will accept that existing power of attorney if it is ever needed in the future.