What to Expect from the New Uniform Power of Attorney Act

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On November 1, 2021, House Bill 2548 will go into effect. State Reps. Preston Stinson and Brent Howard co-authored HB 2548, which adopts the Uniform Power of Attorney Act (UPOAA). Gov. Kevin Stitt signed HB 2548 on April 28, 2021. The UPOAA was first enacted in 2006 by the Uniform Law Commission.

Presently, Oklahoma is the 29th state to adopt the UOPAA in various form. The UPOAA replaces the Uniform Durable Power of Attorney Act of 1979 (which was adopted by Oklahoma in 1988). The new UPOAA enacted by Oklahoma can be found in Okla. Stat. tit. 58 section 3001 *et seq*. Previously, the Uniform Durable Power of Attorney Act could be found at Okla. Stat. tit. 58 section 1071 *et seq*. Those statutes will now be superseded as a result of the UPOAA, which is much more expansive than the previous version.

There are several significant changes to note as a result of Oklahoma adopting the UPOAA and within HB 2548:

- The Act explicitly *excludes* the ability for the principal to grant a power of attorney for health care decisions;
- The Act does not require the power of attorney be notarized. However, if the power of attorney *is* notarized, a court will presume the signature to be genuine if it is acknowledged before a notary (or an authorized individual to take acknowledgements);
- The Act permits a power of attorney to be witnessed by two (2) witnesses. In fact, no witnesses are required under the Act; and
- The Act creates clear liability for agent misconduct. Specifically, should an agent violate the Act, the agent is liable to the principal (or principal's successors in interest) for the amount to restore the value of the property had the violation not occurred, and reimburse for attorney fees incurred on the agent's behalf.

This is not an all-inclusive list of all changes the new Act implements. It is important to note that the legislature did provide within the Act that any power of attorney signed prior to November 1, 2021, is not affected by this Act, and therefore, any health care power of attorney provision currently in effect, or executed prior to November 1, 2021, is still protected and can be relied upon by the agent and/or health care provider.

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