



D I S T R I C T O F C O L U M B I A B A R
Estates, Trusts and Probate Law Section

D.C. Bar Estates, Trusts and Probate Law Section/Community Public Statement
Regarding the Uniform Power of Attorney Amendment Act of 2017

The views expressed herein represent only those of the Estates, Trusts and Probate Law Section/Community of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.

The D.C. Bar Estates, Trusts and Probate Law Section/Community Steering Committee has considered the Uniform Power of Attorney Amendment Act of 2017 (the "POA Act"). The POA Act is intended to update the District of Columbia's financial power of attorney law that was last updated over 15 years ago. The Steering Committee supports enactment of the POA Act,¹ however, there are several sections of the statute for which we would like to recommend revisions as follows:

- (1) Section 21-2501.05. Execution of power of attorney.
Require two witnesses (one of which may be the notary public). This additional requirement supports the goal of reducing incidents of abuse and fraud.
- (2) Section 21-2501.11. Coagents and successor agents.
With respect to part (a) of the section, revise to provide that coagents must act jointly unless otherwise provided in the power of attorney. As currently drafted, the default is that coagents may act independently. The current default is inconsistent what we believe most principals would assume to be the case.
- (3) Section 21-2501.20. Liability for refusal to accept acknowledged power of attorney
Add a provision that requires mandatory acceptance of a properly executed statutory power of attorney. Proper execution of a **statutory form power of attorney** should be valid *prima facie*. Consider language similar to Section 17-104 of the MD Estates and Trusts Code (see attached). The use of powers of attorney in Maryland has improved significantly since Maryland enacted its mandatory acceptance provision.

¹ The Steering Committee of the Estates, Trusts and Probate Law Section/Community voted on this proposed public statement via email on 5/30/17. The results of the vote were: yeas (7): Jennifer C. Concino, Giannina "Gina" Lynn, Stephanie Perry, Christopher Guest, Eli Guiterman, Kathy Mancusi, and Andrew "Chip" Richardson; abstain (2): Karla E. Saguil, and Cecelia Steiner-Smith; and nays (0).



D I S T R I C T O F C O L U M B I A B A R
Estates, Trusts and Probate Law Section

(4) Section 21-2502.04. Real property.

Revise this section to refer to the additional requirement of D.C. Code Section 42-101 regarding the transfer of real property. **Currently, there is much confusion when lay people (and even uninformed lawyers) do not know that there is a separate D.C. Code provision governing the use of a power of attorney for real property transactions.** See D.C. Code Section 42-101. We are recommending that a reference to D.C. Code Section 42-101 be included in this section to eliminate the confusion.

(5) Add language regarding D.C. Code Section 42-101 to the top of the D.C. statutory power of attorney form and include the option for the principal to initial the language the principal intends to apply. Suggested revisions to the statutory power of attorney form are as follows:

At line 913 of the bill, add the following:

“Initial one of the following boxes to indicate whether you authorize your agent to purchase, sell, or borrow against real property you may own.

_____ THIS POWER OF ATTORNEY AUTHORIZES THE PERSON NAMED BELOW AS MY AGENT TO DO ONE OR MORE OF THE FOLLOWING: TO SELL, LEASE, GRANT, ENCUMBER, RELEASE, OR OTHERWISE CONVEY ANY INTEREST IN MY REAL PROPERTY AND TO EXECUTE DEEDS AND ALL OTHER INSTRUMENTS ON MY BEHALF, UNLESS THIS POWER OF ATTORNEY IS OTHERWISE LIMITED HEREIN TO SPECIFIC REAL PROPERTY.

OR

_____ THIS POWER OF ATTORNEY *DOES NOT* AUTHORIZE THE PERSON NAMED BELOW AS MY AGENT TO SELL, LEASE, GRANT, ENCUMBER, RELEASE, OR OTHERWISE CONVEY ANY INTEREST IN ANY AND ALL REAL PROPERTY I OWN.”

Delete line 960 of the bill

In order for the principal to grant her agent authority over real property, she would have to affirmatively grant this authority by initialing the appropriate selection



D I S T R I C T O F C O L U M B I A B A R
Estates, Trusts and Probate Law Section

(discussed below). Real property would not be included in the catch-all powers section entitled "All Preceding Subjects" on line 973.

Add the following after line 979:

Grant of Specific Authority (Optional)

_____ Sell, lease, grant, encumber, release, otherwise convey any interest, and execute deeds and all other instruments on my behalf, with respect to any and all real property I may own at any time.

OR

_____ My agent's authority to sell, lease, grant, encumber, release, otherwise convey any interest, and execute deeds and all other instruments on my behalf, only extends to the below described specific real property I own:

Street address: _____

Lot and square: _____

With the foregoing suggested revisions, the Steering Committee supports enactment of the POA Act.

4831-1026-0297, v. 1