



Uniform Power of Attorney Act

Paige Thorson, J.D.

Legal Assistance Developer

Power of Attorney

- Revered as one of the most flexible, helpful, and useful documents around...
- Also the most misused, misunderstood and abused document around...

Power of Attorney: Who are the players?

- Principal
- Attorney-in-Fact (or Agent)
- “Power of Attorney”

Power of Attorney: What is it?

- A **contract**
- Creates a **fiduciary duty**
- Requires **capacity**
- **Voluntarily** signature
- Limited **authority**
 - Ending at death
- **Binding**

Power of Attorney: Benefits

- Easy and inexpensive to create
- Promotes autonomy/choice
- Avoids guardianship

Power of Attorney: Risks

- Failure to carry out principal's wishes
- Coercion
- Principal lacked capacity to sign
- Financial Exploitation
 - Agent exceeds authority granted by Principal
 - Agent comingles funds

Power of Attorney: Risks

- Who holds Agent accountable?
 - Principal
 - May revoke
 - May name new agent
 - May change terms
 - But after incapacity?

The Uniform Power of Attorney Act

- Intended to fill gaps in states' existing POA laws
- Drafted by Uniform Law Commission
- Divided into 4 parts (“Articles”)
 - Article 1: General Provisions
 - Article 2: Authority
 - Article 3: Statutory Forms
 - Article 4: Miscellaneous Provisions

