



Real Possibilities

Testimony of AARP

In support of H.B. 5215, *AN ACT CONCERNING ADOPTION OF THE  
CONNECTICUT UNIFORM POWER OF ATTORNEY ACT*

February 24, 2014

Dear Members of the Judiciary Committee:

AARP strongly supports enactment of H.B. 5215, the Uniform Power of Attorney Act, or UPOAA, in Connecticut and indeed in every state. As a nonpartisan social mission organization representing nearly 37 million members age 50+, and over 603,000 here in Connecticut, AARP believes the protections outlined in H.B. 5215 will safeguard against abuse and promote choice.

Powers of attorney are essential tools for delegating authority to others to handle financial matters in many situations. It is a legal document used by an individual (the principal) to name someone else (the agent) to make financial decisions and act on the principal's behalf. To be useful as an incapacity planning tool, a POA must give broad authority to the agent.

A power of attorney, whether general or durable, is private; there is no oversight by a court as there is supposed to be for a guardian or conservator. State laws often are unclear about the duty owed by the agent to the principal. This combination of broad consent, lack of oversight, and unclear duties makes it possible for agents to misuse their authority.

The power of attorney has been called a "license to steal" and this misuse of authority is a form of financial exploitation. This concerns us greatly and that is why we think it's critical that state laws help prevent, detect and redress power of attorney abuse. Power of attorney abuse can take many forms, including:

- Forging the principal's signature on a power of attorney or making a fraudulent document;
- Spending the principal's money for the benefit of the agent;

- Making gifts when the power of attorney does not provide authority to do that; and
- Undermining the principal's estate plan by giving assets to unintended recipients.

Additionally, a power of attorney will not be useful if third parties, such as financial institutions, refuse to honor an agent's directions. Third parties that refuse to honor a power of attorney because they believe the agent is misusing authority may help prevent exploitation of the principal. Sometimes, however, third parties refuse to honor the POA for less legitimate reasons, such as because it is old or from another state.

While the Act can't prevent bad actors from committing theft and other forms of abuse, it does set forth clear agent duties and prohibitions that will make civil actions and criminal prosecutions more effective. Highlights include provisions that:

- Contain mandatory and default duties that prohibit self-dealing and mandate preservation of the principal's estate plan;
- Makes clear that a power of attorney terminates when the principal dies;
- Set forth the powers that an agent cannot exercise unless the power of attorney expressly authorizes such actions;
- Establish liability for agents who violate the power of attorney law;
- Address third-party acceptance of and reliance upon a power of attorney; and
- List circumstances under which a third party may legitimately refuse to accept a power of attorney and provide sanctions for unlawful refusals.

To date, thirteen states have enacted the Uniform Power of Attorney Act, and Hawaii, Iowa, Kansas, Mississippi, Pennsylvania and Washington are considering it now. By enacting the UPOAA, Connecticut could strengthen its power of attorney law to better protect its residents and to benefit its businesses and courts.

AARP supports the adoption of this uniform act and encourages the Judiciary Committee members to favorably support H.B. 5215. Thank you.