

UNIFORM POWER OF ATTORNEY ACT (EXCERPT)
Act 187 of 2023

556.219 Acceptance of and reliance upon acknowledged power of attorney; good faith.

Sec. 119.

(1) A person that in good faith accepts an acknowledged power of attorney without actual knowledge that the signature is not genuine may rely upon the presumption under section 105(4) that the signature is genuine.

(2) A person that in good faith accepts a power of attorney that is either an acknowledged power or a vintage durable power without actual knowledge that the power is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding the agent's authority may rely on the power as if the power were genuine, valid, and still in effect, the agent's authority were genuine, valid, and still in effect, and the agent had not exceeded and had properly exercised the authority. This subsection applies regardless of whether the purported agent under a durable power has executed an acknowledgment that complies with section 113(2) or any similar requirement under prior law.

(3) If a power of attorney that is durable is presented for acceptance without an agent's acknowledgment that complies with section 113(2) and is signed by the agent who is to act on the principal's behalf in the transaction in question, a person that is asked to accept the power may require that the agent provide the acknowledgment before accepting the power.

(4) A person that is asked to accept an acknowledged power of attorney may request and may rely, without further investigation, upon any of the following:

(a) A certification under penalty of perjury, including, as may be appropriate for the intended purpose, an affidavit in recordable form, by an agent or an attorney at law who represents either the agent or the principal of any factual matter concerning the principal, agent, or power of attorney.

(b) An English translation of the power of attorney if the power contains, in whole or in part, language other than English and the translation's accuracy is the subject of either a certification or an opinion of counsel.

(c) An opinion of counsel as to any matter of law concerning the power of attorney if the person requesting the opinion explains the reason for the request in a record.

(5) Except as provided in subsection (6), an English translation or an opinion of counsel requested under this section must be provided at the principal's expense unless the request is made more than 7 business days after the power of attorney is presented for acceptance.

(6) If a person that is asked to accept an acknowledged power of attorney requests an opinion of counsel under subsection (4), and a court finds that the reason for the request as stated in the required record is frivolous, the person making the request is subject to liability for attorney fees and costs incurred in providing the requested opinion. In deciding whether the stated reason for the request is frivolous, the court shall consider, in addition to other relevant factors, whether, in light of the language of the power, the provisions of this act, and the surrounding circumstances, there is arguable merit to the legal concern that the request addresses.

(7) As used in this section:

(a) "Acknowledged" means purportedly verified before a notary public or other individual authorized to take acknowledgments.

(b) "Vintage durable power" means a power of attorney to which all of the following apply:

(i) The power is valid within the meaning of section 106.

(ii) The power is durable under the law that validates the power within the meaning of section 106.

(iii) The power was executed after September 29, 2012 and before the effective date of this act.

History: 2023, Act 187, Eff. July 1, 2024