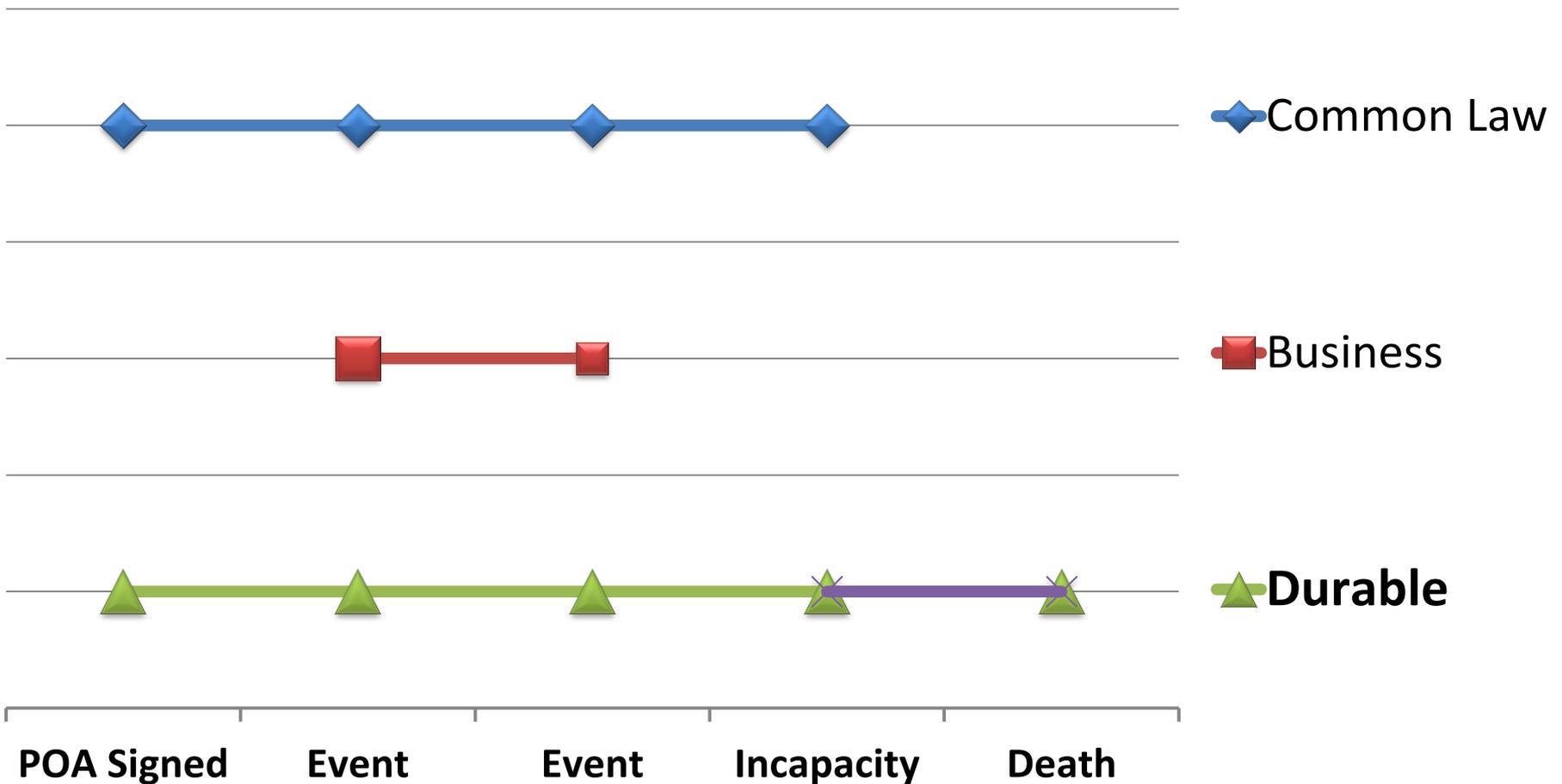
UPOAA: Article I

- Defines “incapacity” as the inability of an individual to manage property or business affairs because the individual:
 - is a person whose decision making capacity is so impaired that the person is unable to make, communicate or carry out important decisions concerning the person’s financial affairs

UPOAA: Execution & Validity

- Required Signatures:
 - Principal
 - Notary OR Witnesses
- Is a POA signed before the UPOAA is adopted valid?

POA: When is it in Effect?



POA: Durable

- Current Law
 - “...not affected by subsequent incapacity of principal”
 - Other words that show Principal’s intent that the authorities granted may be exercised after incapacity
- UPOAA
 - POA is durable **unless** the document expressly states that the document terminates upon incapacity.

UPOAA: Conservator Appointed

- Situation: Court appoints a conservator after POA has been executed.
 - POA is suspended UNLESS POA document provides otherwise
 - If not suspended, agent is accountable to both the Principal AND the appointed conservator
 - POA is reinstated upon termination of the conservatorship as a result of the principal regaining capacity.
- Principal's choice
 - Principal may contemplate future appointment of conservator and name a person to be considered by the court

UPOAA: Termination

- POA document terminates
- Agent's authority terminates

UPOAA:

Co-agents/Successor Agents

- Principal **MAY** appoint two or more persons to serve as co-agents
- Power **shall** be exercised by majority action
 - What if there is an impasse?
 - What if one or more agents resign?
 - If a co-agent is unavailable to perform duties

UPOAA – Compensation for Agent

- Original UPOAA: agent is entitled to reimbursement of expenses and “reasonable compensation”.
- Proposed UPOAA: Iowa law does not allow compensation to the agent unless otherwise provided in the document.

UPOAA: Agent's Duties

- Mandatory Duties
 - Act according to principal's expectations; if not known, act in principal's best interest
 - Act in good faith
 - Act only within the scope of authority granted in the power of attorney

UPOAA: Agent's Duties

- Default Duties:
 - Act loyally for principal's benefit
 - Avoid conflicts of interest
 - Act with care, competency and diligence
 - Keep record of all accounting
 - Cooperate with the person making health care decisions
 - Attempt to preserve estate plan (if consistent with principal's best interest)

UPOAA: Judicial Relief

- Principal/agent
- Guardian, Conservator, other fiduciary
- Person authorized to make health care decisions
- Spouse, parent, descendant (presumptive heir)
- Person named as a beneficiary
- Governmental agency having regulatory authority to protect the welfare of the principal;
- *Caregiver or another person that demonstrates sufficient interest in the principal's welfare*
- A person asked to accept the POA

UPOAA: Judicial Relief

- If one of the previously mentioned parties file such a petition (requesting review):
 - The principal may motion the court to dismiss such a petition *unless principal lacks capacity*;
 - Costs of any action (attorneys fees, expert witness fees) will be assessed against the principal/estate.
 - For good cause – may be assessed against petitioner

UPOAA: Agent's Liability

An agent that violates this act is liable to the principal or principal's successors in interest

UPOAA:

Liability for Refusal to Accept POA

A person is not required to accept POA if:

- Would not be required to engage in same transaction with principal;
- Engaging in a transaction would be contrary to federal law;
- Person has actual knowledge of the termination of agent's authority;
- Person believes that the power is not valid/agent lacks authority;
- Person makes, or knows that another has made, a reports a 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

UPOAA: Specific Grant of Authority

- Agent may do the following **only if** the POA expressly grants such authority:
 - Create, amend, revoke, or terminate *inter vivos* trust;
 - Make a gift;
 - Create or change rights of survivorship;
 - Create or change a beneficiary designation;
 - Delegate authority granted under the POA;
 - Waive principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;
 - Exercise fiduciary powers that the principal has authority to delegate;
 - Disclaim property

UPOAA: Specific Grant of Authority

- Additional Safeguard:
 - An agent who is not an ancestor, spouse, or descendant or principal may not create in the agent (or an individual the agent is legally obligated to support) an interest in the principal's property.

