

Ohio's Statutory Form Financial Power of Attorney Explained

Power of Attorney

A power of attorney is a written document by which a principal gives to an agent (the attorney-in-fact) certain authority to act for the principal, the person signing the power of attorney.

Ohio's Statutory Form Power of Attorney

The Ohio Revised Code includes a form for the creation of a valid power of attorney (R.C. 1337.60). Ohio's Uniform Power of Attorney Act form has certain requirements regarding contents and execution (signing):

- if the power of attorney is for the conveyance, mortgage, or lease of an interest in real property, the principal's signature must be notarized (R.C. 1337.01);
- a power of attorney for the conveyance, mortgage, or lease of an interest in real property must be recorded in the office of the county recorder of the county in which such property is situated, previous to the recording of a deed, mortgage, or lease by virtue of such power of attorney (R.C. 1337.04);
- by definition the statutory form creates a durable power of attorney (one that remains in effect after the principal becomes incapacitated), unless the POA expressly provides otherwise (R.C. 1337.24); and
- the financial power of attorney cannot give the agent authority to make health care decisions for the principal; rather a health care power of attorney must be a separate document. (See Advance Directives & R.C. Chapter 1337).

The bill sets forth a form that may be used to create a power of attorney (R.C. 1337.60). The bill requires that the form used be substantially in the form provided by the statute to create a statutory form power of attorney. However, any form that meets the common-law requirements for a power of attorney may be used to create a non-statutory form power of attorney.

The statutory form begins with a notice of important information for the person creating the power of attorney, including the fact that the powers granted by the document do not include the authority to make health care decisions for the principal.

The form also advises the agent of his duties and liabilities including that once the agent accepts the designation as agent, a fiduciary relationship is created.

The form expressly puts the agent on notice that if the agent violates the terms of the instrument or the fiduciary duties created by the agency relationship, the agent will be liable to the principal or the principal's successors for loss or damage caused by the violation.

The form includes a list of 13 subjects in which the principal may grant power to the agent by initialing the appropriate line on the POA.

General Authority with Respect to Powers Granted in a Power of Attorney

Under the bill, when a principal gives an agent a power of attorney that incorporates by reference a particular power set forth in R.C. 1337.42 to .58, the principal authorizes the agent to do any lawful act with respect to that particular power, except as expressly modified in the power of attorney.

Construction of Particular Powers

For each of the 13 types of powers that the principal may grant to the agent by initialing the appropriate line on the statutory form, the bill states how the power is to be construed. The construction applies as set forth in the bill except as modified by the principal. There are also subjects that do not appear in the form and require express authorization and initialization by the principal in the special instructions section of the form to be effective.