

## **Memorandum**

**Date:** October 13, 2004

**To:** Linda Whitton, Reporter  
Drafting Committee  
Revised Uniform DPA Act

**From:** Charlie Sabatino  
ABA Commission on Law and Aging

**RE:** **Commission Comments on New Draft of UDPPA**

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The Commission on Law and Aging met for its fall meeting this past weekend and, as part of its agenda, discussed the current draft of the UDPAA that the drafting committee will be reviewing October 21-23, 2004. Members primarily focused upon the statutory form. I wanted to give you the comments on which there was strong consensus in writing, since I will not be able to attend that meeting (but do plan to attend future ones). Fortuitously, Abigail Kampmann just became a member of the Commission and participated in the discussion, so she will be able to further explain any of these comments and answer questions.

1. Execution requirements. The Commission supports retaining notarization as a requirement for a valid DPA.
2. Form readability. The Commission recommends that NCCUSL contract with a readability expert to assess the reading level of the form and potential areas of confusion or misunderstanding, so that they may be remedied before final approval. This is especially important since this is essentially a self-help form. For example, some commented that it may be confusing to instruct users to cross out powers they don't want in one section, but then to initial powers they do want in the next. Another example was provided by one of our non-lawyer members who commented that he had no clear idea of what the distinction between real property and tangible personal property is. If this kind of expert assessment is not within NCCUSL's financial resources, foundation grant options could be explored.
3. Form name. There was a strong belief that the legal term "Durable Power of Attorney" remains unclear and confusing to the general public. At the

same time the term has become fairly etched in the vernacular, particularly since health care powers of attorney have also become commonplace. The most likely confusion concerns the overlap of or separation between health powers versus financial powers. Therefore, the Commission recommends that the form (and perhaps the Act itself) be called “Durable Power of Attorney for Financial Decisions” or “Financial Durable Power of Attorney.”

4. Health versus Financial. Another question related to the above issue concerns the relationship between the health care agent (who can obligate the principal to pay for medical care) and the financial agent (who is given full authority over financial decisions). How is their financial authority coordinated in this instrument?
5. IMPORTANT INFORMATION at beginning of the Form. Include information about the importance of the principal actually informing his or her agent of the appointment and reviewing the document with the agent, especially the IMPORTANT INFORMATION FOR AGENT section at the end.

The durability explanation in IMPORTANT INFORMATION (“this durable power of attorney will be effective *even if* you no longer have capacity”) is not consistent with the effective date options provided in the form.

6. Agent Signature. Consider adding a sample signature line for the agent at the end of the form, preferably after IMPORTANT INFORMATION FOR AGENT. This could encourage agent knowledge of and involvement at the creation of the document, as well as increase the likelihood that the agent would read IMPORTANT INFORMATION FOR AGENT.