UPOAA: General Grant of Authority

- A large list of actions/authorities to exercise, but the last is:
 - “do any lawful act with respect to the subject and all property related to the subject”

UPOAA: Subject to Sec. 201

- Section 201: lists those actions which require a specific grant of authority
- Subject to 201 (where applicable) agent may exercise authority, by default, in relationship to:
 - Real property
 - Tangible personal property
 - Stocks and bonds
 - Commodities and options
 - Banks and other financial institutions

UPOAA: Subject to Sec. 201

- ...Continued...
 - Operation of entity or business
 - Insurance and annuities
 - Estates, trusts, and other beneficial interests
 - Claims and litigation
 - **Personal and family maintenance**
 - Benefits from governmental programs or civil or military service
 - Retirement plans
 - Taxes
 - **Gifts**

UPOAA: Subject to Sec. 201

- Personal and Family Maintenance
 - Original UPOAA allows an agent to “perform the acts necessary to maintain the customary standard of living of the principal, the principal’s spouse, and the following individuals, whether living when the power of attorney is executed or later born:
 - **The principal’s children;**
 - Other individuals legally entitled to be supported by the principal; and
 - **The individuals whom the principal has customarily supported or indicated the intent to support.**

UPOAA: Subject to Sec. 201

- Original: “The principals children”
- Proposed: “the principal’s (i) **minor** children, (ii) adult children who are pursuing a post secondary school education and are under the age of twenty-five (25) years, and (iii) the principal’s parents, if the principal had established a pattern of such payments”

UPOAA: Subject to Sec. 201

- Original: “the individuals whom the principal has customarily supported or indicated the intent to support”
- Proposed: exclude subsection

UPOAA: Subject to Sec. 201

- Personal and Family Maintenance
 - Original UPOAA allows an agent to “continue payments incidental to the membership or affiliation of the principal **and the individuals described in paragraph (1)** in a religious institution, club, society, order, or other organization or to continue contributions to those organizations.”

UPOAA: Subject to Sec. 201

- Personal and Family Maintenance
 - Committee considered including a provision which allowed the agent to **“provide funds for shelter, clothing, food, medical needs, educational expenses, transportation, and other living costs for the principal’s adult children and the principal’s grandchildren and more remote descendants (even if not described in paragraph (a)(1) above) if a need for such funds is indicated and if doing so will not impair the principal’s financial security.”**

UPOAA: Forms

- POA form available to public
- Provides education for principal
- Provides education for Agent
- Provides a Form for Certification by the Agent
 - Agent would be required to sign form acknowledging role, duties, and authorities

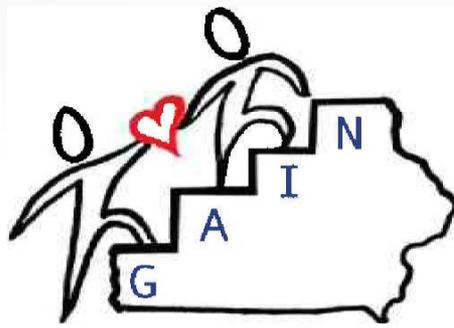
** The forms are not complete – will be finalized if/when act is actually adopted by Iowa legislature

UPOAA: Protections

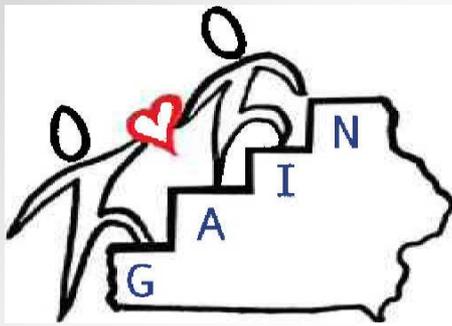
- Personal liability to restore value
- Clear fiduciary standards
 - Think mandatory provisions
- Specified persons can ask agent for accounting or ask court to review agent's conduct
- Duty to keep records
- Authority to make gifts must be specified

Questions?

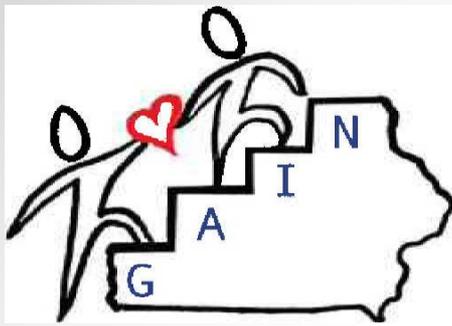
Paige Thorson, J.D.
paige.thorson@iowa.gov
(515) 725-2051



Guardianship Association of Iowa Network **(GAIN)**

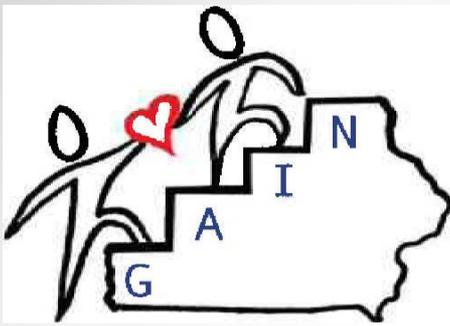


- A group of professionals that came together in early 2011 with a shared interest in substitute decision-making
- Our goal was to form a multi-disciplinary state affiliate of the National Guardianship Association in order to promote ethical standards and practices related to substitute decision-making

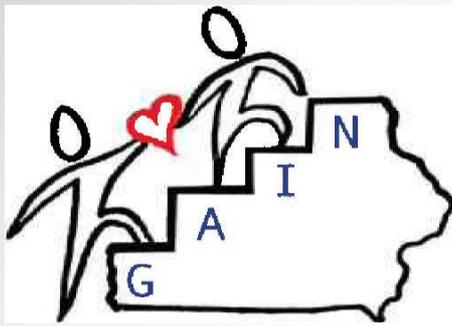


Step by Step Guide to Start a State Guardianship Association

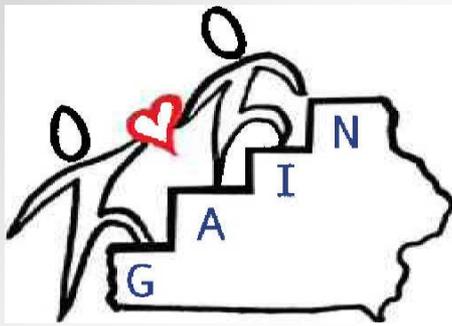
Prepared by Steven D. Fields on behalf of
the National Guardianship Association
(July 2007)



1. Compile a list of people of similar interests such as: Private Guardians, Public Guardians, Judges, Attorneys, Senior and Disability Rights Advocates, etc.
2. Set an In-Person Meeting
3. Discuss benefits of State Association
4. Select a Board of Directors
5. Select Officers

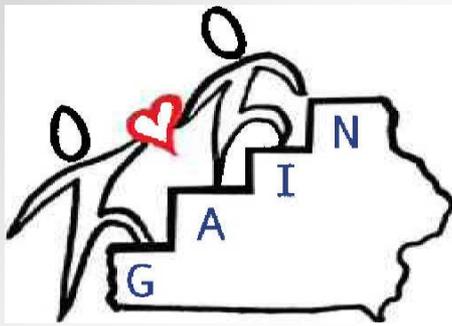


6. Draft Articles of Incorporation
7. Draft and Adopt Bylaws
8. Set up a Website
9. Apply for 501(c)(3) status as a non-profit organization
10. Affiliate with National Guardianship Association

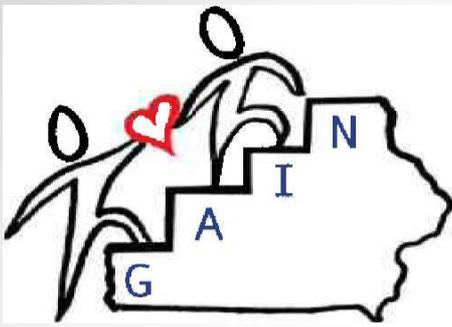


MISSION STATEMENT : Gain aspires to unite, educate, and inform members of the community on substitute decision-making issues by:

- Strengthening network opportunities
- Fostering education and training
- Promoting ethical standards
- Advocating for quality services
- Respecting individual rights and dignity
- Supporting the use of least restrictive alternatives
- Encouraging public policy decisions



- Please visit our Website at iowaguardianship.org
- Please join us for our Kick-Off Event on November 15, 2013
- Please complete an application if you want to join this association of individuals that will make a difference in our state



**THIS MAY BE THE ONLY
TIME IN YOUR LIFE
THAT YOU WILL FEEL
GOOD WHEN YOU GAIN**